

## **TEMPLATE WHOLESALE SERVICES AGREEMENT**

### **PREPAYMENT VERSION**

This is the template wholesale services agreement (WSA) for the provision of wholesale services by Scottish Water to a licensed provider who intends to prepay its wholesale charges and is not required to use an escrow account. The WSA is the contract under which Scottish Water agrees to provide those services for which the licensed provider pays wholesale charges.

It is important to note that the terms of each WSA will be a matter for negotiation between Scottish Water and the relevant licensed provider. However, the Commission has published this template WSA to be the basis of such negotiations.

More information on the WSA is available in the market entry guidance for licensed providers and potential licensed providers, which is published on the Commission's website: [www.watercommission.co.uk](http://www.watercommission.co.uk).

July 2011

**WHOLESALE SERVICES AGREEMENT  
[PREPAYMENT VERSION]**

**between**

**Scottish Water**

**and**

**[insert name of Licensee]**

**Dated: [ ] 2011**

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**THIS AGREEMENT** is made

**BETWEEN:**

**SCOTTISH WATER**, a body corporate established under section 20 of the Water Industry (Scotland) Act 2002 and having its principal office at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline KY11 8GG ("**SW**");

and

**[Insert name of Licensee]** (company registered number [        ]) whose registered office is at **[Insert registered office address]** ("**Licensee**")

**WHEREAS:**

- A. SW is the public water and sewerage authority for Scotland established by Part 3 of the 2002 Act.
- B. The Licensee proposes to carry on business as a Water Services Provider and/or a Sewerage Services Provider.
- C. The Licensee has requested SW pursuant to section 16 of the 2005 Act and/or such other Direction(s) issued by the Commission to provide the Services. This Agreement sets out the terms and conditions that are to apply in relation to the provision of such Services, as required by the said section 16 and/or the Direction(s).
- D. The Parties enter into this Agreement with the approval of the Commission.

This Agreement also sets out the terms and conditions that apply where the Licensee carries out certain specified activities in relation to a Customer's Trade Effluent in place of SW.

**NOW IT IS AGREED as follows:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement (including the Recitals and the Schedules), unless the context otherwise requires, the words and expressions defined in Schedule 1 shall have the meanings respectively given to them in that Schedule.

**1.2 Interpretation**

In this Agreement, except where the context otherwise requires:

- 1.2.1 **number:** the singular includes the plural and vice versa;
- 1.2.2 **provisions of the Agreement:** a reference to any Clause or Schedule is, except where it is expressly stated to the contrary, a reference to such clause of, or schedule to, this Agreement. A reference in a Schedule to any paragraph is, except where it is expressly stated to the contrary, a reference to a paragraph in that Schedule;
- 1.2.3 **amendments:** any reference to this Agreement or to any other document shall include reference to this Agreement or such document as duly amended, supplemented, substituted, novated or assigned from time to time but, where applicable, subject to the provisions of this Agreement;
- 1.2.4 **statutory provisions:** any reference to any enactment (including any subordinate legislation or byelaws) shall be construed as a reference to the enactment as amended, replaced, consolidated or re-enacted, and as including any orders, regulations, byelaws, directions, codes of practice or other delegated or subordinated legislation made under that enactment;
- 1.2.5 **person:** any reference to a person includes partnerships, unincorporated associations, corporations, governments, governmental agencies and departments, statutory bodies and other entities;
- 1.2.6 **Parties:** references to a "Party" mean a party to this Agreement, and reference to SW shall be deemed to include a reference to any organisation or entity which has taken over the functions or responsibilities of SW;
- 1.2.7 **gender:** each gender includes all genders;
- 1.2.8 **headings:** the Clause, Sub-Clause, Schedule and (where provided) paragraph headings in the body of this Agreement are not be taken into account in its interpretation; and
- 1.2.9 **including:** words preceding "include", "includes", "including", "including but not limited to" and "included" shall be construed without limitation by the words which follow those words.

### 1.3 Schedules

The Schedules form part of this Agreement.

## 1.4 **Order of Precedence**

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

- 1.4.1 any Law;
- 1.4.2 the Codes;
- 1.4.3 the Wholesale Charges Scheme; and
- 1.4.4 this Agreement.

## 2. **COMMENCEMENT AND DURATION OF AGREEMENT**

This Agreement shall come into effect when it has been signed by both Parties (subject to Clause 3) and shall continue until terminated in accordance with this Agreement.

## 3. **COMMENCEMENT OF SERVICES**

The commencement of the provision of the Services by SW shall begin on or after the Go Live Date and be conditional on the fulfilment of the following suspensive conditions:

- 3.1 the Licensee holds a Water Services Licence and/or a Sewerage Services Licence and such Licence has not been the subject of any successful appeal notified within 14 days of the date of its grant;
- 3.2 the Licensee has provided the information specified in Schedule 2 to SW;
- 3.3 the Provisional Monthly Charge in respect of the first Month (or portion thereof, as the case may be) in which SW is to provide the Services has been duly paid by the Licensee in accordance with Clause 8; and
- 3.4 the Licensee is entitled to Register Supply Points under the Market Code.

## 4. **SUPPLY OF SERVICES BY SW**

### 4.1 **Provision of Services**

During the Supply Period, SW shall provide the Services in accordance with and subject to the terms of this Agreement.

## 4.2 The Services

For the purposes of this Agreement, the Services in relation to each Supply Point comprise the service or services specified below which are relevant and applicable in respect of that Supply Point:

### A. Water Services

1. the supply of water through the Public Water Supply System where the supply is Metered (including provision of the SW Metering Operations and Services specified in Clause 6.2);
2. the supply of water through the Public Water Supply System to a Supply Point where the supply is Unmeasurable;
3. the supply of water through the Public Water Supply System where the supply is Measurable but is not Metered;

### B. Sewerage Services

1. all Foul Sewerage Services which are provided to any Eligible Premises;
2. all Surface Water Drainage Services (including roads drainage) which are provided to any Eligible Premises; and
3. Trade Effluent Services which are provided to any Eligible Premises PROVIDED THAT during any part of the Supply Period in which the Licensee is required to provide TE Service A or TE Service B in respect of any Discharge Point pursuant to and in accordance with Schedule 5, the Services in respect of that Discharge Point shall not include the provision by SW of any trade effluent sampling or (in the case of TE Service B) analytical services which would otherwise form part of the Trade Effluent Services.

4.3 SW will not, at any time, provide Sewerage Services to more than one Sewerage Services Provider in relation to the same Supply Point.

4.4 Where Trade Effluent Sampling and Analytical Services are, or are to be, provided by the Licensee under this Agreement, the provisions of Schedule 5 (including the Appendices) shall apply.

## 5. SUPPLY OF WATER SERVICES

## 5.1 **Quality of Water**

In supplying water under this Agreement, SW shall comply with the duties in relation to the quality of such water imposed on it by, under, or by virtue of:

5.1.1 Part VIA of the Water (Scotland) Act 1980;

5.1.2 the 2002 Act; and

5.1.3 any other enactment.

## 5.2 **Connection Point**

Water to be supplied under this Agreement shall be made available at the Connection Point. Title to, and risk in, the water supplied shall pass to the Licensee on behalf of its Customer at the Connection Point.

## 6. **SW METERING OPERATIONS AND SERVICES**

6.1 This Clause 6 applies where the supply of Water Services for a Supply Point under this Agreement is, or is to be, measured by meter(s).

6.2 SW shall:

6.2.1 provide, maintain, repair, routinely test for accuracy and, either routinely or where faulty, replace the meter(s); and

6.2.2 where requested by the Licensee:

- (a) install a meter or meters for any Supply Point where the supply is not measured by meter;
- (b) remove a meter or meters installed for any Supply Point;
- (c) replace a meter or meters installed for any Supply Point which is no longer appropriately sized; or
- (d) undertake a meter accuracy test,

in accordance with the provisions of this Clause 6 and in accordance with the Operational Code. In the Wholesale Charges Scheme any charges shown for metering services are in respect of the SW metering operations and services referred to in this Clause 6.2.2.

6.3 The meter shall:

- 6.3.1 be appropriately sized, as determined by the water usage or anticipated water usage from time to time (including water for firefighting);
  - 6.3.2 be in conformity to British Standard 5728 or international standard ISO 4064 or any standard replacing the same;
  - 6.3.3 be provided, installed, tested, repaired and replaced in accordance with good industry practice;
  - 6.3.4 if installed after the date of this Agreement, be installed as near as reasonably practicable to the relevant Connection Point; and
  - 6.3.5 remain the property of SW.
- 6.4 Each Party shall report to the other, as soon as reasonably practicable, any evidence coming to its attention (whether in the course of meter reading or otherwise) of:
- 6.4.1 a water meter installed for a Supply Point failing to record accurately the volume of water supplied within the tolerance permitted under section 54(3) of the Water (Scotland) Act 1980; or
  - 6.4.2 any person improperly tampering or interfering with, or damaging, any water meter installed for a Supply Point (including breaking any seal affixed to the meter).
  - 6.4.3 The Licensee shall be responsible for the due care of any meter installed within the boundary of Eligible Premises. Where such a meter is damaged (not resulting from Force Majeure) by the Licensee or its employees or agents, SW may recover from the Licensee the total cost of the actual work involved in repairing or replacing the meter. The Licensee shall also be liable for Charges lost during the period of damage in accordance with the Market Code.
- 6.5 The Licensee shall take all reasonable steps to ensure that SW or its authorised employees or agents obtains safe and unobstructed access, at all reasonable times, to the water meter installed for a Supply Point for the purpose of carrying out SW metering operations and services. Where the authority, agreement or consent of the owner and/or Occupier of any Eligible Premises is required by Law for the carrying out of any physical works in connection with SW metering operations and services, the Licensee shall seek to obtain such authority, agreement or consent (at its own cost), and shall, when requested and where it is practicable to do so, produce to SW documentary evidence that it has been obtained.

6.6 SW hereby gives its permission to meters installed for a Supply Point and owned by SW being read, in accordance with the Market Code, by the Licensee or its authorised employees or agents, or by any other person permitted to do so under the Market Code.

6.7 References in this Clause 6 to a meter installed for a Supply Point shall be construed as including any meter installed outside the boundary of the Eligible Premises in question (including under a public road) which is used in determining the quantity of water supplied for a Supply Point.

## 7. **CHARGES**

### 7.1 **Wholesale Charges Scheme**

Subject to the provisions of this Clause 7 and section 29E of the 2002 Act, the Charges shall be determined in accordance with the Wholesale Charges Scheme and the Licensee shall pay such Charges in relation to each Supply Point for which they are Registered.

### 7.2 **Non-tariff agreements**

In any case where paragraph 2(5) of Schedule 3 to the 2005 Act for the time being applies in respect of a relevant agreement (within the meaning of that Schedule), the Charges shall be determined by SW but shall not exceed the amount determined by the Commission under paragraph 2(2)(b) of that Schedule.

### 7.3 **Application for Departure from Wholesale Charges Scheme**

7.3.1 If the Licensee believes that, as a consequence of action taken, or proposed to be taken, by a Customer, a departure from the Wholesale Charges Scheme is justified pursuant to section 29E of the 2002 Act in relation to this Agreement, the Licensee may request SW in writing to apply to the Commission for its consent to depart from the Wholesale Charges Scheme pursuant to the said section.

7.3.2 If SW receives a request pursuant to Clause 7.3.1, it shall, subject to Clause 7.3.3 below, comply with the request and apply to the Commission.

7.3.3 SW must apply to the Commission on the request of the Licensee unless:

- (a) it is satisfied, acting reasonably, that the Licensee's request is unfounded and that any application to the Commission for consent would have no reasonable prospect of success; or

- (b) the Licensee fails, without reasonable excuse, to provide information required by SW under Clause 7.3.6.
- 7.3.4 If SW refuses under Clause 7.3.3 to apply to the Commission, it must intimate that fact forthwith to the Licensee and the Commission (together with its reasons for the refusal) and the Licensee may raise the refusal by SW as a Dispute. For the purposes of this Clause 7.3.4, the Expert determination provisions under Clause 25.4.1.1 shall be amended to the effect that an Expert shall not be appointed by the Commission, but by the President for the time being of the Law Society of Scotland.
- 7.3.5 Where, following a request under Clause 7.3.1, SW applies to the Commission for its consent to depart from the Wholesale Charges Scheme, it may make such representations to the Commission regarding the application as it thinks fit, including representations to the effect that consent should be withheld.
- 7.3.6 If the Licensee makes a request under Clause 7.3.1, it must provide SW with such information as it reasonably requires for the purpose of considering the request and (unless the request is refused under Clause 7.3.3) applying to the Commission. The Parties shall make all reasonable efforts to ensure that all information which SW may require for the foregoing purpose has been requested and provided within 20 Business Days of the date of the Licensee's request under Clause 7.3.1. The Licensee shall also discuss its request with SW if SW so requests.
- 7.3.7 Any application to the Commission under Clause 7.3.2, or any decision to refuse to apply, must (unless otherwise agreed between the Parties) be made no later than 30 Business Days after receipt of the request from the Licensee (or no later than 10 Business Days after receipt by SW of all information required under Clause 7.3.6, if later). The application may be made on the basis that further information will be provided to the Commission following the making of the application.
- 7.3.8 SW shall furnish the Licensee with a copy of any application under Clause 7.3.2 and any representations under Clause 7.3.5 at the same time as it makes such application or representations (as the case may be).
- 7.3.9 Where a departure from the Wholesale Charges Scheme is consented to by the Commission under section 29E of the 2002 Act, SW and the Licensee shall, from the date set out in the consent granted by the Commission, apply the revised charge to the relevant Services provided under this Agreement and comply with any conditions set out in the consented departure.

7.3.10 In accordance with Clause 7.3.9, the Licensee shall pay such revised charges in relation to each Supply Point to which the departure relates.

## **8. TERMS OF PAYMENT**

### **8.1 Provisional Monthly Charge**

For each Month during the Supply Period ("Month X"), an amount (the "Provisional Monthly Charge") shall be established in accordance with the following provisions:

8.1.1 the Provisional Monthly Charge shall be an amount payable by the Licensee as set out in the Settlement Report sent by the Central Market Agency to SW and the Licensee, in respect of the provision of Services during Month X;

8.1.2 SW shall invoice the Licensee for the amount of the Provisional Monthly Charge not later than 14 Business Days prior to the start of Month X.

Nothing in this Agreement will prevent the Supply Period commencing on any Business Day during a Month.

### **8.2 Payment of Provisional Monthly Charge**

The Provisional Monthly Charge in respect of Month X shall be paid by the Licensee by the tenth Business Day prior to the start of Month X.

### **8.3 Reconciliation**

8.3.1 When any further Settlement Report is sent to SW and the Licensee by the Central Market Agency after carrying out any Settlement Run in respect of Month X, SW shall render to the Licensee a statement showing a reconciliation between:

(a) the Provisional Monthly Charge or any previous Reconciled Primary Charge paid in respect of Month X (the "Provisional Amount"); and

(b) the Central Market Agency's calculation of the Reconciled Primary Charges in respect of Month X as set out in the Settlement Report.

8.3.2 The reconciliation amount shown in the statement referred to in Clause 8.3.1, together with interest thereon calculated in accordance with Clause 8.3.3 below shall, if the Provisional Amount is less than the Reconciled Primary Charges, be paid by the Licensee and, if the Provisional Amount is greater than the Reconciled Primary Charges, be paid by SW, in each case in accordance with Clause 8.5.

8.3.3 The reconciliation amount payable by the Licensee or SW in terms of Clause 8.3.2 in respect of Month X shall bear interest at the base lending rate from time to time of the Bank of Scotland, such interest to be calculated from the date of payment of the Provisional Monthly Charge for Month X in terms of Clause 8.2 above up to and including the due date for payment of the reconciliation amount in terms of Clause 8.5 below calculated on a daily basis.

#### 8.4 **Payment of other sums**

If any Charge (not being a Primary Charge or a Provisional Monthly Charge) is due to SW, or any payment is due to the Licensee under this Agreement, the Party entitled to payment shall (subject to Appendix 7 of Schedule 5) submit an invoice to the Party liable to make payment for the total amount properly payable, and provide such documentation as is necessary to verify the same. Where such payment is due by the Licensee, the invoice submitted by SW shall be separate from any statement rendered pursuant to Clause 8.3.1.

#### 8.5 **Method of Payment**

Payment of any amount due under this Agreement and shown as payable in an invoice or statement pursuant to this Clause 8 shall be made:

8.5.1 in the case of the Provisional Monthly Charge, in accordance with Clause 8.2, and in any other case not later than ten Business Days from receipt of the invoice or statement; and

8.5.2 by a Clearing House Automatic Payments System transfer of funds to such bank in the United Kingdom as may from time to time be notified by SW to the Licensee (in the case of an amount payable by the Licensee) or by the Licensee to SW (in the case of an amount payable by SW).

#### 8.6 **No deduction or withholding**

8.6.1 All payments by a Party under this Agreement shall be made without any deduction, withholding or set-off (except to the extent permitted by Clause 8.6.2, Clause 14.2 or required by Law).

8.6.2 If any item or part of an item in an invoice or statement rendered by a Party under this Clause 8 is disputed or subject to question, payment of the remainder of the invoice or statement shall not be withheld on those grounds, and the provisions of Clause 8.8.1 shall apply to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been properly payable. Where a Party wishes to

dispute or question an item or part of an item in an invoice or statement, it may only do so in good faith and on grounds which are not vexatious or frivolous.

- 8.6.3 Any dispute or question properly raised under Clause 8.6.2 shall not be considered a breach of this Agreement.

## 8.7 Value Added Tax

- 8.7.1 All sums payable under this Agreement are exclusive of any applicable Value Added Tax ("VAT", which includes any tax in substitution therefor), and accordingly all VAT from time to time properly payable in respect of such sums shall be payable in addition to those sums at the rate from time to time in force against delivery of a valid VAT invoice.
- 8.7.2 The Licensee shall promptly provide SW with all information reasonably necessary to determine the appropriate amount of VAT (if any) payable on Charges (in particular to determine whether the provision of any Service is a zero rated supply under the applicable legislation relating to VAT).

## 8.8 Interest

- 8.8.1 If any sum payable under this Agreement is not paid at the expiry of the period for payment specified in Clause 8.2 or 8.5.1 (as the case may be) (save as contemplated by clause 8.6.2), then the Party who has failed to make payment shall pay interest on the amount outstanding (both before and after judgment or decree) at the rate of 4% per annum over the published base lending rate from time to time of Bank of Scotland, such interest to be calculated from (but excluding) the date of expiry of such period until payment thereof, calculated on a daily basis and compounded annually.
- 8.8.2 Subject to the approval of the Scottish Ministers (if required) under the 2002 Act, SW shall pay interest to the Licensee on the Provisional Monthly Charge at the published base lending rate from time to time of Bank of Scotland. For the purpose of calculating such interest, the Provisional Monthly Charge during Month X shall be treated as due in equal daily instalments as Services are provided during Month X to which the Provisional Monthly Charge relates. From the date when the Provisional Monthly Charge is due, interest shall be calculated on the full amount due. Thereafter interest will be calculated on the reducing balance where the balance reduction reflects the payment of the daily instalment on each day. By way of a non-binding illustrative example:

Say the Provisional Monthly charge due is £30,000 and is paid on the tenth Business Day prior to the Month X (which has 30 days) the interest will be calculated by SW on the entire £30,000 until the first day of Month X. Thereafter the £30,000 is divided into 30 equal amounts of £1,000 and interest is due on the principal which reduces in the same equal amounts over the duration of the Month. The result being that on day 2 of the Month interest is due on £29,000 and a on day 29 interest is due on £1,000.

## 8.9 Expiry of Claims

Each Party shall cease to be entitled to any additional payment or refund in respect of the Provisional Monthly Charge or Reconciled Primary Charges relating to any Month on the expiry of twenty-four Months from the end of the Month in respect of the Month first mentioned, except insofar as such additional payment or refund:

- 8.9.1 Where properly due, has not been paid within that twenty-four Month period;
- 8.9.2 has been the subject of a referral for resolution in accordance with Clause 25 (Dispute Resolution); or
- 8.9.3 arises as a result of alterations to data or factual items required to calculate such Provisional Monthly Charge or Reconciled Primary Charges, provided that this subparagraph 8.9.3 shall not exclude an additional payment or refund arising as a result of incorrect reading of a meter or incorrect meter registration to which section 54(3) of the Water (Scotland) Act 1980 applies.

Notwithstanding termination of this Agreement, this Agreement shall remain in force for the purpose of enforcing this Clause 8.9.

## 8.10 Supplementary

SW shall report to the Commission and the Central Market Agency any failure by the Licensee to pay any sum due under this Agreement (other than a sum disputed in accordance with Clause 8.6.2) either by:

- 8.10.1 the Due Date (as defined in paragraph 1 of schedule 3 to this Agreement); or
- 8.10.2 the end of the relevant period of notice as specified in paragraphs 1(a) and 1(b) of schedule 3 of this Agreement,

in both cases within two Business Days of SW becoming aware of such failure.

## 9. INSURANCE

Each Party shall, at all times during the Supply Period, effect and maintain with insurers authorised and regulated by the Financial Services Authority under the Financial Services and Markets Act 2000 public liability insurance of not less than £5,000,000 for any one incident and unlimited as to the number of incidents, and shall, upon request, produce to the other Party documentary evidence that the above insurance is and remains in place. Either Party may propose an amendment to this figure. If such a proposal is made by one of the Parties and agreement cannot be reached on the revised figure, it will not be treated as a Dispute in accordance with Clause 25 (Dispute Resolution).

## 10. COMPLIANCE WITH LAWS

### 10.1 Statutory Obligations

10.1.1 Each Party undertakes that, in the performance of its obligations and exercise of its discretions under this Agreement, it will comply with:

- (i) the Codes and all other Laws applicable to it; and
- (ii) all applicable Consents, including, in the case of the Licensee, the Licences held by it.

10.1.2 The Licensee shall be obliged to inform its Customers that they are responsible for compliance with the Water Byelaws.

### 10.2 Sewerage Legislation

10.2.1 The agreement of SW to provide Sewerage Services under this Agreement does not authorise the passing or discharge of any matter or substance (including Trade Effluent) into the Public Sewerage System in respect of a Supply Point in contravention of any enactment (including any byelaws or orders), authorisation, consent or agreement, including (in the case of Trade Effluent) any Trade Effluent Consent.

10.2.2 Without prejudice to the provisions of Schedule 5, the Licensee shall report to SW as soon as practicable any evidence coming to its attention of a contravention referred to in Clause 10.2.1.

## 11. SAVING FOR STATUTORY RIGHTS ETC

Without prejudice to Clause 1.4, nothing in this Agreement shall affect the application of any enactment (including byelaws or orders) for the time being in force relating to the provision of

public water or sewerage services in Scotland, and nothing in this Agreement shall prejudice or affect the rights, remedies, powers, liabilities, functions, duties or obligations of either Party under such provisions.

## 12. **INFORMATION REGARDING PUBLIC HEALTH**

If SW supplies the Licensee with information regarding public health matters for onwards transmission to Customers, the Licensee shall communicate such information to Customers, and SW shall not be liable for any delay or error in communication on the part of the Licensee. If the Licensee receives information regarding public health matters from any Customer, and the Licensee knows, or ought reasonably to know, that such information is relevant, to a material extent, to the provision of the Services or the exercise of the Core Functions by SW, the Licensee shall communicate such information to SW forthwith.

## 13. **FORCE MAJEURE**

### 13.1 **Definition of Force Majeure**

For the purposes of this Agreement, "Force Majeure" means, in relation to any Party, any event or circumstances (or combination of events or circumstances) not reasonably foreseeable by such Party which is beyond the reasonable control of the Party and which results in or causes the failure of that Party to perform any of its obligations under this Agreement, but:

- 13.1.1 a strike, lockout or other industrial action by a Party's own employees (unless forming part of a United Kingdom or Scotland-wide strike) shall not be Force Majeure; and
- 13.1.2 the act or omission of any agent or contractor of a Party shall not be Force Majeure unless such act or omission is caused by or results from events and/or circumstances which would be Force Majeure within the meaning of this Clause 13.1 if such person were the affected Party.

### 13.2 **Relief from liability**

- 13.2.1 Subject to Clauses 13.2.2 and 13.2.3, the affected Party shall be relieved from liability for any delay or failure in the performance of any obligation under this Agreement which is caused by or results from Force Majeure.
- 13.2.2 The affected Party shall be relieved from liability under Clause 13.2.1 only for so long as and to the extent that the occurrence of Force Majeure and/or the effects of such occurrence could not be overcome by measures which the affected Party might

reasonably be expected to take with a view to resuming performance of its obligations.

13.2.3 The provisions of this Clause 13 shall not excuse a failure to pay money when due hereunder.

### 13.3 **Notice**

Following any occurrence of Force Majeure the affected Party shall:

13.3.1 as soon as reasonably practicable notify the other Party of the occurrence and nature of the Force Majeure, the expected duration thereof (insofar as the same can reasonably be assessed) and the obligations of the affected Party the performance of which is affected thereby; and

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

- (a) developments in the matters notified under Clause 13.3.1; and
- (b) the steps being taken by the affected Party to overcome the Force Majeure occurrence or its effects and to resume performance of its relevant obligations.

## 14. **SERVICE STANDARDS**

### 14.1 **Service Standards**

The provisions of the Services by SW shall meet the Service Standards.

### 14.2 **Payment for non-compliance**

14.2.1 In respect of any failure to comply with a Service Standard, SW shall pay the Licensee the sum specified in the Service Standards as payable in respect of such failure. Payment shall be made or credited to the Licensee within 30 days of the occurrence of such failure otherwise interest will be due in accordance with Clause 8.8.1. The provisions of Clauses 8.6.2 and 8.6.3 shall apply to such payments.

14.2.2 The liability of SW to the Licensee for any failure to comply with a Service Standard shall be limited to payment of the sum referred to in Clause 14.2.1.

## 15. **LIABILITY**

### 15.1 **Limitations and Exclusions**

- 15.1.1 Neither Party shall be liable to the other Party, as a result of breach of this Agreement, in respect of loss of revenue, loss of profit, loss of contract, business interruption, or any consequential or indirect loss of any nature whatsoever, howsoever caused, even if it was reasonably foreseeable, and irrespective of whether it is caused by the first-mentioned Party's negligence.
- 15.1.2 Neither Party shall be liable to the other Party in respect of any loss or damage resulting from breach of this Agreement (including, in the case of SW, lack of, or deficiency in the quality of, water) except in the case of negligence or wilful misconduct by the first-mentioned Party or any person for whose acts it is in turn responsible.
- 15.1.3 Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury resulting from the negligence of that Party or any of its officers, employees or agents.

## 15.2 Supplemental

- 15.2.1 For the avoidance of doubt, nothing in Clause 15.1 shall prevent or restrict either Party from enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement. Nothing in Clause 15.1 shall affect the operation of Clause 14.2.
- 15.2.2 Nothing in this Agreement shall be construed as imposing upon SW any obligation or duty to, or enforceable by, any Customer.
- 15.2.3 Each of the sub-clauses of this Clause 15 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties.
- 15.2.4 Each Party acknowledges and agrees that the other Party holds the benefit of Clause 15.1 for itself and as trustee and agent for its officers, employees and agents.
- 15.2.5 The provisions of this Clause 15 shall survive termination of this Agreement.

## 16. TEMPORARY INTERRUPTIONS OF SUPPLY

### 16.1 Planned Events

- 16.1.1 SW shall notify the Licensee, in accordance with the Operational Code, of any anticipated reduction in the supply of water in respect of a Supply Point as a

consequence of SW's maintenance, repair, replacement and inspection programmes for the Public Water Supply System.

- 16.1.2 The notification shall, so far as reasonably practicable, include an estimate by SW of the quantities of water, if any, which SW expects to be able to supply during the period when the maintenance, repair, replacement or inspection works are planned.
- 16.1.3 SW shall use all reasonable endeavours to minimise interruptions in the supply of water for a Supply Point as a consequence of planned maintenance, repair, replacement and inspection works.

## 16.2 Unplanned Events

- 16.2.1 The supply of water to a Supply Point may be interrupted or suspended, where SW's ability to provide the supply is affected by:
- (a) breakdown, defect, fault or failure of plant, equipment, apparatus, pipes, structures or facilities forming part of the Public Water Supply System;
  - (b) shortage of, or limitation on the use of, water arising from weather or environmental conditions;
  - (c) deficiency in the quality of water available for supply; or
  - (d) any event or circumstance which, in the absence of steps to interrupt or suspend the supply to the Supply Point, would put at risk the ability of SW to maintain the supply of water for domestic purposes (as defined in the Water (Scotland) Act 1980).
- 16.2.2 In the case of any interruption or suspension of water supplies under Clause 16.2.1, SW shall notify the Licensee of the expected duration of the interruption or suspension, and the steps being taken by SW in accordance with the Operational Code to restore the supplies.

## 16.3 Supplementary

- 16.3.1 Subject to 16.3.2, SW shall not be liable for any consequences arising from the non-availability of water during any period of interruption or suspension arising under this Clause 16.

- 16.3.2 The liability of SW for any failure to comply with Clause 16.1.2 or 16.2.2 shall be limited to payment of any sum specified in the Service Standards as payable in relation to such failure.
- 16.3.3 If the Licensee becomes aware of any significant change (as hereinafter defined) in the anticipated demand for water for any Supply Point, it shall provide reasonable details thereof to SW as soon as reasonably practicable. For the purposes of this Clause 16.3.3, a change in anticipated demand is significant if the Licensee knows, or ought reasonably to know, that the change may put at risk SW's ability to supply sufficient water to meet the demand in the area in which the Supply Point is located.

## **17. INTELLECTUAL PROPERTY RIGHTS**

### **17.1 Software licence**

- 17.1.1 Where software is provided by SW to enable the Licensee to use the Services, SW grants the Licensee, for the duration of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use the software for that purpose (and for no other purpose) and to sub-licence such software with SW's prior written consent.
- 17.1.2 Except as permitted by applicable law, the Licensee must not, without SW's prior written consent, copy, de-compile or modify the software, nor copy the manuals or documentation, nor knowingly allow any other person to do so.
- 17.1.3 Where software is provided by the Licensee to enable SW to provide the Services, the Licensee grants SW, for the duration of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use the software for that purpose (and for no other purpose) and to sub-licence such software with the Licensee's prior written consent.
- 17.1.4 Except as permitted by applicable law, SW must not, without the Licensee's prior written consent, copy, de-compile or modify the software, nor copy the manuals or documentation, nor knowingly allow any other person to do so.

### **17.2 Use of other Party's name**

- 17.2.1 The Licensee shall not make use of or permit anyone else to make use of the registered or unregistered trade marks and service marks, trading names, brand names, devices, styles, emblems or other manifestations associated with SW (or any Affiliated Company of SW), or any element thereof, either alone or in combination with another word or device mark, where such use constitutes an infringement of SW's (or such Affiliated Company's) registered trade mark or common law rights.

- 17.2.2 SW shall not make use of or permit anyone else to make use of the registered or unregistered trade marks and service marks, trading names, brand names, devices, styles, emblems or other manifestations associated with the Licensee, or any element thereof, either alone or in combination with another word or device mark, where such use constitutes an infringement of the Licensee's registered trade mark or common law rights.
- 17.2.3 Nothing in this Agreement shall be deemed to constitute the relationship of principal and agent between the Parties, and neither Party shall have any authority to bind the other Party in any way or for any purposes. Neither Party, nor its employees, agents or representatives, shall engage in any acts which may lead any person to believe that such Party is an employee, agent or representative of the other Party.

## 18. FREEDOM OF INFORMATION

18.1 The Licensee acknowledges that:

- 18.1.1 SW is subject to the requirements of the FOISA and the EISR; and
- 18.1.2 SW may, acting in accordance with guidance or codes of practice issued by Scottish Ministers or the Scottish Information Commissioner, be obliged under the FOISA or the EISR to disclose Information:
- (a) without consulting with the Licensee; or
  - (b) following consultation with the Licensee and having taken its views into account.

In this Clause 18 and Clause 19:

"EISR" means the Environmental Information (Scotland) Regulations 2004 and any subordinate legislation made under those Regulations from time to time together with any guidance and/or codes of practice issued by Scottish Ministers or the Scottish Information Commissioner in relation to such legislation;

"FOISA" means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by Scottish Ministers or the Scottish Information Commissioner in relation to such legislation; and

"Information" has the meaning given under section 73 of the FOISA, and shall also include environmental information as defined in regulation 2(1) of the EISR.

## 19. CONFIDENTIALITY

### 19.1 Confidentiality obligation

The Licensee and SW shall each procure that all confidential information which comes into its ownership, possession or control, or the ownership, possession and control of an Affiliated Company, pursuant to or in the course of the negotiation, implementation or performance of this Agreement relating to the affairs of the other or its operation or management, or otherwise in connection with or in anticipation of the performance of this Agreement (hereinafter referred to as "Confidential Information") shall not be disclosed during the continuance of this Agreement to any third party except insofar as this may be required for the proper operation of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

### 19.2 Return of documents

Upon termination of this Agreement, each Party shall procure that all documents and other written material (including material on disks and tape) containing Confidential Information relating to the other Party shall be returned (together with all copies thereof) to the other Party.

### 19.3 Third parties

Where Confidential Information is disclosed by either Party as permitted under Clause 19.1, the receiving Party shall (without prejudice to its obligations under this Clause 19) take all reasonable steps to secure that the person to whom the information is disclosed:

19.3.1 is aware of the receiving Party's obligations under this Clause 19 in relation thereto;  
and

19.3.2 does not use or disclose the information other than as is permitted of such Party in accordance with this Clause 19.

### 19.4 Exceptions

Nothing in Clause 19.1 shall apply:

19.4.1 to the disclosure or use by the receiving Party of Confidential Information to which the other Party has consented in writing;

19.4.2 to any Confidential Information which:

(a) before it is obtained by the receiving Party is in the public domain; or

- (b) after it is obtained by the receiving Party enters the public domain, in either case otherwise than as a result of a breach by the receiving Party of its obligations under this Clause 19;

19.4.3 to the disclosure of any Confidential Information to any person if and to the extent that the receiving Party is required to make such disclosure to such person, or such disclosure relates to a Dispute, and such disclosure is made in good faith:

- (i) in compliance with the duties of the receiving Party under the Acts or any other requirement of a Relevant Authority; or
- (ii) in compliance with the conditions of the Licences or any document referred to in the Licences with which the Licensee is required by virtue of the Acts or the Licences to comply; or
- (iii) in compliance with any other Law (other than the FOISA or the EISR, disclosure of which Confidential Information is governed by Clause 18); or
- (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
- (v) pursuant to any judicial or arbitral process or tribunal having jurisdiction in relation to the receiving Party;

19.4.4 to the disclosure of any Confidential Information lawfully in the possession of the receiving Party before the disclosure to it under or in connection with this Agreement;

19.4.5 to the disclosure of any Confidential Information to the Commission, where the receiving Party considers in good faith that the other Party may be in breach of (in the case of the Licensee) any Licence or (in the case of SW) any direction to it under section 11 of the 2005 Act, to the extent reasonably necessary to draw such possible breach to the attention of the Commission.

## 19.5 **Survival**

The provisions of Clauses 19.2 to 19.4 shall continue, for a period of two years after the termination of this Agreement, to bind the Licensee and SW, irrespective of the reason for such termination.

## 20. **TERMINATION**

### 20.1 **Termination on application by Licensee**

The Licensee may, at any time, by giving notice to SW, apply to terminate this Agreement, and the following provisions shall apply:

20.1.1 this Agreement shall not be allowed to terminate under this Clause 20.1 until:

- (a) all of the Licensee's Supply Points have been transferred to one or more Licensed Provider in accordance with the Market Code;
- (b) all amounts payable or which may become payable by the Licensee to SW pursuant to any provision of this Agreement (other than amounts which are being contested in good faith) have been paid in full; and
- (c) any outstanding material breach by the Licensee of any provision of this Agreement, being a breach capable of remedy and of which SW has given notice to the Licensee, shall have been remedied;

20.1.2 where the Licensee has given notice under this Clause 20.1 the Licensee and SW shall remain bound by this Agreement until the requirements of Clause 20.1.1 are satisfied; and

20.1.3 where the Licensee has given notice under this Clause 20.1, after the satisfaction of the last of the requirements of Clause 20.1.1 to be satisfied, this Agreement shall (unless otherwise agreed between the Parties) terminate with effect from the fifth Business Day following such satisfaction.

## 20.2 **Termination for Licensee Default**

Upon the occurrence of a Licensee Default, and at any time after such occurrence and while the Licensee Default is continuing, SW may give notice to the Licensee terminating this Agreement with immediate effect or with effect from the date which is specified in the notice. SW shall provide the Commission and the Central Market Agency with a copy of the termination notice as soon as practicable after the notice has been issued to the Licensee.

## 20.3 **No other right to determine**

Neither SW nor the Licensee shall be entitled to terminate this Agreement other than with the consent of the other Party or pursuant to the terms of this Agreement.

## 20.4 **Disclosure to Commission and CMA**

The Licensee acknowledges that it may be necessary for SW, without prejudice to Clause 8.10, to report a Licensee Default to the Commission and the Central Market Agency where it

considers that the Licensee may be in breach of a term or condition of any Licence by virtue of such Licensee Default.

**21. CONSEQUENCES OF TERMINATION**

Except where expressly stated to the contrary, the rights and obligations of the Parties under this Agreement shall cease immediately upon termination of this Agreement, but such termination shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination, and shall not affect the operation or continued operation of any provisions of this Agreement which are expressed to operate after termination or which are required to give effect to such termination or the consequences of such termination.

**22. NOTICES**

22.1 References in this Clause 22 to a notice are to a notice or communication to be given by one Party to the other under this Agreement.

22.2 Any notice shall be in writing and shall be sent as follows:

If to Scottish Water:

Castle House

6 Castle Drive

Carnegie Campus

Dunfermline

KY11 8GG

Fax Number: 01383 848286

Marked for the attention of: Corp. Secretary and Head of Legal

If to [Insert Licensee name and contact details]:

[Fax Number]:Marked for the attention of: [ ]

or to such other United Kingdom address or facsimile number and/or marked for such other attention as the recipient Party may from time to time specify by notice given in accordance with this Clause 22 to the other giving the notice.

22.3 Any notice given by delivery shall be given by letter delivered by hand, and any notice given by post shall be sent by first class recorded delivery post.

22.4 Any notice shall be deemed to have been received:

22.4.1 in the case of delivery by hand, when delivered; or

22.4.2 in the case of first class recorded delivery post, on the second day following the day of posting; or

22.4.3 in the case of facsimile, on acknowledgement by the recipient Party's facsimile receiving equipment.

22.5 Where a notice is sent by facsimile:

22.5.1 the Party giving the notice shall (but without prejudice to Clause 22.4.3), if requested by the recipient Party, re-send as soon as reasonably practicable the notice by post; and

22.5.2 in the case of a termination notice under Clause 20, SW shall in any event, within two days following the sending of such facsimile, send to the Licensee a copy of the notice by first class prepaid post.

22.6 A Party may specify different addresses or facsimile numbers and representatives pursuant to Clause 22.2 for the purposes of notices of different kinds or relating to different matters.

## 23. **ASSIGNATION**

Neither Party may assign or transfer (whether outright or in security) any or all of its rights under this Agreement without the prior written agreement of the other Party.

## 24. **MODIFICATION OF THE AGREEMENT**

24.1 SW is responsible for preparing this Agreement under Section 16 of the 2005 Act.

24.2 Subject to this Clause 24, no modification may be made by or on behalf of either Party otherwise than in accordance with the provisions of this Clause 24.

24.3 Either Party shall be entitled at any time to submit a Modification Notice to the other Party for information and to the Commission for approval or rejection by the Commission within thirty Business Days of its submission. If no objections have been received by either Party from the Commission within that period, the Modification Notice shall be deemed approved by the Commission. If a Change to the Market Code or the Operational Code is approved or determined that affects the content of this Agreement, the Parties agree that this Agreement shall be modified to give effect to that Change. The Parties will submit a Modification Notice as above as soon as practicable after the Change is approved or determined under the

Market Code or Operational Code. If no objections are received by either Party from the Commission within 30 Business Days of receipt of the Modification Notice, it shall be deemed approved by the Commission.

- 24.4 The Commission may veto the Modification Notice if it considers that the Modification Notice is not consistent with the WSA Principles
- 24.5 Separately, if at any time and to the extent that the Commission on its own considers that a modification of this Agreement would be consistent with WSA Principles, then the Commission may provide the Parties with a Modification Notice which will take effect fourteen Business Days from the date of such notice.
- 24.6 Any modifications proposed by either of the Parties or the Commission shall be recorded in a written agreement, in a form to be specified by the Commission and signed by the Parties.
- 24.7 This Clause 24 shall not be subject to the provisions of any Modification Notice by the Parties.
- 24.8 The Commission shall have no obligation to compensate the Parties for the cost and expense of any modifications proposed under this Clause 24 and each Party will be responsible for their own costs and expenses for any such modification.
- 24.9 Nothing in this Agreement shall restrict the right of SW to propose and make revisions to the Wholesale Charges Scheme at any time and from time to time pursuant to the 2002 Act.

## 25. **DISPUTE RESOLUTION**

### 25.1 **Introductory**

Subject to any contrary provision of the Acts, the Codes or any Licence, and to the rights, powers, duties and obligations of the Commission under the Acts, the Codes or any Licence, if any disagreement between the Parties concerning this Agreement (a "Dispute") shall arise between the Parties, such Dispute shall be resolved only in accordance with this Clause 25.

A Party involved in a Dispute is referred to as a "Disputing Party".

### 25.2 **Negotiation and escalation**

- 25.2.1 The Disputing Parties shall, within ten Business Days of a written request by one of the Disputing Parties to the other, meet and negotiate in good faith and shall use their respective reasonable endeavours to resolve such Dispute.
- 25.2.2 Any Dispute that cannot be resolved by the Disputing Parties within ten Business Days of the written request referred to in Clause 25.2.1 shall within a further five

Business Days be referred by either Disputing Party to a representative of the Licensee and a representative of SW who have authority to bind the Disputing Party they respectively represent, and such representatives shall meet and negotiate in good faith and shall use their reasonable respective endeavours to solve amicably the Dispute. The Disputing Parties hereby agree to provide the relevant representatives with all such information as they reasonably require in order to enable them to determine the Dispute.

### 25.3 Reference for determination

If the Dispute or any part of the Dispute cannot be resolved within ten Business Days of the Dispute being referred in accordance with Clause 25.2.2 above, then either Disputing Party may require that the Dispute be referred to an Expert for determination in accordance with Clause 25.4.

### 25.4 Expert Determination

#### 25.4.1 Appointment of the Expert

25.4.1.1 A Disputing Party wishing to refer a Dispute to an Expert for determination under Clause 25.3 shall provide the other Disputing Party(ies) (and where it is not a Disputing Party the CMA) with: (i) notice of its intention to refer the Dispute to an Expert and (ii) notice of a proposed Expert. The Disputing Parties shall endeavour within five (5) Business Days of such notice to agree upon the selection of an Expert and may meet for this purpose. In the event of failure to reach such agreement, the Expert shall be appointed by the Commission on the application of any Disputing Party.

25.4.1.2 On selection of a suitable Expert under Clause 25.4.1.1, the Disputing Party which instigated the referral shall forthwith provide the Expert with an "Expert Notification".

25.4.1.3 An Expert Notification shall include the following:

- (a) the names of the Disputing Parties and a summary of the Dispute (the terms of such summary to be agreed by the Disputing Parties);
- (b) a request that the Expert confirm within five (5) Business Days whether or not he is willing and able to accept the appointment;
- (c) a request for certification of the Expert's scale of fees and expenses;

- (d) a statement that the Expert's fees and expenses will be paid as provided in Clause 25.4.4;
- (e) a statement that the information disclosed in the Expert Notification (and any information subsequently disclosed to the Expert relating to the Dispute) is confidential and should be treated in accordance with Clause 19 as if the Expert were a Party and that it should not be disclosed, copied or revealed whether the appointment is accepted or not;
- (f) a copy of this Clause 25.4 and a request for confirmation that the Expert is able and willing to act in accordance with the procedure set out herein; and
- (g) a request for confirmation that the Expert does not hold any interest or duty which would or potentially would conflict with the performance of his duties under his contract with the Disputing Parties, and that he will inform the Disputing Parties immediately in the event of any such conflict arising.

#### **25.4.2 Determination by the Expert**

- 25.4.2.1 Where a Dispute has been referred to an Expert by a Disputing Party, the Disputing Parties shall promptly provide to the Expert all information reasonably requested by such Expert relating to the Dispute.
- 25.4.2.2 The CMA may be asked to provide all reasonable assistance to any Expert appointed under this Clause 25.4 in order to seek to resolve a Dispute.
- 25.4.2.3 The Expert shall be required by the Disputing Parties to use all reasonable endeavours to render his determination, with full reasons, within twenty five (25) Business Days following his receipt of the information requested, or if this is not possible as soon thereafter as may be reasonably practicable, and the Disputing Parties shall cooperate fully with the Expert to achieve this objective.
- 25.4.2.4 The Expert shall determine any Dispute referred to him as an Expert and not as an arbiter or mediator.

25.4.2.5 The Expert shall determine any Dispute referred to him in accordance with the provisions of the Market Code to which the Dispute relates and shall in making such determination have regard to the WSA Principles.

#### 25.4.3 **Effect of Expert Determination**

25.4.3.1 The determination of the Expert shall be final and binding upon the Disputing Parties.

25.4.3.2 No Disputing Party shall commence proceedings in respect of or refer to any court any finding by the Expert, whether made at any time after his appointment or in his determination, as to the Dispute or the construction of or otherwise in respect of this Agreement.

#### 25.4.4 **Costs**

25.4.4.1 The Expert shall provide the Disputing Parties with a breakdown of:-

- (a) his/her fees; and
- (b) his/her reasonable expenses, including without limitation to the generality of the foregoing, the fees of and reasonable expenses incurred by any technical or professional advisers.

25.4.4.2 The Disputing Parties shall share equally the fees and expenses of the Expert unless the Expert directs that they should be borne by the Disputing Parties in some other proportion. In the event that the Expert determines that one of the Disputing Parties ("Party A") is liable to pay a sum to another of the parties of the Disputing Parties ("Party B"), including, but not limited to, fees and expenses, Party A will, subject to whatever the Expert's determination may state, pay to Party B an amount equal to such sum together with interest thereon from such date as the Expert's determination may specify. Such interest will accrue from day to day at the rate of 4% over the published base-lending rate from time to time of the Bank of Scotland.

### 25.5 **Conjoined Disputes**

25.5.1 If a Dispute arising under, out of or in connection with this Agreement which the disputing Parties agree relates to a dispute or difference under the Operational Code

or a dispute or difference under the Market Code ("Related Dispute") and where the Related Dispute has been referred to an Expert for determination (the "Related Procedure") any Disputing Party shall, or procure that any party to the Operational Code or any party to the Market Code (as appropriate) shall, as soon as practicable, give to the Expert the following information:

- (a) a copy of the Operational Code and/or the Market Code (as appropriate);
- (b) the basis and grounds for consolidation of the Dispute hereunder and any Related Dispute;
- (c) the cases of the parties to the Related Dispute; and
- (d) any relief sought by the parties to the Related Dispute.

25.5.2 On receiving the information set out above and within ten days of the referral of the Dispute to the Expert in accordance with Clause 25.4 the Expert may, at the request of all the Parties to all of the Related Disputes immediately order consolidation of the Dispute and the Related Dispute and shall in such circumstances have the authority and power referred to in Clause 25.5.3 below.

25.5.3 The Expert shall have the authority and power to direct that all matters arising in both the Dispute and the Related Dispute are consolidated in whatever manner the Expert determines and the Disputing Parties shall thereafter abide by and implement such consolidation and any such direction.

25.5.4 In the event that the Dispute is consolidated with the Related Dispute the Expert shall reach a decision on and the Disputing Parties shall attempt to resolve the Dispute and the Related Dispute at the same time.

## 26. GENERAL

### 26.1 Entire agreement

This Agreement sets out the entire agreement between the Parties in respect of the subject matter hereof, and supersedes all prior representations, arrangements, understandings and agreements between the Parties (other than fraudulent misrepresentation) relating to such subject matter. Neither Party has relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement.

### 26.2 Waiver

No failure to exercise, nor any delay in exercising, on the part of a Party of any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy prevent any further or other exercise thereof or the exercise of any other right, power or remedy. Except as otherwise expressly provided in this Agreement, the rights and remedies provided herein are cumulative and not exclusive or any rights or remedies provided by Law.

**26.3 No partnership**

Nothing herein contained shall be construed as giving rise to the relationship of partnership or joint venture.

**26.4 Illegality**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

**26.5 Announcements**

Subject as provided below, no public announcement or statement regarding this Agreement shall be issued or made by either Party unless, prior thereto, the other Party has been furnished with a copy thereof and has approved the same (such approval not to be unreasonably withheld). Neither Party shall be prohibited from issuing or making any public announcement or statement if it is required to do so in order to comply with any applicable Law or the obligations of any recognised stock exchange.

**26.6 Jurisdiction**

Subject and without prejudice to the provisions of Clause 25, the Parties submit to the exclusive jurisdiction of the Scottish courts.

26.7 **Governing Law**

The construction, validity and performance of this Agreement shall be governed in all respects by Scots law.

**IN WITNESS WHEREOF** this Agreement consisting of this and the preceding [ ] pages, together with the Schedules annexed, is executed in duplicate as follows:

Subscribed on behalf of  
SCOTTISH WATER by .....

one of its directors,  
at .....

on.....200[ ]  
before this witness

Signature: .....

Name: .....

Address: .....  
.....  
.....

Subscribed on behalf of  
[Insert Licensee] by, .....

one of its directors,  
at .....

on.....200[ ]  
before this witness

Signature: .....

Name: .....

Address: .....  
.....  
.....

**These are the Schedules referred to in the Wholesale Services Agreement between Scottish Water and [Insert name of Licensee]**

**SCHEDULE 1  
DEFINITIONS**

Any words or expressions used in the 2002 Act or the 2005 Act shall, unless the contrary intention appears, have the same meaning when used in this Wholesale Service Agreement.

**the 2002 Act** means the Water Industry (Scotland) Act 2002;

**the 2005 Act** means the Water Services etc (Scotland) Act 2005;

**Acts** means the Sewerage (Scotland) Act 1968, the Water (Scotland) Act 1980, the 2002 Act and the 2005 Act;

**Affiliated Company** means, in relation to a Party, a subsidiary or holding company of that Party, or another subsidiary of such holding company (**subsidiary** and **holding company** having the meanings specified in section 736 of the Companies Act 1985);

**Business Day** means any day other than a Saturday or Sunday or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971;

**Central Market Agency** means any body established by or under any directions made by the Commission relating inter alia to the central market agency to exercise certain central market functions in relation to the participation of Licensed Providers in the provision of Water Services and Sewerage Services, the first such body being Central Market Agency Limited, a company limited by guarantee with registered number SC328635 and having its registered office at Ochil House, Springkerse Business Park, Stirling, FK7 7XE;

**Change** has the meaning given in the Market Code;

**Charges** means (a) the charges payable to SW under this Agreement for the Services, and (b) any other sum payable to SW by the Licensee, as a Licensed Provider, under the Wholesale Charges Scheme;

**Codes** means the Operational Code, the Disconnections Code, and the Market Code;

**Commission** means the body established under section 1 of the 2002 Act;

**Confidential Information** has the meaning specified in Clause 19.1;

**Connection Point** means, in relation to any Supply Point(s), the point at which the private pipework supplying water for the Supply Point(s) connects to the Public Water Supply System;

**Consent** means all permissions, consents, approvals, certificates, permits, licences and authorisations of a Relevant Authority required for the performance of any of a Party's obligations under this Agreement;

**Core Functions** has the meaning specified in section 70(2) of the 2002 Act;

**Customer** means, at any time, any Occupier of Eligible Premises for whom one or more Supply Points are Registered, in accordance with the Market Code and who is entitled to receive one or more Services;

**Direction(s)** means the Water Services (Codes and Services) Directions 2007 (or any other direction which amends, replaces or supplements, or is made in respect of substantially the same subject matter as that direction);

**Discharge Point** means, in relation to any Eligible Premises, the point specified, in any Trade Effluent Consent in respect of such Eligible Premises, for the taking of samples of Trade Effluent (or, if no point is so specified, such point as SW may determine in writing from time to time for the purposes of Schedule 5);

**Disconnections Code** means the code made by the Commission pursuant to section 19 of the 2005 Act, as in force from time to time and supplemented by any disconnections guidance published by the Commission from time to time;

**Dispute** has the meaning specified in Clause 25.1;

**Disputing Party** has the meaning specified in Clause 25.1;

**DPID** has the meaning set out in the Market Code;

**Due Date** has the meaning specified in Schedule 3;

**Eligible Premises** has the meaning specified in section 27(1) of the 2005 Act;

**Expert** means a person with appropriate qualifications and experience to resolve a Dispute, appointed under Clause 25.4.1;

**Expert Notification** has the meaning specified in Clause 25.4.1.2;

**Force Majeure** has the meaning specified in Clause 13.1;

**Foul Sewerage Services** has the meaning set out in the Market Code;

**Go Live Date** means 1 April 2008 or such other date as may be determined by or under a direction given by the Commission;

**Laboratory Information Management System** or **LIMS** means a computer-based system to control sample scheduling, sampling and analysis of samples and to provide information on the samples to SW's datamarts for reporting purposes;

**Law** means any Act of Parliament or of the Scottish Parliament, any statutory instrument or other subordinate legislation of either parliament, any exercise of the Royal Prerogative, any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, any applicable guidance direction or determination with which a Party is bound to comply and any applicable judgement or decree of a relevant court of law which creates binding precedent in Scotland;

**Licence** means a Water Services Licence or a Sewerage Services Licence;

**Licensee Default** means an event or circumstance specified in Schedule 3;

**Licensed Provider** means a Water Services Provider or a Sewerage Services Provider;

**Market Code** means the code designated as such by or under the Water Services (Codes and Services) Directions 2007 (or any other direction which amends, replaces or supplements, or is made in respect of substantially the same subject matter as that direction);

**MCERTS** means Monitoring Certification Scheme, which is a scheme operated by the Environment Agency, adopted throughout the United Kingdom, providing a framework within which environmental measurements can be made to published quality standards;

**Measurable** has the same meaning as Measurable Supply Point as defined in the Market Code;

**Metered** has the meaning set out in the Market Code;

**Modification Notice** means the notice specifying the changes to be made to this Agreement which will include:

- (i) the name of the person proposing the modification;
- (ii) a description (in reasonable but not excessive detail) of the issue or defect which the modification seeks to address;
- (iii) a description (in reasonable but not excessive detail) of the modification and of its nature and purpose including confirmation of how the modification is consistent with the WSA Principles;
- (iv) where possible, an indication of those parts of this Agreement which would require change or would otherwise be affected by the

modification, together with proposed drafting of those changes or effects;

- (v) where the person proposing the modification considers that it is urgent, a statement of that fact and an indication of why they consider this to be the case; and
- (vi) where possible, an indication of the impact of the modification on the Operational Code, the Market Code, any Licence or any other industry code, agreement or document;

**Monitoring Meetings** has the meaning specified in Schedule 5;

**Month** means a calendar month, and (where the context requires) includes a part of a calendar month;

**Occupier** shall be construed in accordance with section 6 of the 2005 Act;

**Operational Code** means the code designated as such by or under the Direction;

**Primary Charge** means the charges appearing from time to time in the Wholesale Charges Scheme as Primary Charges for Water or Primary Charges for Sewerage;

**Public Sewerage System** means any and all of the sewers (and junctions therewith), drains, SUD systems, sewage treatment works and other similar infrastructure which are (either or both): (a) vested in SW; or (b) used by SW (or a person acting on its behalf under its authority) in connection with the exercise of SW's core functions as respects the provision of sewerage or the disposal of sewage;

**Public Water Supply System** has the meaning specified in section 28 of the 2005 Act;

**Provisional Amount** has the meaning specified in Clause 8.3.1;

**Provisional Monthly Charge**, in respect of a Month, has the meaning specified in Clause 8.1;

**Reconciled Primary Charge** means the amount of the Primary Charges in respect of any Month as set out in the Settlement Report issued by the Central Market Agency after carrying out any Settlement Run in respect of that Month;

**Registered** has the meaning set out in the Market Code;

**Related Dispute** has the meaning specified in Clause 25.5.1;

**Related Procedure** has the meaning specified in Clause 25.5.1;

**Relevant Authority** means any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or any part of the United Kingdom, or of the European Union, and includes the Commission;

**Sampling Observation Report** means the report to be submitted to SW pursuant to paragraphs 3 and 4 of Appendix 2 to Schedule 5;

**Sampling Visit** means a visit by the Licensee's sampler to a Customer's premises to take a Trade Effluent sample from the relevant Discharge Point, which is made pursuant to the schedule of Sampling Visits produced by the Licensee and submitted to SW under paragraph 1 of Appendix 2 to Schedule 5, including any visit which is rescheduled in accordance with that paragraph;

**Service Standards** means the standards specified in Schedule 4;

**Services** means any Water Services, Foul Sewerage Services, Surface Water Drainage Services or Trade Effluent Services;

**Settlement Report** has the meaning set out in the Market Code;

**Settlement Run** has the meaning set out in the Market Code;

**Sewerage Services** means the services described in Clause 4.2 under Category B (Sewerage Services);

**Sewerage Services Licence** means a licence granted under section 6(3) of the 2005 Act ;

**Sewerage Services Provider** has the meaning specified in section 6(4) of the 2005 Act;

**Supply Period** means a period;

(a) commencing at 00.01 hours on the date that the last of the suspensive conditions in Clause 3 have been fulfilled (or, if that date is not a Business Day, 00.01 hours on the first Business Day after such date). or such other day as may be agreed between the Parties; and

(b) ending on termination of this Agreement;

**Supply Point** has the meaning set out in the Market Code;

**Surface Water Drainage Services** means making arrangements for or in relation to drainage from or in relation to any Eligible Premises to the Public Sewerage System (comprising property and roads drainage as appropriate);

**SW Scientific Services** means Scottish Water Scientific Services, a laboratory owned and operated by SW which undertakes the sampling and analysis of Trade Effluent;

**Trade Effluent** has the meaning specified in section 59(1) of the Sewerage (Scotland) Act 1968;

**Trade Effluent Sampling Code of Practice** means the Code of Practice issued by SW from time to time setting out best practice in relation to the sampling and analysis of Trade Effluent;

**Trade Effluent Services** means making arrangements for or in relation to the provision of sewerage, or disposal of sewage, in respect of Trade Effluent discharged from any Eligible Premises where the sewage and/or the related water supply is either Metered, Unmeasurable or Measurable but is not Metered;

**TE Service A** has the meaning specified in paragraph 1 of Schedule 5;

**TE Service B** has the meaning specified in paragraph 1 of Schedule 5;

**Trade Effluent Consent** means a consent given under Part II, or an agreement entered into under section 37, of the Sewerage (Scotland) Act 1968;

**Trade Effluent Sampling and Analytical Services** has the meaning specified in Schedule 5;

**Trade Effluent Sampling Plan** means a document prepared by SW pursuant to paragraph 1 of Appendix 2 to Schedule 5, detailing for a particular Discharge Point, the number of Trade Effluent samples to be taken during the year (or part of a year) to which the document relates and the analysis to which each sample should be subjected, and includes any revision or updating of such document by SW pursuant to the said paragraph;

**UKAS** means United Kingdom Accreditation Service;

**Unmeasurable** has the meaning set out in the Market Code;

**VAT** means Value Added Tax;

**Water Byelaws** has the meaning set out in the Operational Code;

**Water Services** means the services described in Clause 4.2 under Category A (Water Services);

**Water Services Licence** means a license granted under section 6(1) of the 2005 Act ;

**Water Services Provider** has the meaning specified in section 6(2) of the 2005 Act;

**Wholesale Charges Scheme** means SW's charges scheme setting out its charges for Water Services and Sewerage Services approved by the Commission under section 29A of the 2002 Act, from time to time; and

**WSA Principles** mean the principles set out in paragraph 3 of the Schedule of the Direction as amended from time to time.

**SCHEDULE 2  
INFORMATION ON LICENSEE**

1. contact details (individual names, postal address, telephone number, mobile number, e-mail address) and authorised signatories (but without prejudice to Clause 22);
2. bank account and account number;
3. postal address for sending invoices;
4. Licence reference number(s);
5. Business SIC code under the United Kingdom Standard Industrial Classification of Economic Activities, and corresponding VAT status.

**SCHEDULE 3  
LICENSEE DEFAULT**

For the purposes of Clause 20, there shall have occurred a Licensee Default in any of the following events or circumstances:

1. **Non-payment:** where the Licensee fails to pay any sum due to SW under this Agreement (other than a sum disputed in accordance with Clause 8.6.2) by the final date for payment thereof specified in Clause 8 (the "**Due Date**"), and:
  - (a) where the sum is, or is part of, a Provisional Monthly Charge, SW gives notice of non-payment to the Licensee not less than five Business Days after the Due Date and the Licensee fails to make payment in full within a period of five Business Days from receipt of such notice; or
  - (b) in any other case SW gives notice of non-payment to the Licensee not less than ten Business Days after the Due Date and the Licensee fails to make payment in full within a period of ten Business Days from receipt of such notice.
2. **Persistent non-payment:** where the Licensee defaults in the payment of a sum due under this Agreement (excluding where pursuant to Clause 8.6.2) on three or more occasions in a twelve Month period and fails to remedy such default upon the first two occasions within the following periods from the date of notice thereof from SW, namely ten Business Days in the first instance and five Business Days in the second instance;
3. **Material breach capable of remedy:** where:
  - (a) the Licensee is in material breach of any provision (other than a payment obligation) of this Agreement; and
  - (b) the breach is capable of remedy by the Licensee; and
  - (c) SW has given notice (making reference to Clause 20 and this paragraph 3) of such breach to the Licensee; and
  - (d) within ten Business Days after SW's notice under sub-paragraph (c), the Licensee does not either:
    - (i) remedy the breach in all material respects, where the breach is capable of remedy within such period of ten Business Days; or
    - (ii) where the breach is not so capable of remedy, provide to SW a programme (setting out the steps to be taken by the Licensee and

the timetable for taking such steps) for the remedy of the breach as soon as is reasonably practicable; and

- (e) in the case in sub-paragraph (d)(ii), the Licensee does not:
  - (i) remedy the breach in all material respects with all reasonable diligence and so far as reasonably practicable in accordance with the programme provided under that sub-paragraph or a revised programme pursuant to sub-paragraph (e)(ii); and
  - (ii) where, notwithstanding the reasonable diligence of the Licensee, it is not reasonably practicable for the Licensee to remedy the breach in accordance with that programme, provide to SW a revised such programme; and
- (f) the breach remains unremedied in any material respect after the expiry of five Business Days after a further notice by SW to the Licensee to the effect that the Licensee has not complied with sub-paragraph (d) or (e);

4. **Material breach incapable of remedy:** where:

- (a) the Licensee is in material breach (other than a payment obligation) of this Agreement; and
- (b) the breach is not capable of remedy; and
- (c) SW has given notice (making reference to Clause 20 and this paragraph 4) of the breach to the Licensee; and
- (d) at any time within the period of twelve Months following SW's notice under sub-paragraph (c), there occurs a further material breach by the Licensee of the same provision of this Agreement; and
- (e) SW has given a notice of such further breach to the Licensee and a period of ten Business Days has expired following such notice;

5. **Insolvency:** where:

- (a) the Licensee is unable or is deemed unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences

negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

- (b) the value of the assets of the Licensee are less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness of the Licensee under Part I of the Insolvency Act 1986;
- (d) the Licensee is insolvent or is deemed to be insolvent for the purposes of the law;
- (e) any corporate action, legal proceedings or other procedure or step is taken in relation to or with a view to:-
  - (1) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Licensee other than a solvent liquidation or reorganisation of any Licensee;
  - (2) a composition, compromise, assignment or arrangement with any creditor of the Licensee;
  - (3) the appointment of a liquidator (other than in respect of a solvent liquidation of the Licensee), receiver, administrative receiver, administrator (whether appointed out of court or otherwise), compulsory manager, trustee in bankruptcy, judicial custodian or factor, or other similar officer in respect of any Licensee or any of its assets; or
  - (4) enforcement of any security over any assets of any member of the Licensee, or any analogous procedure or step is taken in any jurisdiction; or
- (f) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Licensee.

6. **Loss of Consent:** where any Licence or other any material Consent required by the Licensee to enable it to observe or perform any of its obligations under this Agreement ceases to be in full force and effect so that it becomes unlawful for the Licensee to observe or perform any of its obligations hereunder; or

7. **Prolonged Force Majeure:** where a Force Majeure event affecting the Licensee continues for a period of six Months.

**SCHEDULE 4  
THE SERVICE STANDARDS**

**[Subject to discussion between SW and Licensee]**

**1. Complaints from Customers**

If the Licensee passes to SW a complaint by a Customer regarding the provision of the Services by SW, SW will respond to the complaint within five Business Days after receipt. If SW fails to send a written response within that period in cases where it received a written complaint, or a complaint by telephone in which the Licensee asked for a written response, SW will pay the Licensee £20. If the complaint is passed to SW after 14.00 on any day, it will be treated for the purposes of calculating the period of five Business Days as received on the next day.

**2. Keeping appointments with Customers**

If SW arranges, through the Licensee, an appointment to meet with a Customer, it will offer a morning or afternoon appointment or a two-hour time-band. Provided the appointment is arranged more than 24 hours in advance, SW will pay £20 to the Licensee if it fails to turn up on the scheduled morning or afternoon or within the agreed two-hour time band, unless it gave at least 12 hours notice to the Licensee cancelling or changing the appointment.

**3. Planned Interruptions to Water Supply**

SW will give the Licensee notice of any planned interruption (including notifying the time when the supply is planned to be restored) to water supplies to Customers in accordance with the Operational Code. If SW fails to give said notice, or fails to restore the supply by the notified time, it will pay the Licensee £50 per affected Supply Point. If the supply is turned off, SW will pay the Licensee £25 per affected Supply Point for each 12-hour period without water after the notified time for restoration of supply.

**4. Unplanned Interruptions to Water Supply**

If the water supply to Supply Points is disrupted because of a fault or breakdown in plant, equipment, apparatus or pipes forming part of the "Public Water Supply System", SW will restore the supply within 12 hours from the time SW finds out about the interruption, unless the burst affects a strategic main (that is to say, a main with a diameter equal to or greater than 300mm), in which case the supply will be restored within 48 hours from the time SW finds out. If SW fails to do this, it will pay the Licensee £50 per affected Supply Point. If the supply remains interrupted beyond the applicable 12-hour or 48-hour time period, SW will pay £25 per affected Supply Point for each additional 12-hour period without water.

5. **Water getting into gas system**

SW will return any telephone call from the Licensee to its emergency helpline regarding water entering the gas system of a Customer with a Supply Point within two hours of the initial contact being received from the Licensee, to provide practical advice and explain what happens next. If it fails to do this, it will pay £20 to the Licensee.

6. **Flooding from sewers**

If waste water from SW's sewers floods the inside of a Customer's premises occupied by a Customer, SW will refund to the Licensee the annual waste water charges payable to SW in relation to the relevant Supply Point (up to maximum of £1,000 per flooding incident), provided the flooding is not due to general surface flooding of the area, a defect in the Customer's private drains or the Customer's own actions. SW will clear up as quickly as possible any mess within the affected Customer's premises which is directly caused by the overflow of waste water from SW's sewer.

7. **Meter Installation Applications**

If the Licensee requests SW to fit a meter, SW will carry out a survey to establish if a meter can be fitted and what costs, if any, are involved, and will then report the outcome to the Licensee. SW will do this within eight Business Days of receiving the request, and if it fails to do so, it will pay the Licensee £20.

8. **Water Pressure**

SW will supply water to Supply Points under this Agreement at a minimum pressure of 1bar. If the Licensee suspects that the water supply is below this pressure, it must contact SW who will investigate the complaint and report the findings to the Licensee within three Business Days. If SW fails to do this, SW will pay £20 to the Licensee. If, following the investigation, SW determines:

- that the water supply to the Supply Points is less than 1bar of pressure measured on the Customer's side of the boundary stopcock/stop valve; and
- that the low pressure is caused by SW's supply system,

SW will pay the Licensee £20.

Payments made under this Service Standard will be restricted to one per affected Supply Point within any 6-Month period.

The Licensee will not be entitled to claim against this Service Standard where the Supply Point concerned is:

- above the level of water leaving SW's storage tank; or
- between the level of water leaving SW's storage tank and a level of 10.5 metres below the tank.

## 9. **Response in Emergencies**

An "Emergency" has the same meaning here as in the Operational Code. The Service Standards during an Emergency are:

- SW will announce information updates at least every 48 hours;
- SW will provide alternative drinking water supplies to sensitive premises (hospitals, nursing homes etc) in accordance with the water emergency plans;
- SW will give as much advance notice as possible of any necessary restrictions on supplies to a Supply Point for Eligible Premises.

If SW fails to meet any of these standards, and any of the Licensee's Customers are directly affected by the Emergency, the Licensee will be entitled to claim at least 5% of the annual water or wastewater charge attributable to those Customer's affected Supply Points (subject to a maximum of £5,000 per Customer) and can claim up to 15% of the said annual water or wastewater charges if it can show that the loss suffered by its Customer had a value greater than 5% of the said annual water or wastewater charges (subject to a maximum of £5,000 per Customer).

**SCHEDULE 5  
REQUIREMENTS FOR THE PROVISION OF TRADE EFFLUENT SAMPLING AND  
ANALYTICAL SERVICES BY THE LICENSEE**

[Where the Licensee opts to provide such services by notice to SW under paragraph 3(g) below]

**1. Scope of Trade Effluent Sampling and Analytical Services**

The Licensee will provide:

- (a) a Trade Effluent Scheduling, Sampling, Courier and Reporting Service ("TE Service A"); or
- (b) a Trade Effluent Scheduling, Sampling, Courier, Analytical and Reporting Service ("TE Service B")

to SW, in accordance with, and subject to, the provisions of this Schedule.

For the avoidance of doubt, and without prejudice to Clause 11, SW will continue to be entitled to carry out any sampling, monitoring, analysis, investigations or enforcement that it deems necessary in relation to Trade Effluent at any Discharge Point for the performance of its statutory duties or the Core Functions, and nothing in this Schedule shall prejudice or affect the rights, remedies or powers of SW under or pursuant to any Trade Effluent Consent.

A Licensee will only be able to provide TE Service A or TE Service B at DPIDs to which it is registered under the Market Code.

Neither TE Service A nor TE Service B includes the taking of Trade Effluent samples other than during Sampling Visits. SW will not be obliged to include samples taken outwith Sampling Visits in any calculations or reports undertaken by it in relation to compliance with any Trade Effluent Consent.

**2. Licensee Responsibilities Prior to Commencing the Provision of TE Service A and TE Service B**

Prior to commencing the provision of TE Service A or TE Service B, the Licensee will:

- (a) obtain the written permission of its Customer allowing the Licensee (or its employees, contractors, agents or representatives) safe and unobstructed access to their premises and designated Discharge Points in order to take samples of Trade Effluent to fulfil the requirements specified within this Schedule;
- (b) obtain the written permission of its Customer to release to SW any data or other information obtained through the carrying out of TE Service A or TE Service B to fulfil the requirements specified within this Schedule;
- (c) comply with the accreditation requirements specified within Appendix 1 (including obtaining the confirmation from SW referred to in paragraph 3 of Appendix 1);
- (d) provide SW with documentary evidence of the documentation stated in (a) and (b) above;

- (e) obtain SW's approval to its proposed schedule of Sampling Visits at a Discharge Point in accordance with paragraph 1 of Appendix 2; and
- (f) notify SW in accordance with paragraph 3(g) below.

### **3. Licensee Obligations in Providing TE Service A and TE Service B**

The Licensee will:

- (a) where providing TE Service A:
  - (i) adhere to the service requirements specified in Appendix 2; and;
  - (ii) provide such service in such manner as ensures that the service level specifications in Appendix 8, Table 1 are met;
- (b) where providing TE Service B:
  - (i) adhere to the service requirements specified in Appendix 2 (other than paragraph 6) and Appendix 3; and
  - (ii) provide such service in such manner as ensures that the service level specifications in Appendix 8, Table 1 and Table 2 are met;
- (c) provide all assistance that SW may reasonably require from time to time with respect to resolving operational problems in connection with the provision of TE Service A or TE Service B;
- (d) comply with the accreditation requirements specified within Appendix 1;
- (e) when carrying out TE Service A or TE Service B, adhere at all times to the requirements set out in Standard Condition A6 of the Commission's Standard Conditions of Water and Sewerage Services Licences;
- (f) adhere to the service review requirements set out in Appendix 5;
- (g) provide SW with a minimum of 2 months' notice that it intends to provide TE Service A or TE Service B at a Discharge Point;
- (h) provide SW with a minimum of 28 days' notice that it will cease providing TE Service A or TE Service B at a Discharge Point, provided that where such cessation is by reason of the Licensee's Customer becoming a Customer of another Licensed Provider by a transfer under the Market Code, the foregoing reference to 28 days' notice shall be deemed to be a reference to 5 Business Days' notice;
- (i) at all times keep the dates and other details of planned Sampling Visits confidential from the Customer; and
- (j) be responsible for, and release and indemnify SW on demand from and against, any liability for losses arising from death or personal injury, loss of or damage to property, or third party actions, claims or demands which arise out of or in consequence of the presence of the Licensee or its employees, agents or contractors on a Customer's premises for the purposes of or in connection with the sampling, monitoring or analysis of Trade Effluent pursuant to this Schedule.

Any notice given by the Licensee under (g) or (h) above shall not be capable of being withdrawn, save with the agreement of SW.

The provisions of Clauses 15.1.1 and 15.1.2 shall not limit or otherwise affect the operation of (j) above, and the provisions of (j) shall survive the termination of this Agreement.

Without prejudice to Clause 17.2.3, in all dealings with Customers regarding Trade Effluent, the Licensee:

- (i) shall not hold itself out as being entitled to bind SW in any way;
- (ii) shall indicate clearly in all correspondence and dealings that the Licensee is acting on its own account and not represent itself to be the agent of SW or incur any liability on behalf of SW; and
- (iii) shall not make or give any promise, representation, statement or undertaking (including any statement regarding the intent, belief, opinion, policy or expectations of SW) which may be construed as made or given on behalf of SW.

#### **4. SW Obligations**

SW will:

- (a) provide the Licensee with a Trade Effluent Sampling Plan for each Discharge Point where TE Service A or TE Service B is, or is to be, provided by the Licensee. The Trade Effluent Sampling Plan will detail or make provision for the matters referred to in paragraph 1 of Appendix 2 and (where appropriate) paragraph 1 of Appendix 3;
- (b) provide the Licensee with confirmation of the location of designated Discharge Points within the Customer's premises;
- (c) provide the Licensee with other associated information reasonably required by the Licensee to facilitate the provision of TE Service A or TE Service B;
- (d) adhere to the service review requirements set out in Appendix 5; and
- (e) adhere to the payment requirements set out in Appendix 7.

#### **5. Contacts**

Unless otherwise stated within this Schedule, key contacts of each Party in relation to the provision of TE Service A or TE Service B are set out in Appendix 4. Each Party may from time to time, by notice to the other Party, remove any person as a designated key contact of the Party giving the notice, or designate some other person as a key contact of such Party. Unless otherwise stated, and notwithstanding Clause 22, any communication with SW under or for the purposes of this Schedule 5 (including the giving of any notice or the provision of any report or other document) will be sent to a designated key contact of SW.

#### **6. Sub-contracting**

The Licensee may sub-contract any of its obligations under this Schedule 5, subject to Appendix 1. The Licensee shall be liable and continue to be liable for all and any acts or omissions of any sub-contractor, and the sub-contracting shall not affect any of the provisions of this Schedule 5 or the obligations of the Licensee. Unless the context otherwise requires, references to the Licensee in this Schedule 5 include a reference to the sub-contractor.

<b>SCHEDULE 5, APPENDIX 1</b>
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**Accreditation Requirements – TE Service A and TE Service B**

1. The Licensee will ensure that at all times it (or the sub-contractor providing services to the Licensee), and the specific staff utilised to undertake services, are accredited for sampling (or analysis, as the case may be) of Trade Effluent to an appropriate standard equivalent to SW Scientific Services and its staff, with a scope of accreditation for analysis of Trade Effluent covering the same or a wider range of methods as that of SW Scientific Services.
2. The accredited sampling procedures must be MCERTS or equivalent. Currently SW is accredited for Trade Effluent sampling and analysis by UKAS and SW would expect the Licensee (or the sub-contractor providing services to the Licensee) to be accredited by UKAS or a similar organisation.
3. The Licensee must provide to SW documentary evidence of accreditation of the Licensee (or its sub-contractor) and copies of its (or its sub-contractor's) accredited sampling procedures prior to undertaking the service.

The Licensee must receive written confirmation from SW that it (or its sub-contractor) has the necessary accreditation before it can commence the provision of services.

4. The Licensee will also be required to provide documentary evidence of the scope of its (or its sub-contractor's) accreditation on demand to SW and inform SW of the findings of all external and internal audits, including but not limited to the details of any improvement action necessary to uphold such accreditation. This information will be provided to SW within 28 days of the original publication date of the audit findings.
5. SW reserves the right to inspect or examine, and take copies of, any documentation in relation to the accreditation of the Licensee (or the sub-contractor providing services to the Licensee) at any time. The Licensee will produce such documentation to SW (or its employees, agents or representatives) upon reasonable notice.

<b>SCHEDULE 5, APPENDIX 2</b>
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**Sampling – Service Requirements****1. Sampling General**

SW will provide the Licensee with a Trade Effluent Sampling Plan including sample point locations for each Discharge Point which are subject to the provision of services by the Licensee.

Each Trade Effluent Sampling Plan will cover a period running from 1 April in a calendar year (or, if different, in the case of the first Trade Effluent Sampling Plan, the commencement date for TE Service A or TE Service B) until 31 March in the following calendar year.

The Trade Effluent Sampling Plan will include the sampling frequency, i.e. the number of samples to be taken each year, and the name and contact details of SW's Trade Effluent Quality Adviser responsible for monitoring the premises. SW may also provide additional information regarding the sampling arrangements at each site e.g. whether an automatic sampler has been provided by the Customer, if the Licensee is to undertake 24-hour composite sampling utilising a portable automatic sampler, or if there are any seasonal variations in sampling requirements.

Within 10 Business Days of receiving the Trade Effluent Sampling Plan and additional information from SW, or any subsequent annual update of such Trade Effluent Sampling Plan, the Licensee will produce and submit to SW a schedule of Sampling Visits for the Discharge Point. The schedule will provide the anticipated dates that the samples will be taken. Samples should be taken from a Discharge Point at regular intervals over the year (subject to any seasonal variations in sampling requirements notified by SW) and, so far as practicable, should not be taken on the same day of the week or at the same time of day. The Licensee must obtain SW's approval of the sampling schedule in advance of commencing sampling and must inform SW of any subsequent changes it intends making to the schedule. SW may accompany the Licensee at any Sampling Visit.

SW may change the Trade Effluent Sampling Plan at any time, notifying the Licensee of such changes in which case the Licensee will produce and submit to SW a revised schedule of Sampling Visits within 28 days of SW's notification. The Licensee must obtain SW's approval of any revised schedule in advance of implementing its terms. As a matter of course, SW will provide the Licensee with annual updates to the Trade Effluent Sampling Plan and associated information as appropriate.

The Licensee shall use its best endeavours to adhere to the intended dates of the Sampling Visits set out in its sampling schedule. In any case, samples must be taken not earlier than 2 Business Days before, and not later than 2 Business Days after, the scheduled date. If for any reason the Licensee is unable to take the sample within that period, it must contact SW and agree an alternative date for the Sampling Visit. Such alternative date must be within 10 days after the scheduled date. The Licensee must also inform SW of the failure to take a sample through the submission of an observation report to SW as set out in paragraph 3 below.

If, during the course of a Sampling Visit to a Customer's premises or through any other contact with the Customer, the Licensee becomes aware of any change to the company name or the company contact details, the Licensee shall notify SW within 5 days and SW shall amend the Trade Effluent Sampling Plan as appropriate.

**2. Transportation**

Samples must be taken from the designated Discharge Points notified by SW and transported to the designated analytical laboratory according to the accredited procedures previously supplied to SW. This normally means that samples are submitted to the analytical laboratory on the same day that they are taken and in any case within 24 hours of the Sampling Visit. The Licensee must ensure that

samples transported to the laboratory are stored in the appropriate conditions. This generally means that the samples must be stored between 2°C and 8°C in transit.

### 3. Sampling Observation Reports

In the course of each Sampling Visit, the Licensee will carry out site-specific observations in accordance with its accredited procedures or where specifically required by SW under the Trade Effluent Sampling Plan, including the site-specific observations listed in the Trade Effluent Sampling Code of Practice. The Licensee must record any site-specific observations which it carries out under this paragraph, and, within 5 Business Days of the date of each Sampling Visit, it must submit to SW a Sampling Observation Report containing details thereof. This paragraph 3 is without prejudice to the provisions of the next following paragraph.

### 4. Immediate Contact

If in the course of a Sampling Visit the Licensee observes any discharge to sewer, event, equipment defect or act or omission by the Customer which in its opinion constitutes:

- a) a breach or an anticipated or threatened breach of Part 1 of the Water Environment and Water Services (Scotland) Act 2003; and/or
- b) an event which could have a significant detrimental impact on the Public Sewerage System or SW's staff,

it must immediately contact SW's Trade Effluent Quality Adviser associated with that Discharge Point using the telephone contact details previously provided. It must then submit its Sampling Observation Report to SW's Trade Effluent Quality Adviser within 24 hours of that initial contact.

In considering and determining whether it requires to contact SW under this paragraph, the Licensee shall use that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in similar sampling work.

### 5. Items of Data required for Sampling

The following items of data are required for sample reporting:

- Licensee ID/Name
- Sample Point DPID
- Sample ID
- Date Sample Taken
- Time Sample Taken
- Name of Person Taking Sample
- On-Site pH Test Result (if required)
- On-Site Temperature (if required)
- Observation Comments
- Date and Time Sample Logged into Laboratory

The Licensee must ensure that the above parameters are recorded on a Laboratory Information Management System (LIMS) and transferred to SW within 48 hours of the Sampling Visit, by means of the [designated IT interface].

#### 6. Sample Submission to SW Scientific Services (TE Service A)

Where the Licensee chooses not to provide analytical services, i.e., is providing TE Service A, it will be provided with sample labels and sample worksheets by SW. The Licensee must affix these sample labels and must deliver samples and associated worksheets to SW Scientific Services' Sample Reception at Juniper House, Heriot-Watt Research Park, Avenue North, Edinburgh EH14 4AP during the normal hours of opening (Monday to Friday 8:00 to 18:00; Saturday and Sunday 9:30 to 16:30).

For each sample submitted the sample worksheet will include the following details:

Licensee ID/Name

Sample Point DPID

Sample ID

Date Sample Taken

Time Sample Taken

Name of Person Taking the Sample

On-Site pH Test Result (if required)

On-Site Temperature (if required)

Observation Comments.

All Trade Effluent samples taken by the Licensee during each Sampling Visit must be submitted for analysis to SW Scientific Services' laboratory in bottles that are suitable for the analysis required. Specific bottling requirements are specified in the Trade Effluent Sampling Code of Practice.

#### 7. Performance Reporting

The Licensee will provide SW with the reports detailed below:

- Daily summary of samples taken in the previous 24 hours (to be provided by noon of each day);
- Monthly summary of samples scheduled and samples taken including reasons for missed/cancelled samples; and
- Monthly summary list of Sample Observation Reports submitted to SW under paragraph 3 above.

Except where otherwise stated, these reports will be provided within 5 Business Days of the end of the relevant month.

The format of the above reports will be specified by SW.

<b>SCHEDULE 5, APPENDIX 3</b>
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**Analysis – Service Requirements****1. General**

SW will provide the Licensee with a list of determinands to be analysed at each Discharge Point as part of the Trade Effluent Sampling Plan. Currently SW analyse for approximately 95 determinands in samples taken from DPIDs, however the number of determinands required to be analysed, may increase as a result of changes in environmental monitoring requirements or related legislation.

The Licensee's analytical laboratory should utilise a Laboratory Information Management System (LIMS) to track a sample's progress and to enable effective reporting.

**2. Early Warning of Determinand Failures**

Details on required reports are listed in paragraph 3 below, but must include the ability to provide the Customer by telephone or other direct contact, and SW by electronic means, with early warning of determinand failures as soon as possible and in any case within 1 Business Day of the completion of the specific determinand analysis.

**3. Items of Data required for Sample Analysis Reporting**

The following items of data are required for sample analysis reporting:

- LICENSEE ID/Name
- Analytical Laboratory ID
- Sample Point DPID
- Sample ID
- Date Sample Taken
- Time Sample Taken
- Name of Person Taking Sample
- On-Site pH Test Result (if required)
- On-Site Temperature (if required)
- Observation Comments
- Date and Time Sample Logged into Laboratory
- Result and Unit of Measure for each individual determinand
- Date/Time Analysis Completed for each individual determinand
- Date/Time Analysis Authorised for each individual determinand

- Date/Time Sample Authorised by the laboratory
- Date/Time Analysis Sent to SW

The Licensee must ensure that the above parameters are recorded on a Laboratory Information Management System (LIMS) and transferred to SW within 48 hours of the completion of laboratory analysis of the sample by means of the designated IT interface.

The Licensee's laboratory will cooperate with SW in any subsequent investigation into specific sample test results.

#### 4. Turnaround Times for Analysis

The Licensee will complete analysis within the turnaround times as detailed below:

<b>Analysis</b>	<b>Turnaround (days from date sample received into Licensee's analytical laboratory)</b>
pH	6
Ammonia	6
COD	6
TSS	6
BOD	7
Pesticides	15
All other parameters	10

#### 5. Performance Reporting

The Licensee will provide SW with the reports detailed below:

- Monthly summary of the status of samples active within the laboratory i.e. submitted but not complete or authorised;
- Monthly summary of compliance against turnaround times; and
- Monthly summary of laboratory quality control statistics.

Except where otherwise stated, these reports will be provided within 5 Business Days of the end of the relevant month.

The format of the above reports will be specified by SW.

<b>SCHEDULE 5, APPENDIX 4</b>
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**Key Contacts**

Subject to paragraph 5 of Schedule 5, the following persons have been designated as key contacts to provide information and support in relation to the provision of TE Service A and TE Service B.

<b>Scottish Water</b>		
••	••	••
••	••	••
••	••	••
SW Contact Centre for any out-of-hours communication		••

<b>Licensee</b>	
Licensee Sampling Manager	••
Licensee Laboratory Manager (where TE Service B is undertaken)	••
Out-of-Hours Contact	••

<b>SCHEDULE 5, APPENDIX 5</b>
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**Service Review**1. Contacts

There will be regular contact review meetings between the Licensee and SW.

A named contact of the Licensee will be designated to liaise with SW

SW Contact: xxxxxx xxxxxx (or delegate)

Licensee Contact: xxxxx xxxxx (or delegate)

2. Monitoring Meetings

The contacts listed in paragraph 1 above will attend Monitoring Meetings that will be held to assess general progress in provision of TE Service A or TE Service B. The frequency of the meetings will be dependant on the number of DPIDs that the Licensee is providing the services to, but in any case will be no less frequent than annually.

The agenda for the Monitoring Meetings will include:

- the Licensee's general performance in providing services;
- the Licensee's performance against the service level specifications in Appendix 8;
- a review of performance reports required under Appendix 2, paragraph 7 and Appendix 3, paragraph 5 (as appropriate), including agreement on corrective action to be taken, where performance is of concern and/or where service levels are not being achieved.

Actions from Monitoring Meetings are to be recorded and agreed post-meeting.

3. Escalation

Should actions agreed and recorded at the Monitoring Meetings not be completed to the satisfaction of either SW or the Licensee, then the issue will be escalated to a representative of the Licensee and a representative of SW who have the authority to resolve the issue.

If the issue remains unresolved then SW or the Licensee may initiate termination proceedings as specified in Appendix 6.

**SCHEDULE 5, APPENDIX 6**
**Termination of TE Service A or TE Service B**
**1. Termination by SW**

Subject to the provisions of this Appendix, SW may terminate the provision of TE Service A or TE Service B for any material breach of the terms or conditions set out in this Schedule 5. Material breach for the purposes of this Schedule is defined as any of the following events:

- (a) failure by the Licensee to comply with any of its obligations specified or referred to in paragraph 2 of this Schedule;
- (b) persistent failure by the Licensee to comply with any of its obligations specified or referred to in sub-paragraphs (a) and (b) of paragraph 3 of this Schedule, or any failure by the Licensee to comply with any of those obligations where such failure has a material and adverse effect on SW's ability to carry out the activities or perform the statutory duties or functions referred to in the second sub-paragraph of paragraph 1 of this Schedule;
- (c) failure by the Licensee to comply with any of its obligations specified or referred to in sub-paragraphs (c) to (j) (inclusive) of paragraph 3 of this Schedule.

SW may also terminate the provision of TE Service A or TE Service B if any change in any Law causes the Licensee to be unable to comply with all or a material part of its obligations under this Schedule.

Where SW considers it has grounds for termination, it will send an intended notice of termination to the Licensee, specifying the grounds for reaching such decision. Upon receipt of the notice, the Licensee will have 10 Business Days to respond to SW, making any representations regarding SW's notice. Such representations may include confirmation by the Licensee of the corrective action that it intends taking to rectify any material breach which has occurred. SW must act reasonably at all times in considering such representations.

Within 10 Business Days of receiving the Licensee's representations, SW will respond in writing to the Licensee:

- (a) enclosing a final notice of termination confirming the effective date of termination of the provision of TE Service A or TE Service B by the Licensee. The date of termination will be no less than 28 days from the date of issue of the intended notice of termination; or
- (b) confirming that SW is willing to accept the representations made by the Licensee and notifying any consequential changes in the status of the intended notice of termination and any conditions which SW may reasonably apply.

If the Licensee fails to make any representations within the specified period of 10 Business Days, SW may, within 10 Business Days following expiry of such period, send a final notice of termination to the Licensee confirming the effective date of termination for provision of TE Service A or TE Service B by the Licensee, which date shall be no less than 28 days from the date of issue of the intended notice of termination. If SW does not serve a final notice within the specified period, the intended notice of termination will lapse.

For the avoidance of doubt the Licensee will remain responsible for the provision of TE Service A or TE Service B up to the date of termination.

2. Termination by the Licensee

The Licensee may terminate the provision of TE Service A or TE Service B upon giving SW notice in accordance with paragraph 3(h) of this Schedule.

For the avoidance of doubt the Licensee will remain responsible for the provision of TE Service A or TE Service B up to the date of termination.

3. Supplemental

Termination of the provision of TE Service A or TE Service B under this Schedule 5 pursuant to paragraph 1 or 2 above shall not affect the operation or continued operation of the other provisions of this Agreement.

The termination rights under paragraphs 1 and 2 above are without prejudice to the rights of the Parties to terminate this Agreement under Clause 20.

For the avoidance of doubt, if this Agreement is terminated under Clause 20, the provision of TE Service A or TE Service B shall cease immediately upon termination.

<b>SCHEDULE 5, APPENDIX 7</b>
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**Terms of Payment**

SW will pay the Licensee charges for the provision of TE Service A and TE Service B in accordance with this Schedule 5 and Clause 8 of this Agreement.

For the avoidance of doubt, SW will pay the Licensee by means of the provision of a credit against the respective Primary Charge, in accordance with the Wholesale Charges Scheme in force from time to time.

No charge will be payable by SW in respect of (a) the taking, transporting, reporting upon or analysing of a sample of Trade Effluent taken other than during a Sampling Visit, or (b) a Sampling Visit during which no sample of Trade Effluent is taken.

<b>Schedule 5, Appendix 8</b>
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**Service Level Specifications**1. Service Level Specifications for Provision of TE Service A and TE Service B

- (a) A schedule of sampling visits must be produced under Appendix 2, paragraph 1 within 10 Business Days of receiving a Trade Effluent Sampling Plan from SW.
- (b) Sampling Visit must be made not earlier than 2 Business Days before, and not later than 2 Business Days after, the date set out in the sampling schedule.
- (c) Samples of Trade Effluent must be delivered to the designated analytical laboratory within 24 hours of completion of the Sampling Visit.
- (d) Any data items required under Appendix 2, paragraph 5 must be provided to SW via a designated IT interface within 48 hours of completion of the Sampling Visit.
- (e) The Performance Reporting requirements set out in Appendix 2, paragraph 7 must be adhered to.

2. Further Service Level Specifications for Provision of TE Service B

- (a) Early warning of determinand failures must be notified to the relevant Customer and SW (electronically) within one Business Day of completion of the specific determinand analysis.
- (b) Any data items required under Appendix 3, paragraph 3 must be provided to SW via a designated IT interface within 48 hours of completion of the laboratory analysis of the relevant sample.
- (c) The analysis turnaround times set out in Appendix 3, paragraph 4 must be adhered to.
- (d) The performance reporting requirements set out in Appendix 3, paragraph 5 must be adhered to.