

# **Northumbrian Water Limited**

## **Network Access Code for Combined Supplies**

**Version 18.0**  
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# PART 1

## INTRODUCTION

## 1 INTRODUCTION

### 1.1 ROLE OF THE ACCESS CODE

This document is the water supply system access code (the Access Code) of Northumbrian Water Ltd (NWL). It sets out the price and non-price terms for access to NWL's water supply systems in accordance with the requirements of NWL's Instrument of Appointment and current guidance issued by the Water Services Regulation Authority (Ofwat). This document applies both to NWL's supply systems in the North East of England, where the company trades as Northumbrian Water and in the South East of England, where it trades as Essex & Suffolk Water (hereafter referred to as the North East operating area and the Essex & Suffolk operating areas, respectively). Unless specifically stated or the context requires otherwise, all references to NWL in this document should be taken to apply equally to the North East and Essex & Suffolk operating areas.

This version of our Access Code supersedes all previous versions and we reserve the right to further amend it at any time in the light of experience and events, including changes to legislation and to Ofwat's [Access codes guidance](#). As a minimum, we will in any case review the Access Code annually in October or as otherwise directed by Ofwat.

This Access Code does not constitute a contract for the multilateral use of NWL's assets. It sets out a framework which would be used to establish terms for access, in accordance with Section 66D(2) of the amended Water Industry Act and Ofwat's Access codes guidance. Generally, such agreements are required to be case-specific, reflecting the particular requirements of each access proposal. Nevertheless, the terms and conditions of access agreements will reflect the requirements of this Access Code in a consistent and non-discriminatory manner.

This version of our Access Code reflects the introduction by Ofwat in its latest [Access codes guidance](#) of an Operational Code and Common Contract in relation to wholesale supplies of water to licensees. Accordingly, we have restructured our Access Code and now show the provisions in relation to wholesale and combined supplies in separate parts of the document. As required by Ofwat's latest guidance, the section on wholesale supplies, which follows this introductory section, now consists mainly of the Operational Code and Common Contract.

### 1.2 RELEVANT FRAMEWORK DOCUMENTS

#### 1.2.1 Introduction

The Water Act 2003 (WA03) does not repeal or suspend the Competition Act 1998 (CA98) and its "Doctrine of Essential Facilities", which was previously assumed to be the relevant legislation governing access, but it does create a framework for licensed access to treated water networks and to discrete non-potable water networks serving non-household customers. In particular, it prohibits access to such water supply systems except where access is by the incumbent undertaker or a supplier licensed by Ofwat for the purposes of supplying eligible customers.

The framework is set out in Schedule 4 of WA03, which contains the revisions to the Water Industry Act 1991 (WIA) needed to implement the framework. Ofwat has produced statutory guidance on access terms as required by Section 66D(4) of the

revised WIA. This guidance includes, inter alia, an explanation of the framework. Licensees applying to NWL for access will need to be thoroughly familiar with the Ofwat guidance, which is available from the Ofwat website, <http://www.ofwat.gov.uk/> (see 1.2.2 for a list of relevant framework documents)

Licensees considering making an application for a combined supply, which involves common carriage, should also be familiar with the Drinking Water Inspectorate (DWI) requirements for water supply and the role of DWI. General information is obtainable from the DWI website, <http://www.dwi.gov.uk/>. Section 1.2.2 lists specific DWI documents to which Licensees may need to refer.

Licensees applying for a combined supply will need to ensure that any raw water source they intend to use is properly licensed for the purposes of public water supply. Advice on this should be sought from the regional office of the Environment Agency, which is responsible for abstraction licensing under the terms of the Water Resources Act 1991. For a general appreciation of the role and duties of the Environment Agency, combined licensees should read the Environment Act 1995, or visit the EA website at <http://www.environment-agency.gov.uk/>.

## 1.2.2 List of relevant framework documents

### i) Primary and secondary legislation

Water Industry Act 1991

<http://www.legislation.gov.uk/ukpga/1991/56/contents>

The Water Supply (Exceptions from Supply System Prohibitions) Regulations 2005

<http://www.legislation.gov.uk/uksi/2005/3075/contents/made>

The Water Supply Licence (New Customer Exception) Regulations 2005

<http://www.legislation.gov.uk/uksi/2005/3076/contents/made>

The Water Supply Licence (Application) Regulations 2005

<http://www.legislation.gov.uk/uksi/2005/1638/contents/made>

The Water Supply (Water Fittings) Regulations 1999

<http://www.legislation.gov.uk/uksi/1999/1148/contents/made>

Competition Act 1998

<http://www.legislation.gov.uk/ukpga/1998/41/contents>

### ii) Statutory and non-statutory guidance

Access codes guidance

[http://www.ofwat.gov.uk/competition/wsl/gud\\_pro\\_accesscodes.pdf](http://www.ofwat.gov.uk/competition/wsl/gud_pro_accesscodes.pdf)

Guidance on Eligibility

[http://www.ofwat.gov.uk/competition/wsl/gud\\_pro\\_wslelig.pdf](http://www.ofwat.gov.uk/competition/wsl/gud_pro_wslelig.pdf)

Guidance on Applying for a Water Supply Licence

[http://www.ofwat.gov.uk/competition/wsl/gud\\_pro\\_wslappguid.pdf](http://www.ofwat.gov.uk/competition/wsl/gud_pro_wslappguid.pdf)

Customer Transfer Protocol

[http://www.ofwat.gov.uk/competition/wsl/pap\\_pos\\_wsltransport.pdf](http://www.ofwat.gov.uk/competition/wsl/pap_pos_wsltransport.pdf)

[http://www.ofwat.gov.uk/competition/wsl/pap\\_tec\\_100201ctpsupp1.pdf](http://www.ofwat.gov.uk/competition/wsl/pap_tec_100201ctpsupp1.pdf)

Guidance on Strategic Supplies

[http://www.ofwat.gov.uk/competition/wsl/gud\\_pro\\_stratsuppguid.pdf](http://www.ofwat.gov.uk/competition/wsl/gud_pro_stratsuppguid.pdf)

Guidance on Secondary Supplies

[http://www.ofwat.gov.uk/competition/wsl/gud\\_pro\\_stratsuppguid.pdf](http://www.ofwat.gov.uk/competition/wsl/gud_pro_stratsuppguid.pdf)

Water Supply Licensing Determinations Procedure

[http://www.ofwat.gov.uk/competition/wsl/wslpublications/gud\\_pro\\_wsldeterpro.pdf](http://www.ofwat.gov.uk/competition/wsl/wslpublications/gud_pro_wsldeterpro.pdf)

Office of Fair Trading Competition Act 1998 Application in the water and sewerage sectors

[http://www.ofwat.gov.uk/shared\\_of/business\\_leaflets/ca98\\_guidelines/of422.pdf](http://www.ofwat.gov.uk/shared_of/business_leaflets/ca98_guidelines/of422.pdf)

### iii) Conditions of Appointment

NWL's Instrument of Appointment

[http://www.ofwat.gov.uk/industrystructure/licences/lic\\_lic\\_nes.pdf](http://www.ofwat.gov.uk/industrystructure/licences/lic_lic_nes.pdf)

### iv) Other relevant documents

DWI Information Letter 13/04 Common Carriage: Guidance on the Drinking Water Quality Aspects

[http://www.dwi.gov.uk/stakeholders/information-letters/2004/13\\_2004ANNEX%20A.pdf](http://www.dwi.gov.uk/stakeholders/information-letters/2004/13_2004ANNEX%20A.pdf)

DWI Guidance on the Water supply (Water Quality) Regulations 2000

[http://www.dwi.gov.uk/stakeholders/guidance-and-codes-of-practice/Reqs%202000%20\(England\)%20&%202001%20\(Wales\).pdf](http://www.dwi.gov.uk/stakeholders/guidance-and-codes-of-practice/Reqs%202000%20(England)%20&%202001%20(Wales).pdf)

DWI Guidance on the Notification of Events

<http://www.dwi.gov.uk/stakeholders/guidance-and-codes-of-practice/notification%20of%20events.pdf>

DWI Water Industry (Suppliers' Information) Direction 2009

[http://www.dwi.gov.uk/stakeholders/information-letters/2009/06\\_2009.pdf](http://www.dwi.gov.uk/stakeholders/information-letters/2009/06_2009.pdf)

## 1.3 STRUCTURE OF THIS ACCESS CODE

This Access Code comprises four main parts, of which this introductory chapter, which supplies the context for the other parts, is the first.

**Part 2** deals with wholesale supplies and, following a brief introductory chapter (Chapter 2), principally comprises, as appendices (A-2.1 and A-2.2, respectively), the Operational Code and Common Contract, extracted from Ofwat's [Access codes guidance](#). Water undertakers are required to follow the Operational Code and to adopt the common contract where required to do so by licensees. However, where licensees have requirements that either differ from or are not included within the provisions of the common contract, the parties may negotiate alternative terms.

**Part 3**, covering Chapters 3-9, deals with combined supplies, that is where licensees wish to introduce water to an undertaker's supply system for the purpose of supplying their customer or customers. The Operational Code and Common Contract do not apply to combined supplies and these will continue to be subject to negotiation between licensees and undertakers. It may, nevertheless, be useful to incorporate

certain aspects of the provisions in relation to wholesale supply into any agreements concerning combined supplies.

Part 3 is divided into seven chapters that cover the following aspects of negotiating combined supplies:

- Chapter 3 deals with the process of applying for access and explains how NWL will process the application. This generally conforms to Ofwat guidance and, where possible, adopts recognised best practice but nevertheless includes some requirements that may be specific to NWL.
- Chapter 4 considers the legal aspects of access and presents the structure of typical agreements for combined access.
- Chapter 5 deals with the operational requirements for connecting a combined licensee's source to the water supply system, including any source obtained from a secondary undertaker. It also sets out the requirements for connecting a new customer to the water supply system, or re-connecting a customer previously served from the network.
- Chapter 6 briefly describes the operation of the Customer Transfer Protocol (CTP). This is the procedure for arranging the transfer of supplier for a customer once an access application has been processed and the terms of access have been agreed and is the same for both combined and wholesale supplies. The CTP is a national standard, updated and modified centrally by a forum of stakeholders under the aegis of Ofwat, but administered locally by the relevant undertaker.
- Chapter 7 covers water supply system control and balancing. The key elements described include NWL's water resource planning, contingency planning for droughts, security of supply arrangements, and licensees' roles in these. Detailed arrangements for network balancing in specific cases may vary, as set out in agreements reached with combined licensees, but this chapter sets out the generic principles. Options and responsibilities for meter reading, maintenance and calibration are also explained.
- Chapter 8 deals with network maintenance and emergency procedures. Licensees must be prepared to co-operate with NWL by communicating with customers and varying supply arrangements as necessary during emergencies or in the planning of interruptions to normal supply for the purposes of network maintenance.
- Chapter 9 clarifies the responsibilities for routine customer contact, including dealing with complaints and operational queries and regular meter readings.

Part 3 also contains two appendices:

Appendix A-3.1: Glossary of defined terms (combined supplies);

Appendix A-3.2: Pro forma applications for combined access.

Appendix A-3.2 contains separate forms for access to NWL's potable and Teesside Industrial Raw Water supply systems. These are also available as separate documents on our website:



<http://www.nwl.co.uk/bAccesscode.aspx>

**Part 4**, comprising Chapter 10 and two appendices, covers access pricing, both for wholesale and combined supplies. Here we explain our methodology for setting access prices and the key assumptions we have made in calculating indicative access prices.

Our tables of indicative access prices appear in two appendices to Part 4:

Appendix A-4.1: Indicative wholesale supply prices;

Appendix A-4.2: Indicative combined supply prices.

These are also available as separate documents on our website:

<http://www.nwl.co.uk/bAccesscode.aspx>.

Finally, a standard confidentiality agreement, applicable to both wholesale and combined supply situations, is included as an appendix to the Access Code. Before processing any application for access by a Licensee under the Water Supply Licensing regime, in compliance with Condition 'R' of its operating licence, NWL will require that it shall have concluded a confidentiality agreement with the Licensee, based either on this standard document or as modified by agreement between the parties.

## 1.4 ROLE OF KEY INDUSTRY PLAYERS

### 1.4.1 Northumbrian Water Limited (NWL)

Any licensee applying for access (the Licensee) should be aware of its obligations under its licence, but also needs to become familiar with the Conditions of Appointment in NWL's Instrument of Appointment, which differ from and are more extensive than the licence conditions contained in the Licensee's licence. This reflects the special role assigned to water undertakers by the amended WIA. In particular, NWL retains regional responsibility for water resources planning, emergency and security planning and drought planning.

NWL is required to provide access to licensed water suppliers for the purposes of serving eligible premises by offering either wholesale or combined supply services under terms complying with the WIA and Ofwat's guidance. This applies to NWL's potable water supply networks in both the North East and the Essex & Suffolk operating areas, as well as to its non-potable water supply network on Teesside (the Teesside Industrial Raw Water System). Where the Licensee's eligible customer is located within NWL's statutory area, NWL's role will be that of a "Primary Undertaker" (as described in Section 66A in relation to wholesale supplies and in Section 66B in relation to common carriage services of the revised WIA). Where the Licensee's eligible customer lies in the statutory area of a neighbouring water undertaker, NWL may be requested to perform the role of a "Secondary Undertaker" (as described in Section 66C of the revised WIA).

NWL retains ownership and management of its water supply systems and does not concede any rights in those respects. Access to the water supply systems will only be granted to licensees in accordance with access agreements complying with the revised WIA, Ofwat's guidance and this Access Code.

The WIA provides that the duties imposed on the undertaker under Sections 66A, 66B and 66C do not apply in certain circumstances. These are described below.

In relation to Section 66A (wholesale supplies), the duty to provide a supply of water to a licensee, or to take steps to enable it to provide such a supply, do not apply if both the first and second conditions below are satisfied or if the third condition below is satisfied.

The first condition is that:

- The premises to be supplied by the licensee consist only of land and that they do not include a building or part of a building; or
- The supply to be made by the licensee to the premises is for purposes other than domestic purposes.

The second condition is that the provision of the supply by the undertaker would:

- Require the undertaker to incur unreasonable expenditure in carrying out works, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply water to buildings or parts of buildings for domestic purposes; or
- Otherwise put at risk the undertaker's ability to meet any of those existing or probable obligations.

The third condition is that there is a contravention, as determined in regulations made under section 74 WIA91 and related to section 66A (6) WIA91, in relation to the water fittings used or to be used in connection with:

- The supply of water to the premises to be supplied by the licensee; or
- The use of water in those premises.

In relation to Section 66B WIA (common carriage), a primary undertaker has no duty to permit the introduction of water by a licensee into its supply system and in relation to Section 66C WIA (secondary supplies) a secondary undertaker has no obligation to provide a wholesale supply of water, if either the first or second condition below is satisfied:

The first condition is that providing the supply or allowing the introduction of the water into the primary water undertaker's supply system:

- Would require the undertaker in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
- Would otherwise put at risk its ability to meet any of those existing or probable future obligations.

The second condition is that there is a contravention of the prescribed requirements of regulations made under section 74 WIA91 in relation to the water fittings used or to be used in connection with:

- the supply of water to the premises to be supplied by the licensee; or
- the use of water in those premises.

#### 1.4.2 Licensees

Licensees must comply with their licence conditions and any access agreements made with NWL. This includes co-operating fully with the Drinking Water Inspectorate (DWI) over the planning and operation of licensees' treatment facilities used in connection with common carriage access arrangements. In particular, NWL will expect to exchange information with the Licensee in connection with any and all water quality events and incidents communicated to the DWI concerning the Licensee's supplies or affecting the Licensee's customers.

The Licensee must possess relevant quality standard accreditation and maintain accreditation throughout the duration of any access agreement.

#### 1.4.3 Water Services Regulation Authority (Ofwat)

Ofwat is the economic regulator of the water industry in England and Wales.

The Water Industry Act 1991 introduced a new duty on Ofwat to "further the consumer objective" which is "to protect the interests of consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the provision of water and sewerage services".

Ofwat is required to publish guidance on the operation of the Water Supply Licensing regime. It is responsible for granting Water Supply Licences for wholesale and combined services. In doing so, Ofwat will assess whether the applicant has the required skills and competencies.

Ofwat also has powers to determine disputes about the eligibility of premises, the terms and conditions of proposed access agreements and the conditions for refusing supplies.

#### 1.4.4 Drinking Water Inspectorate (DWI)

Applications for common carriage will be referred to the DWI for information and comment and NWL may request guidance from the DWI at appropriate stages in the application process.

DWI will need to be satisfied that the licensee is aware of and understands its regulatory duties and responsibilities in respect of drinking water quality at the licence application stage. Where a combined licensee intends to treat a source of water for potable supply, the treated water cannot be introduced into the public supply system until the DWI is satisfied that the treatment processes meet the relevant regulatory requirements and the works is being operated in a competent manner.

During access negotiations, DWI will advise Ofwat as necessary on drinking water quality issues relating to the use of common carriage, particularly in respect of dispute resolution.

In general, licensees will be subject to the same level of regulation as undertakers. Further information can be found in the Water Supply Licensing section of the DWI's website at [www.dwi.gov.uk](http://www.dwi.gov.uk).

### 1.4.5 Environment Agency (EA)

The Environment Agency (EA) has a duty to secure the proper use of water resources in England and Wales. It monitors water in the environment and issues abstraction licences to regulate who can take water from the environment and how much they can take.

Water undertakers produce Drought Plans every three years that identify how, during a period of drought, they will continue to meet their duties with as little recourse as possible to drought orders or drought permits. From October 2005, the production and publication of these plans became a legal requirement. The Environment Agency reviews these plans and advises the Government on their adequacy.

Water undertakers also produce Water Resources Management Plans every five years that identify available resources, forecast demand and set out how future deficits may be addressed through resource development, bulk supply arrangements or demand management options. The Environment Agency also reviews these plans and advises the Government on their adequacy.

There is a duty on water supply licensees to provide information to water undertakers for both Drought Plans and Water Resources Management Plans.

In most cases, combined water supply licence applicants will require a water abstraction licence from the Environment Agency to take water from surface water or groundwater sources. Every new proposal to abstract or impound water undergoes extensive scrutiny and investigation before a decision is made to grant or refuse an abstraction licence application.

Secondary supplies (under section 66C of the Water Industry Act 1991) are meant to encourage the use of 'spare water', but the undertaker and the licensee may not be able to agree on how much water the undertaker has 'spare'. In the absence of agreement, Ofwat may be asked to determine whether a supply under 66C should be made and, if so, the terms of that supply.

In these instances, the EA will also play a role in advising Ofwat on whether the criteria for rejecting a proposal for a secondary supply under sections 66C(5) or (6) of the Water Industry Act 1991 are satisfied. Ofwat will then make a determination.

Further information is available on the Environment Agency's website.

<http://www.environment-agency.gov.uk/business/sectors/32393.aspx>

### 1.4.6 Department for the Environment, Food and Rural Affairs (DEFRA)

DEFRA is the government department responsible for WSL legislation.

The Secretary of State has issued statutory instruments which govern the competition regime and may issue further instruments in the future which affect the regime. NWL will, if necessary, amend this Access Code to reflect relevant changes.

Further information is available on DEFRA's website:

<http://www.defra.gov.uk/environment/quality/water/>

## 1.5 DEFINITION OF SERVICES

### 1.5.1 Primary water undertaker

#### i) Wholesale supplies

Where NWL is performing the role of Primary Water Undertaker, and subject to reaching agreement in accordance with the amended WIA, Ofwat's guidance and this Access Code, NWL is able to offer terms to licensees for wholesale supplies from its potable water supply systems in the North East and Essex & Suffolk operating areas. A separate non-potable water supply system also exists in the Teesside area of North East England, the Teesside Industrial Raw Water System, from which wholesale supplies can be provided, but not in other locations.

In relation to wholesale supplies, NWL will be bound by the Operational Code, which is now an integral part of Ofwat's [Access codes guidance](#), with which it must comply, and is reproduced as Appendix A-2.1 in Part 2 of this Access Code. Additionally, where licensees elect to adopt the Common Contract as published by Ofwat, NWL is required to conclude an agreement on this basis. Alternatively, licensees may choose to negotiate an agreement with NWL on terms that may vary to a greater or lesser extent from the Common Contract.

In all cases, agreements for wholesale supplies will be based on the provision of water at the boundary of customers' premises, through existing connections wherever possible. The quality and reliability of such supplies will be the same as those provided by NWL to its own customers, unless the Licensee requests some variation that NWL can feasibly provide and that the Licensee is willing to see reflected in the cost of access.

NWL will not normally expect to communicate with the Licensee's customers. However, elements of the services NWL provides to its own customers can be offered if the Licensee requests them and is prepared to see their costs reflected in access charges. These include:

- Monthly meter reading;
- Provision of meter readings to the Licensee and/or customers and/or the sewerage undertaker (where this is not NWL);
- Directly responding to customer queries through the account management service NWL provides to similar customers;
- Visiting customers to discuss supply problems on a regular basis (again as part of the account management service);
- Billing the Licensee's customers on behalf of the Licensee
- The provision of water efficiency advice to the Licensee's customers.

#### ii) Combined supply arrangements

In addition to the above arrangements for wholesale supplies, NWL will process applications for common carriage from licensees, in accordance with Ofwat's guidance and this Access Code. Combined supplies are not covered by the

Operational Code or Common Contract, although it may still be useful to incorporate some aspects of these into combined supply agreements. Where agreement can be reached on price and non-price terms, a legal agreement will be offered stipulating, inter alia, the period for which the Licensee will introduce water at agreed entry points into NWL's water supply system in order to supply the Licensee's customer (or customers) at agreed exit points from the network.

In some cases, it may be necessary for NWL to carry out network reinforcements before common carriage is feasible. Where this is necessary, the Licensee will be required to reimburse NWL the full cost of the necessary reinforcements upon their completion and in the interim NWL may require the provision of a bond or guarantee in respect of such works.

Where it becomes necessary for mains to be laid within NWL's statutory area in order to introduce the Licensee's treated water into NWL's water supply system (or non-potable water, in the case of the Teesside Industrial Raw Water System) and thereby supply the Licensee's customers and where the Licensee requests NWL to use its statutory powers to lay such mains, NWL will do so in accordance with Section 66B of the amended WIA. In such situations, the Licensee will be required to reimburse NWL the full cost of the mains upon their completion, and in the interim NWL may require the provision of a bond or guarantee in respect of such works.

### 1.5.2 Secondary water undertaker

Where NWL is performing the role of Secondary Water Undertaker and a combined licensee requests NWL to provide a wholesale supply for onward transmission to the Licensee's customers in a neighbouring Primary Undertaker's statutory area, NWL will take the necessary steps in accordance with Section 66C of the amended WIA. In such situations, the Licensee will be required to reimburse NWL upon their completion the full costs of any works NWL needs to carry out to make the supply available at the requested location and in the interim NWL may require the provision of a bond or guarantee in respect of such works.

NWL's periodic charges to recover the ongoing costs of making the supply available at the requested location may include the costs of advancing any works that would otherwise have been required at a later date.

NWL will use its best endeavours to cooperate with the Licensee and the Primary Undertaker over the introduction of the supply from NWL into the Primary Undertaker's water supply system.

## 1.6 HOW TO CONTACT US

For any matters relating to this Access Code or to proposed access agreements, please contact:

Competition Manager  
Northumbrian Water Limited  
Boldon House  
Wheatlands Way  
Pity Me  
Durham  
DH1 5FA

Email: [competition@nwl.co.uk](mailto:competition@nwl.co.uk)

## **PART 2**

# **WHOLESALE SUPPLIES**

## 2 WHOLESALE SUPPLIES

### 2.1 INTRODUCTION

The latest version of Ofwat's [Access codes guidance](#) introduces significant changes to the arrangements in relation to wholesale supplies under the Water Supply Licensing regime.

Previously, licensees were required to negotiate individually with each water company in whose area they wished to compete, first to conclude a Wholesale Master Agreement, covering the common principles under which wholesale supplies to any eligible premises might subsequently be granted, and then subsequently to agree access prices and other site-specific terms for any sites that did transfer to the Licensee.

Ofwat, in conjunction with industry stakeholders has developed, an Operational Code and Common Contract that are intended to simplify the process of applying for wholesale supplies.

The Operational Code is intended to cover the rules of the market that a water company must follow up to the point that it signs a supply contract with a licensee. Thereafter, the contract will govern the relationship between the licensee and the water company.

Water companies are now required to follow the Operational Code and, where a licensee requests, to adopt the Common Contract. However, the licensee may choose to negotiate variations to the terms of the Common Contract with the water company or, indeed, to negotiate on the basis of an entirely different document.

Unlike the previous Wholesale Master Agreements, which covered all wholesale supplies by an undertaker to a particular licensee, the Common Contract relates to supplies to one customer and separate contracts are required for supplies to different customers. However all eligible sites belonging to or managed by a single customer may be covered in one contract.

### 2.2 CONFIDENTIALITY AGREEMENTS

Condition R of NWL's Instrument of Appointment and Standard Licence Condition 2 of the Licensee's Licence impose an obligation on both undertakers and licensees not to use or disclose information inappropriately. Condition R also requires NWL to ensure that legally enforceable terms exist about the confidentiality of information.

In the light of the above requirements, before considering an application for a wholesale supply, it will be necessary for NWL and the Licensee to have entered into a confidentiality agreement, covering all matters relating to the application.

NWL's standard confidentiality agreement, which is applicable to both wholesale and combined supplies, is reproduced in the Appendix to this Access Code. It is also available as a separate document on our website:

<http://www.nwl.co.uk/bAccesscode.aspx>



NWL believes there are benefits to both licensees and undertakers from the adoption of a standard confidentiality agreement to cover access applications but understands that the Licensee may wish to discuss modifications to this document to cover particular circumstances.

### **2.3 OPERATIONAL CODE AND COMMON CONTRACT**

Under Ofwat's latest [Access codes guidance](#), water companies are required to substantially replace the previous provisions in their Access Codes relating to wholesale supplies with the Operational Code and Common Contract. These two documents, reproduced from Ofwat's current guidance are therefore attached as Appendices A-2.1 and A-2.2, respectively, to this Part 2.

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## APPENDICES TO PART 2

A-2.1 Operational Code

A-2.2 Common Contract

### Notes:

1. Both documents are reproduced from Ofwat's current [Access codes guidance](#)
2. A standalone version of the Common Contract with NWL's details pre-entered appears on our website:  
<http://www.nwl.co.uk/bAccesscode.aspx>

## Operational code

### 1. Overview

#### 1.1 Order of precedence

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

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

#### 1.2 Definitions

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

### 1.3 Objectives and purpose

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

### 1.4 Status and enforceability

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

### 1.5 Ofwat's role

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

(Provision of combined and wholesale water supplies) and Condition of Appointment S (Customer transfer protocol)) and licensees' standard licence conditions.

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

## **1.6 Duties of appointed water companies and licensees to other bodies**

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

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

## **1.7 England and Wales**

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

## **2. Applying for access**

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

- 2.2 If a licensee wishes to use the common contract as the access agreement between the parties, the application process is as follows:
- (a) Licensee submits its application to the appointed water company. That application shall comprise:
    - (i) a copy of the customer's consent to switch supplier (see further sections 2.4 and 2.5 below); and
    - (ii) a completed copy of the common contract (see further section 2.6 below).
  - (b) The appointed water company shall offer an access price for the licensee's customer and provide a signed copy of the common contract within 10 working days of receiving the licensee's application. The access price offered by the appointed water company shall remain valid for six (6) months and shall specify the discount in p/m<sup>3</sup> from the standard retail tariff. The offer shall also explain:
    - (i) the basis of the discount from the standard retail tariff; and
    - (ii) any difference between the indicative discount for such a customer and the discount in the customer-specific offer.
  - (c) If the licensee accepts the access price offered by the appointed water company, the Customer Transfer Protocol process will switch the customer to the licensee. If the licensee is unable to agree an access price with the appointed water company, the parties shall follow the dispute resolution procedure set out in section 4 below.
- 2.3 If a licensee has chosen not to use the common contract as the access agreement between the parties, the application process is as follows:
- (a) Licensee submits its application to the appointed water company. That application shall comprise:
    - (i) a copy of the customer's consent to switch supplier (see further sections 2.4 and 2.5 below); and
    - (ii) any contract or terms that is/are proposed or agreed between the parties.

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

- 2.6 If the licensee has chosen to use the common contract as the access agreement between the parties and provided all of the information required of it by that contract, the appointed water company shall not reject the licensee's application on the grounds of insufficient information.
- 2.7 An appointed water company shall not recover from a licensee any costs of processing an access application.
- 2.8 An appointed water company shall not charge the licensee for providing copies of any documents relating to the transfer of a customer or for clarifying its policy and information requirements.
- 2.9 A licensee shall not charge the appointed water company for providing any information which is necessary for the carrying out of the appointed water company's functions.
- 2.10 The parties shall comply with any reasonable request for information received from each other.

### **3. Access pricing**

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



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

Charges at (b)(ii) shall be calculated in accordance with paragraph 4 of schedule 2 to the common contract; and
  - (c) The discounts for the first and second customer of a specific licensee.
- 3.7 Indicative wholesale supply charges published by an appointed water company shall be for the service defined in clause 2 of the common contract.
- 3.8 When publishing or amending any indicative charging information, an appointed water company shall explain any assumptions it has made for the purpose of calculating that information.
- 3.9 Indicative charging information shall be reviewed by an appointed water company every year by 15 October. This information may also be reviewed at any other time. An appointed water company shall notify Ofwat and publish updated information on its website within seven (7) days of making any modifications to its indicative charging information.
- 3.10 If requested, an appointed water company shall provide Ofwat with information to explain how it has calculated its indicative wholesale supply charges. Such information shall be provided in such manner, and by such time, as Ofwat may specify.

- 3.11 Nothing in this operational code limits an appointed water company's ability to publish indicative charging information for supplies and in respect of circumstances which are not specified in this section.
- 3.12 If a licensee has made an application to an appointed water company in respect of the supply to a particular customer, the appointed water company may offer its published indicative wholesale charge for such supply if it considers that charge to be appropriate.

## **4. Dispute resolution procedure**

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

## Common contract

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### **Schedule**

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### **Appendix**

Data Sheet

This Contract is made on 20[ ]

## Between

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

## Whereas

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

## It is agreed

### 1 Definitions and Interpretation

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

1.3 In this Contract:

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

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

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

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

## **2. Water Supply**

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



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

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

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

### **3. Term**

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

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

### **4. Warranties**

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

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

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

### **5. Compliance with Relevant Laws**

5.1 The Undertaker warrants for the Term that it will comply with all Relevant Laws.

5.2 The Licensee warrants for the Term that it will comply with all Relevant Laws.

5.3 Nothing in this Contract shall be construed to prevent a Party from discharging any duty or obligation which is required by any Relevant Law.

## **6. Supply System**

6.1 Nothing in this Contract alters the Undertaker's ownership of the Supply System or its responsibility to manage and operate the Supply System and this Contract does not confer any responsibilities for ownership, maintenance or other use of the Supply System to the Licensee or the Customer.

6.2 Subject to clauses 8 and 9, nothing in this Contract shall prevent or restrict the Undertaker from altering, amending, expanding, replacing, developing and/or redeveloping its Supply System.

## **7. Meters**

7.1 In respect of any Meter which the Undertaker has installed at the Premises, the Undertaker shall:

- (a) maintain or replace the Meter (as appropriate);
- (b) perform tests on the operation and accuracy of the Meter if requested by the Licensee;
- (c) upsize or downsize the Meter (as appropriate) if requested by the Licensee; and
- (d) if the Undertaker is implementing a replacement scheme for meters that includes the type, location or any other feature of the Meter, replace the Meter as part of such scheme.

7.2 In respect of the Undertaker's obligations under clauses 7.1(b) and 7.1(c), the Undertaker may charge the Licensee provided that such charges are consistent with the Undertaker's charges to its other customers in comparable circumstances.

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

## **8. Supply Interruptions**

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

## **9. Information and Notification of Supply Interruptions and Supply Changes**

- 9.1 Unless the Undertaker has notified the Licensee of a Supply Interruption or a Supply Change under clauses 9.2 to 9.4, the Undertaker shall promptly notify the Licensee and the Customer of the nature or scale of a Supply Interruption or a Supply Change and its estimated duration (provided that such Supply Interruption or Supply Change is material or could reasonably be construed as material).
- 9.2 Subject to clause 10, if any Planned Maintenance by the Undertaker will or is reasonably likely to cause a Supply Interruption, the Undertaker shall provide the Licensee and the Customer with not less than 48 hours' prior written notice of such Supply Interruption.
- 9.3 In respect of any Planned Maintenance, the Undertaker shall, to the extent reasonably practicable, liaise with the Licensee and its Customer (if requested

by the Licensee) to assess the impact of the Planned Maintenance on the Customer and the Undertaker shall use reasonable endeavours to minimise or eliminate the Planned Maintenance (or impact thereof) affecting the Customer.

- 9.4 The Undertaker shall provide the Licensee with information on the Supply System (to the extent that it is applicable to the Licensee's Customer) that is equivalent in terms of content and timeliness as the Undertaker provides to its Large Users.

## 10. Special Consumers

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

## 11. Unmeasured Takes

- 11.1 The Parties agree that where an illegal connection is made to the Supply System which results in a third party taking water from the Supply System (an **Unmeasured Take**):
- (a) up to the Meter, such Unmeasured Take shall be for the Undertaker's account;
  - (b) at any point from and including the Meter, such Unmeasured Take shall be for the Licensee's account.
- 11.2 Each Party agrees to provide the other with all reasonable assistance in respect of any steps, actions or proceedings against a third party relating to an Unmeasured Take, including disconnecting the illegal connection and seeking compensation.

## **12. Licensee Equipment**

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

### 13. Charges and Payment

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

### 14. Change Control Process

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

### 15. Adding Premises

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

### 16. Switching Premises

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

(b) the planned Switch Date.

16.2 The Undertaker and the Licensee shall perform the Switch of any Premises in accordance with the Customer Transfer Protocol.

16.3 Subject to clause 28, in respect of any Switch this Contract shall terminate in part in relation to those Premises specified in the Switch Notice on the Switch Date save in respect of clause 13 (and any related provisions or schedules) which shall survive termination until all Charges owed by the Licensee in respect of such Premises have been paid.

16.4 In respect of any Switch, the Licensee shall perform and promptly notify the Undertaker of the Switch Read. If the Licensee fails to provide the Undertaker with the Switch Read within five (5) Working Days of the Switch Date, the Undertaker may use an Estimated Read in lieu of the Switch Read for the purposes of the Licensee's final bill in respect of the Premises.

16.5 Subject to clause 28, to the extent that a Switch relates to all Premises specified in this Contract, this Contract shall terminate in its entirety on the Switch Date of the last Premises to Switch save in respect of clause 13 (and any related provisions or schedules) which shall survive termination until all Charges owed by the Licensee in respect of the Premises have been paid.

## 17. Termination

17.1 The Licensee may terminate this Contract in whole or in part (for example terminating one (1) or more but not all of the Premises) on not less than 30 days' prior notice in writing subject to its compliance with clause 18.3.

17.2 Without prejudice to any other rights or remedies, either Party may terminate this Contract in whole or in part (for example terminating one (1) or more but not all of the Premises) with immediate effect if the other Party commits a material breach of its terms and fails to either remedy such material breach (where capable of remedy) or present reasonable proposals to the other Party for rectification within 30 days of having been notified of the material breach.

17.3 For the purposes of clause 17.2, 'material breach' shall be construed as including without limitation:

(a) a failure by the Licensee to pay an undisputed amount within 14 days of the date of receipt of the relevant invoice; or

- (b) any breach of the warranties set out at clause 4.

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

## **18. Exit Arrangements**

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

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

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

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

- (a) the Licensee will cease supplying water to the Premises and the date thereof;



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

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

## 19. Force Majeure Event

- 19.1 Subject to the remainder of this clause 19, neither Party shall be liable to the other where it is unable to perform its obligations under this Contract by reason of a Force Majeure Event provided that the Party claiming to be prevented or delayed in the performance of its obligations by reason of a Force Majeure Event (the **Affected Party**) shall use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which the obligations contained in this Contract may be performed.
- 19.2 The Affected Party shall:
- (a) notify the other Party of the Force Majeure Event as soon as reasonably practicable and in any event within 10 Working Days of the Force Majeure Event occurring; and
  - (b) upon request, within 15 Working Days of the Force Majeure Event occurring, provide a report containing all relevant available information relating to the Force Majeure Event and details of the measures the Affected Party is taking to overcome or circumvent such Force Majeure Event.
- 19.3 The Parties shall not be relieved by reason of the Force Majeure Event from any obligation to indemnify or make payment.

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

## **20. Dispute Resolution**

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

- (b) refer the Dispute to a Competent Authority where appropriate; or
- (c) commence legal proceedings in the Courts.

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

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

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

## **21. Limitation of Liability**

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

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

otherwise, inconsistent with the provisions of this clause 21.2 are hereby expressly excluded (subject always to clauses 21.4 and 21.5).

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

## **22. Intellectual Property Rights**

- 22.1 Any Intellectual Property owned or duly licensed by either Party, or developed by either Party during the Term, in relation to the subject matter of this Contract howsoever arising shall remain vested in that Party and the other Party shall acquire no proprietary rights in or licence to use such Intellectual Property without the express written agreement of the Party in which it is vested.

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

### **23. Assignment**

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

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

### **24. Notices**

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

(a) in the case of the Undertaker:

Address: •

E-mail: •

Facsimile No: •

Attention: •

(b) in the case of the Licensee:

Address: •

E-mail: •

Facsimile No: •

Attention: •

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

24.2 A notice shall be treated as having been received:

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

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

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

## **25. Relationship of the Parties**

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

## **26. Third Party Rights**

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

## **27. Entire Agreement**

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

## **28. Survival of Rights**

- 28.1 Termination of this Contract for any reason shall not affect any rights or liabilities that have accrued prior to termination or the coming into force of any term that is expressly or by implication intended to come into force or continue in force on or after termination. Without limitation, the Parties intend that the following provisions shall survive termination:
- (a) Exit Arrangements (clause 18);

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

## **29. Waiver**

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

## **30. Rights Cumulative**

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

## **31. Severance**

31.1 If any term or provision of this Contract is held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Contract but the validity and enforceability of the remainder of this Contract shall not be affected.



## 32. Counterparts

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

## 33. Governing Law

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

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

Signed by

duly authorised for and on behalf of

Signed by

duly authorised for and on behalf of

## Schedule 1

### Definitions

**Act** means the Water Industry Act 1991.

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

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

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

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

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

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

**Charges** means the charges calculated in accordance with schedule 2.

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

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

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

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

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

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

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

**Dispute** has the meaning given to it in clause 20.1.

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

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

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

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

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

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

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

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

**Force Majeure Event** means any act of God, adverse weather conditions (excluding any serious deficiency in supplies caused by an exceptional shortage of rain), strike,

lockout or other industrial disturbance or dispute (other than one affecting only the Party in question or its parent company or other companies in its group or otherwise associated with it), war, threat of war, act of terrorism, blockade, revolution, riot, civil commotion, public demonstration, sabotage, earthquake, or other event or circumstance which is beyond the reasonable control of the Party in question to the extent that it causes or results in an inability to perform obligations under this Contract.

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

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

**Intellectual Property** means:

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

in each case subsisting at any time in any part of the world (whether registered or unregistered) and (i) any pending applications or rights to apply for registrations of any of these rights that are capable of registration in any country or jurisdiction and

(ii) any similar or analogous rights to any of these rights, whether arising or granted under the laws of England and Wales or in any other jurisdiction.

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

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

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

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

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

**Losses** means damage, losses, expenses or costs.

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

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

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

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

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

**Planned Maintenance** means any maintenance requirement which:

- (a) is identified in the Undertaker's maintenance plans as notified to the Licensee in accordance with clause 9; or

(b) was a reasonably foreseeable maintenance requirement.

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

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

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

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

**Relevant Law** means:

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

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

**Special Consumer** means any Customer that:

- (i) the Undertaker and the Licensee agree; or

- (ii) a Competent Authority specifically or generally determines by relevant notice,

regularly requires water urgently on medical or other grounds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**VAT** means value added tax.

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

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

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

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



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## Schedule 2

### Charges

#### 1 Calculation of Charges

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

#### 2 Payment of Charges

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

- (c) the Charges Terms;
  - (d) For each Meter –
    - (i) the Transfer Read, preceding Meter Read or preceding Estimated Read (as appropriate);
    - (ii) the present Meter Read, present Estimated Read or the Termination Read (as appropriate);
  - (e) any adjustments from previous Billing Periods;
  - (f) any Charges Adjustment; and
  - (g) any VAT payable.
- 2.6 Without prejudice to any other rights or remedies available to the Undertaker, the Undertaker may add interest at the rate of three (3) percent per annum above the current official Bank Rate (as published by the Bank of England from time to time) to any amounts not paid by the Licensee on or before the Due Date (to be calculated on a daily basis).
- 2.7 All amounts expressed as payable pursuant to this Contract are expressed to be exclusive of any applicable VAT and accordingly VAT shall be payable in addition to the amounts expressed at the rates from time to time in effect against a valid VAT invoice.

### **3 Charges Adjustments**

- 3.1 If the Licensee is making payment in advance (see paragraph 4 below) for the Water Supply, the Undertaker shall deduct the Advance Payment Discount from the Charges.
- 3.2 If the Undertaker has in effect at any time during the Billing Period a policy of providing a reduction in charges to non-household customers where such customers incur or suffer a leakage, the Undertaker shall reduce the Charges to the Licensee in the relevant Billing Period by the Leakage Adjustment.
- 3.3 If the Licensee uses water that is supplied pursuant to this Contract for the purposes of fire-fighting or testing fire-fighting equipment (**Fire-Fighting Offtake**) in any Billing Period, the Undertaker shall make an adjustment to the

Charges for such Billing Period equivalent to the proportion of the Charges incurred that relate to the Fire-Fighting Offtake provided that the Licensee notifies the Undertaker in writing:

- (a) within 30 days if the Fire-Fighting Offtake occurred for the purpose of fire-fighting or, if impracticable, as soon as is reasonably practicable after the date of the Fire-Fighting Offtake; or
- (b) no later than 30 days after the date of the Fire-Fighting Offtake if the Fire-Fighting Offtake occurred for the purposes of testing fire-fighting equipment.

#### **4 Payment in Advance**

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

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- 4.4 Any invoice issued by the Undertaker pursuant to this paragraph 4 shall detail (if applicable):
- (a) the Premises;
  - (b) the Charges;
  - (c) the Charges Terms;
  - (d) For each Meter –
    - (i) the Transfer Read, preceding Meter Read or preceding Estimated Read (as appropriate);
    - (ii) the present Meter Read, present Estimated Read or the Termination Read (as appropriate);
  - (e) any adjustments from previous Billing Periods;
  - (f) any Charges Adjustment;
  - (g) any VAT payable;
  - (h) a credit for the amount of the Provisional Monthly Charge for the relevant Billing Period; and
  - (i) the amount of the Provisional Monthly Charge for the following Billing Period.
- 4.5 If the Provisional Monthly Charge for a Billing Period is greater than the amount owing to the Undertaker for such Billing Period, the Undertaker shall deduct such amount from the Provisional Monthly Charge for the following Billing Period or, if requested by the Licensee, reimburse the Licensee such amount within 10 Working Days of receiving such request.
- 4.6 If the Provisional Monthly Charge for a Billing Period is less than the amount owing to the Undertaker for such Billing Period, the Undertaker may add such amount to the Provisional Monthly Charge for the following Billing Period.
- 4.7 If the Provisional Monthly Charge over any consecutive three (3) month period is either materially greater or materially less than the actual Charges for the Water Supply in the same period, either Party may require the other Party to agree to a recalculation of the Provisional Monthly Charge in accordance with the Guidance on not less than one (1) month's notice in writing.

## 5 Reconciliation

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

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## Schedule 3

### Change Control Process

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

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

## Appendix

### Data Sheet

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

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



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

## **PART 3**

# **COMBINED SUPPLIES**

## 3 APPLICATION FOR COMBINED SUPPLY ACCESS

### 3.1 PROCESS REQUIREMENTS

#### 3.1.1 Confidentiality agreements

Condition R of NWL's Instrument of Appointment and Standard Licence Condition 2 of the Licensee's Licence impose an obligation on both undertakers and licensees not to use or disclose information inappropriately. Condition R also requires NWL to ensure that legally enforceable terms exist about the confidentiality of information.

In the light of the above requirements, before considering an application for a combined supply, it will be necessary for NWL and the Licensee to have entered into a confidentiality agreement, covering all matters relating to the application.

NWL's standard confidentiality agreement, which is applicable to both wholesale and combined supplies, is reproduced in the Appendix to this Access Code. It is also available as a separate document on our website:

<http://www.nwl.co.uk/bAccesscode.aspx>

NWL believes there are benefits to both licensees and undertakers from the adoption of a standard confidentiality agreement to cover access applications but understands that the Licensee may wish to discuss modifications to this document to cover particular circumstances.

#### 3.1.2 Information requirements

A significant amount of information may be required by NWL to process combined supply applications, where detailed water quality data is certain to be needed by DWI as well as NWL. The precise requirements may vary in individual cases.

Appendix A-3.2 contains questionnaires, covering:

- i) Treated water into NWL's water supply system
- ii) Raw water into NWL's Teesside Industrial Raw Water supply system

#### 3.1.3 Timescales

NWL will use best endeavours to meet the target timescales referred to in Ofwat's guidance. However, some technical investigations may take longer. The need for NWL to consult DWI during the processing of applications for common carriage may also introduce unavoidable delays.

NWL cannot be expected to process incomplete applications. To assist the licensee in providing all relevant information, NWL has included the standard questionnaires in Appendix A-3.2 of this Access Code.

### 3.1.4 Credit provisions and credit limits

NWL will generally treat licensees as it would its own large user customers, unless there are justifiable reasons for doing otherwise. As such, there will normally be no credit provisions or credit limits applied to licensees and invoices will be based on monthly meter readings.

As stated in section 1.5, if NWL is required to commit capital to enable the access proposal to proceed, a bond or financial guarantee may be required and full payment will be required on completion.

## 3.2 CONFIRMING ELIGIBILITY

Section 17A(3) WIA91 sets out the following three requirements that must be satisfied in relation to each of the premises supplied by a licensee:

- The customer's premises are not household premises;
- When the licensee first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually by the licensee is not less than 5 megalitres (the 'threshold requirement'); and
- The premises are not being supplied by another licensee (but may be supplied by a licensee and one or more water undertakers).

Further information can be found in Ofwat's [Guidance on eligibility](#).

### 3.2.1 Responsibilities

In all cases and for all aspects of eligibility, it is the Licensee rather than the water undertaker that must ensure that the premises of a potential customer are eligible, in accordance with Ofwat's [Guidance on eligibility](#).

A licensee should seek its own legal advice if it is unsure whether a customer's premises are eligible.

In practice, as part of its investigations to confirm the eligibility of premises, the Licensee may wish to refer to information held by NWL. NWL will only provide the Licensee with such information with the customer's consent.

### 3.2.2 Attachment to the supply system

Section 17A(5) of the amended WIA requires that a physical link exist between the combined licensee's introduction point and its customer's premises.

The existence of such a physical link, however, does not in itself guarantee that a supply can be made from the licensee's entry point to the customer through the water supply system. Hydraulic conditions in the network may preclude the direct transfer of water from the entry point to the customer. However, provided NWL is able to reduce the output of one or more of its sources, or reconfigure how it uses the combination of its supplies with those introduced by the licensee, supply by displacement may be possible.

### 3.2.3 Customers in debt

Outstanding debt is defined in Condition S and Standard Licence Condition 6 as charges in relation to water supplied to the premises of a customer, which have remained unpaid for 30 days or more after the date that the old supplier has served notice on the customer demanding payment. If there is outstanding debt and arrangements are not in place for the repayment of any outstanding water debt, an objection to the customer transfer can be raised by the old supplier in accordance with the [Customer Transfer Protocol](#). However, to allow the transfer to continue, it may be possible to allow the debt to be assigned to the new supplier. Such arrangements would need to be agreed between the new supplier, the customer and the old supplier.

## 3.3 APPLICATION PROCEDURE

Ofwat's Access codes guidance envisages that the application procedure for a combined supply will typically consist of three stages:

- Introduction:  
The licensee contacts the appointed water company with an initial expression of interest;
- Application:  
The licensee makes a formal application to the appointed water company;
- Negotiation:  
Terms and conditions are discussed and agreed or rejected. In practice, this may overlap the application stage.

### 3.3.1 Introduction stage

At this stage, the Licensee should contact NWL, informing it of the type of licence it holds and its contact details. NWL will confirm its basic information requirements but will not divulge any information of a confidential nature unless the Licensee has already entered into a confidentiality agreement with NWL.

If the Licensee requests an initial meeting, NWL will arrange this within 10 working days of receiving the request. NWL advises Licensees to seek such a meeting to discuss the broad feasibility of any proposed combined supply and to identify any potential problems in advance of the Licensee making a formal application.

At this stage, the licensee will not be expected to reveal the identity of its customers, their consumption or location.

### 3.3.2 Application stage

#### i) Purpose of the Application

The purpose of NWL's assessment of an application will be to determine if the proposal is technically feasible and, if appropriate, to provide a firm offer of access to the Licensee, conditional upon signing an Access Agreement.

## ii) Liaison with the Drinking Water Inspectorate

The Licensee will keep DWI fully informed throughout of its proposals for a potable water combined supply (common carriage) arrangement. In this connection, it should be noted that DWI has requested that it be given two to three months' warning prior to its required involvement in a combined supply application.

The Licensee and NWL will pay due regard to the guidance on the water quality aspects of common carriage appended to [DWI Information Letter 13/2004](#) and any updated versions of that or other relevant guidance that DWI may produce. NWL will advise DWI if any water quality issues arise from investigations undertaken at the application stage. DWI will arbitrate any disputes arising over water quality.

## iii) Liaison with EA

The Licensee will need to ensure that it has or will have access to sufficient water to meet its proposed input to NWL's system over the full period of the Access Agreement. This could mean having appropriate abstraction licence(s) entitlement or a valid agreement with abstraction licence holder(s) to use their source(s). In either case, this will necessitate liaison with the EA to ensure the proposals are acceptable.

Should the application stage conclude before the Licensee has secured appropriate access to source water, the terms offered by NWL would be conditional upon such access being obtained. It should be further noted that it would not be possible to conclude detailed contract negotiations if the Licensee had not secured appropriate access to water resources.

Supply/demand balance considerations may have a significant impact on NWL's ability to meet its customers' demands for water and also on the cost of entry. The application process cannot therefore be completed until there is:

- clarity regarding the inputs that the Licensee will make during the period of the Access Agreement;
- clarity regarding what will happen if the Licensee fails to supply the proposed volumes; and,
- Confirmation that the EA is content with any revised NWL Water Resources Management Plan and Drought Contingency Plan.

## iv) Information required from the Licensee

Appendix A-3.2 to this Part 3 contains pro forma questionnaires outlining the basic information requirements in connection with applications for combined supply access to both NWL's potable and Teesside Industrial Raw Water Systems. These are also available as standalone documents from our website:

<http://www.nwl.co.uk/bAccesscode.aspx>.

Licensees must, as a minimum, provide the information required in the appropriate questionnaire, together with any further information specified as necessary by NWL, either at or following the preceding meeting between the parties..

Applications must include a signed consent form from each customer that the Licensee is proposing to supply, stating that the named customer has expressed an interest in the Licensee becoming its new supplier. This should be dated no more than two months before the date at which the Licensee makes its application or must be otherwise be verified by the customer as still being in force at that time.

Information requirements will depend on the nature and complexity of the application. It may be necessary for NWL to request further information once the assessment of the application has started, if investigations indicate this is required to ensure a proper appraisal of the Licensee's proposal.

The Licensee should advise NWL without delay of any changes to information already provided or if further information that may be relevant to the application has become available. If NWL considers new information necessitates further investigation or modification of price or non-price terms previously quoted, NWL will inform the Licensee as soon as practicable.

An overview of data requirements at the application Stage is provided below. Reference should be made to the pro forma applications in Appendix A-3.2 for further details.

- The Licensee will provide the location of the point(s) of entry. NWL understands that this may need to be subject to discussion, since the Licensee may not possess sufficient information on the details of NWL's water supply system to state the location precisely. However, this is a key information item and the point of entry must be identified before any technical investigations can proceed.
- Details of the flow to be provided by the Licensee at the point(s) of entry will be required. This will cover maximum, average and minimum values for the annual, monthly, weekly and daily demand and a normal diurnal flow profile for each point of entry. Seasonal variations and forecasts for the duration of the Access Agreement are also required.
- The Licensee will provide details of pressure to be provided at each Point of Entry where the supply is directly into NWL's pipework. This is not required when the supply is directly into an NWL service reservoir.
- The Licensee will provide the location of the point(s) of exit and information about the quantity to be delivered to these points in order to supply the Licensee's customer(s). Information required will include maximum, average and minimum values of the following: annual, monthly, weekly and daily demand and a normal diurnal demand profile for each point of exit. Seasonal requirements and forecasts for the duration of the Access Agreement are also required.

When it is proposed to inject treated water into NWL's water supply system, the Licensee will provide details of the treatment processes and practices currently applied (or proposed, if the works is yet to be commissioned). The objective of this is to demonstrate that the works will provide water that meets all regulatory requirements and that is compatible with NWL's treated water. This data will include but not necessarily be limited to:

- Raw water quality results for at least one year;
- Results and methodology for assessments of raw water, e.g. cryptosporidium risk assessments;
- Processes (type of treatment, process modelling);
- Details of process monitoring and control procedures;
- If available, results from process monitoring for one year;
- Procedures in place (quality assurance, maintenance, security, emergencies and back-up arrangements);
- Plant (manufacture, type) and standby provision;
- Chemicals (grade, supplier); and
- Environmental obligations and abstraction (EA licence) conditions.

Where the Licensee has been producing drinking water for at least one year from the treatment works, the Licensee will provide a full historic record of the data for all parameters listed in the Water Quality Regulations and other parameters on a case-by-case basis for the treated water which it intends to supply at the point(s) of entry.

Where the treatment works has been operational for less than twelve months, the Licensee shall provide all the available data for all parameters listed in the Water Quality Regulations for the treated water that it intends to supply at the point(s) of entry.

NWL will only allow connection to its treated water supply system once it is satisfied that the Licensee's works will produce an acceptable water quality and that the DWI has no objections. If the data does not demonstrate the works' capability under seasonal fluctuations, further samples may be requested before connection. There may also be a requirement for increased monitoring after connection.

Where the treatment works has yet to be commissioned, the Licensee shall provide all available data to demonstrate that the works will be capable of producing acceptable water quality. For example, raw water quality data and cryptosporidium risk assessments as described in the Water Quality Regulations, bench scale tests, pilot scale tests, operating procedures, emergency procedures, target values for water quality at intermediate treatment stages, works exit and the point(s) of entry.

Where the Licensee proposes to use NWL's Teesside Industrial Raw Water supply system, the Licensee shall supply NWL with data to establish the nature of the raw water and its compatibility with the existing raw water supply. Although the raw water does not have to meet drinking water supply regulations, it should be screened to exclude solid matter and the quality should be such that it will not degrade NWL's or customers' pipework, fittings or pumps.

NWL will only allow connection to its raw water supply system once it is satisfied that the raw water quality of the Licensee's supply is fully established and will not cause problems with NWL's downstream Levels of Service to existing raw water customers. If the data does not cover all likely circumstances, seasonal fluctuations or identify risks, further samples may be requested before connection.

For both raw and treated water combined supply arrangements, the Licensee shall demonstrate that its supply arrangements have the ability to meet its proposed volumetric input over the agreed balancing period throughout the period of the



proposed Access Agreement. The Licensee shall produce an annual supply/demand balance forecast for the duration of the proposed Access Agreement. In deriving the supply/demand balance forecast, the Licensee should adopt the methodology in the Environment Agency's "[Water Resources Planning Guidelines](#)" and reports referenced therein and any updated versions or other amendments of that or other relevant guidance that EA may produce.

The Licensee must demonstrate that it has or will have appropriate access to raw water. This may be through Environment Agency abstraction licence(s) or agreements with existing abstractors. The licence(s) or agreement(s) must be sufficient to meet the Licensee's proposed input to NWL's water supply system over the duration of the Access Agreement and for all likely planning scenarios. The Licensee shall demonstrate adequacy of the abstraction licences using methodologies consistent with those in the Environment Agency's "[Water Resources Planning Guidelines](#)" and reports referenced therein and any updated versions or other amendments of that or other relevant guidance that EA may produce by providing:

- a) A robust yield assessment of its proposed resource(s) with supporting data and calculations. The assessment shall be made using a methodology that is consistent with "Reassessment of Water Company Yields", Environment Agency (1997).
- b) An appropriate risk assessment to assess likely frequency and duration of outage of supply for maintenance, power failure, source failure or other reason.
- c) A forecast of the margin of dry year deployable output over peak week demand of its customers for each year of the Access Agreement.

Other data may be requested from the Licensee in order to ensure a proper assessment. This will depend on the specific circumstances of the application.

If the Licensee is not proposing to meet the full volumetric requirements of its customer(s) over the balancing period, then it must enter into a wholesale agreement with NWL to supply the shortfall.

The Licensee will confirm details of the customer(s) to be supplied and may wish to include a statement that, to the best of their belief, the premises are eligible to be supplied under WIA91 Section 17A(3).

In addition to technical information regarding the application for access, the Licensee will confirm in detail what it requires from NWL in order to supply its prospective customer(s). The Licensee should also confirm in detail what activities it will undertake, to ensure the correct identification of ARROW costs.

All data are to be provided in one loose-leaf paper copy and, where appropriate, in electronic format as specified by NWL and, as far as possible, following the relevant pro forma questionnaire in Appendix A-3.2.

The Licensee will provide sufficient supporting documentation to enable NWL to determine the robustness of data and estimations made in the application.

## v) Application assessment

Once the Licensee has provided all of the required information, NWL will carry out an assessment of the effect on the water supply system into which the proposed water will be supplied and on the customers it serves. Aspects that may be investigated during the assessment of the Licensee's proposal include (but are not limited to) the following:

- Can the Licensee's inflow at the proposed point of entry supply its customers either directly or by displacement?
- What changes will be necessary to NWL's supply arrangements to accommodate the Licensee's proposal?
- Will flows increase or reverse such that the sediment in any pipe is suspended with the risk of discolouration?
- Will the Licensee's water quality at the point of entry ensure that Water Quality Regulations are met throughout the network?
- Are the treatment processes in place, or proposed, suitable for the raw water type?
- Have risk assessments been completed (in particular for cryptosporidium)? Will risks be properly managed?
- Are the Licensee's treatment and other facilities suitable?
- Are the Licensee's operational and management practices suitable?
- What will be the penetration of the Licensee's supply into the water supply system (e.g. which customers will receive the new water)?
- Will any mixing of supplies, flow reversals and changes, changes in disinfection, residence time in service reservoirs or changes in transit time affect water quality or consumer acceptability?
- Will special consumers be adversely affected by the proposals?
- Will there be effects on any Undertaking, Authorised Departure, Enforcement Action or Relaxation that may be in force under the Water Quality Regulations?
- Will there be any impact on NWL's long-term resource planning or drought contingency plans?
- Will the Licensee's inflow proposals at the point of entry or other inflows specified by the Licensee meet its customers' demand requirements over an agreed balancing period?
- Will network pressure be adequate to supply the flows specified above and maintain minimum service levels for all customers?
- What will be the effect of the proposed new supply arrangements on service reservoir and tank operating regimes?
- Will there be any adverse effects on network control equipment (e.g. PRVs, PSVs, NRVs, float valves)?
- Will the operating regimes proposed cause unacceptable surge pressures?
- Can the water supply system accommodate the diurnal variation in flows?
- Will there be adverse effects on pipe materials, e.g. corrosion, cement erosion, leaching, plumbosolvency?
- Will there be adverse effects on customers' fittings: corrosion/degradation?
- Will there be adverse effects on NWL's emergency procedures?

#### **vi) Application assessment report**

Written feedback will be provided by NWL to the Licensee on its application. A report will be prepared giving NWL's view of the feasibility of the proposal and providing a description of any measures that would be required to make the proposal feasible.

Where the proposal poses an unacceptable risk of detrimental effects on customers' supplies or is unsatisfactory in some other way, these issues will be identified. Such issues will be discussed with the Licensee. The need for capital works or changes to operations to reduce the risks associated with the proposal or to meet other essential requirements may also be discussed. Such capital works or changes to operational procedures would be carried out at the Licensee's expense should an Access Agreement be entered into. The Licensee may present modifications to its proposal for reassessment.

In preparation for possible negotiation over the Access Agreement, the report will include:

- a) Monitoring requirements;
- b) Modifications needed to Licensee's facilities or proposed modes of operation;
- c) Modifications needed to NWL's network or modes of operation;
- d) Any other issues that must be addressed.

Firm price and non-price terms will be provided in the report, provided the proposal is technically feasible and any water quality issues can be properly addressed to protect public health. The Licensee will be given the opportunity to discuss the report with NWL.

NWL and the Licensee will, wherever possible, negotiate a mutually agreeable conclusion to the application process.

#### **vii) Application process and timescale**

The report on the Licensee's application will be provided as soon as is practicable after NWL has received all information from the Licensee, DWI and EA. In most cases, NWL would expect to provide the report within 50 working days from receipt of all the information required. The actual time taken will depend on the complexity of the proposals and the time taken by the Licensee, regulators and other appropriate consultees to provide input.

#### **viii) Dispute procedure**

NWL will endeavour to resolve any dispute through discussion. However, the Licensee may request a determination from Ofwat where it feels further discussion is unlikely to resolve the issue. NWL is unable to refer disputes over access agreements to Ofwat (see "[Procedure for handling water supply licensing determinations](#)", available from Ofwat's website).

## ix) Re-application

In the event of serious issues being identified, the Licensee may re-apply with a revised proposal in which these issues have been addressed.

### 3.3.3 Negotiation stage

#### i) Progression to Detailed Contract Negotiations

If NWL has produced firm price and non-price terms in the application report, the Licensee may decide to progress to detailed contract negotiations. The Access Agreement will detail all rights and obligations of NWL and the Licensee relating to the access to, and use of, NWL's treated water supply systems or the Teesside Industrial Raw Water System. This section gives details of many of the items that will be included in the Access Agreement.

#### ii) Heads of Agreement

The Access Agreement must comply with this Access Code and Ofwat's [Access codes guidance](#), NWL's Conditions of Appointment, the Licensee's Standard Licence Conditions, primary legislation and secondary legislation. The Access Agreement will include (but will not be restricted) to the following:

- The names of the Licensee's eligible customer(s);
- Locations of the Points of Entry and Exit;
- Unique premises reference number(s), as generated by NWL;
- Details of forecast flow rates to be carried by NWL's water supply system from each Point of Entry for the duration of the Access Agreement;
- Details of all work necessary by the Licensee and NWL before access to NWL's water supply system can be made;
- Locations of all monitoring points at, for example, abstraction points, treatment works, Point(s) of Entry, water supply system, Point(s) of Exit;
- Details of all parameters to be monitored, together with the Target Values, Warning Values, Emergency Values, the frequency and telemetry requirements for each parameter at each monitoring point;
- Details of agreed procedures and actions that will come into force when parameters breach Warning Values or Emergency Values;
- Details of the balancing period and requirements for the volumes that the Licensee will input into NWL's water supply system to supply its customer(s);
- Payment terms. These should include:
  - terms for access to NWL's water supply system;
  - terms for NWL to provide water for the Licensee's customers, should the Licensee propose, as part of the Access Agreement, to meet only part of its customer(s) demand(s);

- terms for NWL to provide water for the Licensee's customers, should the Licensee fail to supply the contracted volume over the agreed balancing period;
- A service level agreement, setting out the specific support services to be provided by NWL to the Licensee and the Licensee's customer(s);
- Arrangements for dealing with any outstanding customer debt;
- The transfer date, making due allowance for work that is necessary by Licensee and NWL to facilitate the combined supply arrangement and also for completion of actions under the Customer Transfer Protocol;
- Details of arrangements for first introducing the Licensee's supply into NWL's water supply system to ensure water quality and Levels of Service are maintained; and
- The duration of the Access Agreement and arrangements for its termination

### iii) Detailed contract negotiation process and timescale

NWL will produce a draft Access Agreement, based on the outcome of the application report. Communication between NWL and the Licensee will be required at this stage to confirm points of detail.

The terms offered by NWL in the draft Access Agreement will be open to discussion between the parties involved for up to 15 working days. During this time, the Licensee may wish to change the services requested, which may affect the price or non-price terms. Where such a change is requested and is feasible, NWL will revise the draft Access Agreement as soon as is practicable.

The offer made by NWL to the Licensee will remain open for acceptance for a period of six months. However, during this time, NWL may make offers to other licensees, if requested to do so. NWL may also vary the terms of an offer during this period, in the event of one or more material changes in circumstance. In such cases, NWL will advise the Licensee of the changes to its offer and the reasons for them. The Licensee will only be able to accept NWL's most recent offer at any time.

In most cases, the detailed contract negotiations should take no more than 40 working days. The actual time taken will depend on the complexity of the Access Agreement and the number of iterations required before the Access Agreement can be agreed.

Once the negotiations have been concluded and prior to the completion of the contract, a unique premises reference number (PRN) will be generated by NWL for each of the premises that the Licensee proposes to supply under the agreement and a transfer date agreed and included in the contract, making due allowance for completion of actions under the CTP.

If the Licensee accepts the terms of NWL's offer, NWL will send the Licensee two signed copies of the contract within 10 working days of receipt in writing of such

acceptance. The Licensee should also sign both copies of the contract, returning one copy to NWL within a further 10 working days.

#### **iv) Role of DWI**

Both NWL and the Licensee have a duty to supply wholesome water for domestic and food production purposes. Both parties will be subject to the same level of audit and inspection by DWI, to ensure that the relevant regulatory requirements are being met. Before a combined licensee is permitted to introduce potable water into the public supply system, it will need to satisfy DWI that it will meet the regulatory requirements relating to water sources and treatment works.

DWI's involvement in a combined supply application procedure is essential. In particular, DWI will assess compliance with the relevant regulatory requirements, identify any issues arising from its guidance on common carriage and review against industry best practice. NWL will take full account of DWI's comments in the contents and conclusions of the application assessment report. The application will not progress to detailed contract negotiations until DWI and NWL are satisfied that the proposals meet drinking water quality requirements.

In the event of a dispute involving a determination by Ofwat under section 66D of the amended WIA, DWI will advise Ofwat on water quality aspects of the case.

#### **v) Role of the Environment Agency**

The Licensee will need to ensure that it has or will have access to sufficient water to meet its proposed input to NWL's supply system over the period of the Access Agreement. This could mean having appropriate abstraction licence(s) or an agreement with abstraction licence holder(s) to use their source(s). In either case, this will necessitate liaison with the EA to ensure the proposals are acceptable.

If the Licensee's proposals have a significant impact on NWL's supply/demand balance, it will be necessary for NWL to produce a revised draft Water Resources Management Plan and to consult the EA, Ofwat, the Secretary of State and any licensed water supplier already supplying water from NWL's supply system (see sections 37 A – D of the amended WIA). Depending on the outcome of this consultation, it may be necessary to adjust the revised draft Water Resources Management Plan to reflect any directions given by the Secretary of State. This may have an impact on the terms of access.

The Licensee will also need to ensure it has any required consents from the EA for any discharges from the assets it intends to operate (e.g. discharges from water treatment works).

#### **vi) Role of the secondary water undertaker (where applicable)**

Should the Licensee seek the involvement of a secondary water undertaker, with the intention of entering into an agreement for a wholesale supply which would then be introduced into NWL's water supply system, NWL will take steps to facilitate that introduction in accordance with section 66C(2)(b) of the amended WIA. This includes liaising with the secondary water undertaker over details of the transfer, including the

design of pipework and any pumping arrangements that may be required and water quality issues (if any).

The introduction by a licensee into NWL's water supply system of a supply obtained from a secondary undertaker requires two separate agreements: one between the Licensee and NWL, as the primary undertaker; the other between the Licensee and the secondary undertaker.

A secondary water undertaker is obliged by section 66C of the amended WIA to take steps to facilitate a supply in much the same way as a primary water undertaker is required to facilitate its reception.

### vii) Provision of information to the sewerage undertaker

Ofwat's [Access codes guidance](#) requires the involvement of the sewerage undertaker (where this is not the primary water undertaker). To this end, any confidentiality agreement must not prevent the water undertaker from communicating details of the Licensee's proposals to the sewerage undertaker.

In the North East operating area, NWL is both water and sewerage undertaker for the most part, but in the Hartlepool area NWL is the sewerage undertaker and Anglian Water holds the appointment as water undertaker. In several other places around the boundary, NWL holds the appointment for either water or sewerage, and a neighbouring undertaker (UU or Yorkshire Water) is responsible for the other service.

In the Essex & Suffolk operating areas, NWL is a water-only service provider and either Anglian Water or Thames Water provides sewerage services (Anglian Water in Suffolk and either Anglian Water or Thames Water in Essex).

It should be noted that section 205 WIA91 provides for the sharing of meter readings, so that sewerage undertakers will continue to receive meter readings, for the purpose of billing, of customers that have transferred. Standard licence condition 5 also requires licensees to inform sewerage undertakers of any premises connecting to the distribution system for the first time, so that they can bill the new customers and connect them if necessary.

### 3.3.4 Objections and rejection process

Section 7 of Ofwat's [Access codes guidance](#) sets out examples of the types of objection that might arise during the application process. These are in addition to the statutory reasons for refusing access, given in Sections 66A–C of the amended WIA.

The reasons for an objection to the Licensee's proposal could include, but are not limited to:

- Insufficient or incorrect details being provided by the licensee or refusal by the licensee to provide the necessary information;
- NWL does not consider the premises to be eligible;
- An application by another licensee has already been accepted;
- The licensee's proposals are impractical, e.g. unfeasible hydraulic conditions;

- Unacceptable water quality implications;
- Concerns over source risk assessment;
- National security concerns.

The [Customer Transfer Protocol](#) also lists a number of reasons why a supplier might object to or reject a customer transfer.

If any of these conditions (or any other that in NWL's opinion represents an insurmountable obstacle to access) arise during an application, NWL will advise the Licensee in writing, setting out the reasons for rejecting the Licensee's proposals. Where appropriate, it will also indicate the steps that the Licensee would need to take in order for a resubmission of the application to be successful.

### 3.3.5 Application process - arbitration and disputes resolution

NWL will endeavour to resolve all disputes by negotiation but the Licensee is entitled to request Ofwat to make a determination at any point in the application process. Where the dispute relates to water quality, Ofwat will consult DWI. Where the dispute relates to water resource licensing or prospective water resources developments, Ofwat will consult the EA. The likelihood of a dispute arising, or if one has arisen, delays in its resolution, will be minimised if the DWI and EA are kept informed at the appropriate stages.

## 3.4 ACCESS CRITERIA

### 3.4.1 Water quality input specification for drinking water supply

All drinking water supplied through NWL's water supply system must meet relevant water quality regulations at the point of supply. The quality of water introduced by a Licensee into NWL's water supply system must be such that this can be achieved.

As a minimum, water introduced by a Licensee into NWL's water supply system at the Point of Entry must be compliant with the relevant water quality regulations. However, in some cases, water quality at the Point of Entry may have to exceed the requirements of the Water Quality Regulations, in order to ensure compliance at other points within the supply network. The requirements in this respect will be case-specific and will be dealt with during the application process on an individual basis.

Water introduced by a Licensee into NWL's water supply system at the point of entry must be compatible with water already in supply. This includes factors such as taste, smell, appearance and hardness. Compatibility issues will differ, depending on the part of NWL's water supply system concerned and the nature of the Licensee's input. Some issues may not be identifiable without appropriate investigation. We therefore only cover generic considerations concerning compatibility in this Access Code.

Compatibility considerations must take into account matters relating to (but not limited to) disinfection and microbiological quality requirements for fluoridation and plumbosolvency control and the need for appropriate residence times. The impact of changes in water quality on consumer acceptability, bio-film formation and on the condition of the distribution system must also be identified and managed.



Consideration needs to be given to any effect of a common carriage arrangement on the taste, odour or appearance of the water supplied to consumers. In some cases, it may be necessary to phase-in the Licensee's new water supply to ensure changes take place gradually, thereby helping to achieve consumer acceptability.

The impact of changes of water quality on the processes of existing non-household customers also needs to be taken into account.

If the quality of water in distribution changes adversely as an unanticipated consequence of the Licensee's introduction of water into NWL's water supply system, the Licensee must change its inputs to ensure compatibility, if necessary suspending the introduction until this can be achieved.

If new water regulations are introduced during the period of the contract, the Licensee must ensure that its inputs comply in the required timescales.

NWL will work with the Licensee during the application process with the aim of resolving water quality issues. In some cases, resolution will require changes to NWL's assets or operating regime. The Licensee will meet the cost of such changes. Capital costs would be recoverable on completion of the new assets and operating costs would be incorporated in the access price.

Before NWL enters into a contract with the Licensee, both the DWI and NWL must be satisfied that the Licensee will meet the requirements of the water quality regulations, and that other water quality issues have been addressed in an appropriate manner in accordance with DWI guidance.

Reference should be made to DWI's Guidance on the Water Quality Aspects of Common Carriage. The Licensee and NWL must take full account of this guidance in any combined supply application process. That guidance should be read in conjunction with this Access Code.

NWL and the Licensee are required to comply with the Water Industry Act 1991 and with the Water Supply (Water Quality) Regulations 2000 (the Regulations). Both parties have a duty to supply wholesome water for domestic and food production purposes. Both parties are also liable under s70 of WIA1991 for the offence of supplying water unfit for human consumption.

In its application for a combined supply arrangement, the Licensee must be able to demonstrate that:

- The quality of its raw water (for subsequent treatment) has been assessed in accordance with regulation 15 of the Regulations;
- An assessment of the risk of contamination to the source has been carried out, including the risk of cryptosporidium as required by regulation 27;
- The treatment applied is appropriate to the quality of the raw water;
- An appropriate level of monitoring is in place to ensure the quality of treated water leaving the works meets regulatory requirements and also other requirements of NWL, on a case by case basis.

Both parties need to agree on the approach to maintaining the biological integrity of the system. The simplest way to achieve this is for the Licensee to use the same type of disinfection as NWL. It should be noted that in parts of Essex, both free chlorine and chloramination are used at various times and, where the proposed combined supply relates to these areas, the Licensee will need to ensure its disinfection methods and operational processes are compatible with both of these approaches.

Some of NWL's water supply networks are fluoridated in accordance with Strategic Health Authority requirements. Where appropriate, the Licensee will be required to ensure that the water entering the distribution system contains an equivalent concentration of fluoride.

NWL conditions much of its water supplies to control plumbosolvency. In some areas, water softening and pH control are also undertaken. Where conditioning is undertaken by NWL, the Licensee should include any treatment required to match NWL's water supplies.

Altering the distribution system's operating regime may increase residence times of water, especially in service reservoirs. This may increase the risk of stagnation, affecting water quality. The potential for this to happen should be identified and, if required, measures introduced to avoid water quality issues.

The potential for any increases in flow velocities, or changes in flow direction, to cause suspension of mains sediment must be identified. In some cases, mains cleaning or other measures may be required to avoid water quality problems.

### **3.4.2 Water flow and pressure**

There are numerous flow and pressure regimes within NWL's water supply system. The flow and pressure regime in any particular part of the water supply system may also vary from time to time, e.g. seasonally. Licensees' flow and pressure proposals will also differ in each application for a combined supply arrangement. It is therefore impossible to provide specific flow and pressure requirements in this Access Code. However, in judging whether a proposal for common carriage is acceptable, the following principles will apply with respect to water flow and pressure.

- Pressure at the point of entry must be sufficient to introduce the contracted volumes over the agreed balancing period but must not result in exceedance of the safe operating pressure of NWL's water supply system or cause excessive leakage;
- The flow and pressure at the point of entry must be compatible with the flow and pressure regime in NWL's water supply system at all times;
- Flow velocities in NWL's water supply system resulting from the common carriage arrangement must not be high enough to suspend sediment resulting in water quality issues;
- Reversal of flow direction or tidal flows in NWL's water supply system as a result of the common carriage arrangement must not cause suspension of sediment resulting in water quality issues;

- Pressure surges (e.g. from the Licensee's pumping plant) must not result in pressures that exceed the safe operating pressure of NWL's water supply system;
- Pressure at the point of entry must be consistent with maintaining minimum service levels for all customers;
- The Licensee must have appropriate means of monitoring and control that will enable pressures and flows to be managed within agreed limits.

NWL will work with the Licensee during the application process to resolve flow and pressure issues. In some cases, resolution of flow and pressure issues will require changes to NWL's assets or operating regime. The cost of such changes will be at the expense of the Licensee. Capital costs would be recoverable on completion of the new assets and operating costs would be incorporated in the access price.

NWL must be satisfied that the Licensee's proposals will meet the principles outlined above before entering into a contract.

### 3.4.3 Water quality sampling and monitoring

The Licensee has responsibility for the quality of the water introduced to NWL's water supply system and it must ensure water quality sampling and analysis is undertaken as required under the Water Supply (Water Quality) 2000 Regulations and all amendments thereto. Results of this sampling should be reported to DWI, as required under the Water Undertakers (Information) Direction 2004.

In addition to regulatory monitoring requirements, appropriate operational monitoring must be undertaken by the Licensee on its operations (e.g. on raw water input to treatment works, treatment works processes, treatment works exit and point of entry) to ensure its assets produce water in accordance with Water Quality Regulations or other requirements specified in the Access Agreement.

The level of monitoring and control over and above regulatory requirements will be case-specific and commensurate with the level of risk to public health.

The Access Agreement will specify the nature, frequency and timescales for water quality information to be provided by the Licensee to NWL. Requirements for meters, loggers and telemetry will also be specified. The Licensee should ensure that it has suitable quality control procedures in place concerning sampling and analysis. Laboratories used must be UKAS DWTS (Drinking Water Testing Specification) accredited or subject to DWI inspection.

The Access Agreement will also specify the nature, frequency and timescales for water quality information to be provided by NWL to the Licensee concerning its customer(s) supplies.

NWL will retain all legal responsibility for regulatory monitoring and reporting to DWI for the Drinking Water provided by its water supply system.

NWL reserves the right to suspend, without prior notice, the introduction of water into its supply system if it has reasonable cause to suspect that continued introduction would put it at risk of supplying unwholesome water or at risk of committing an offence under section 70 WIA91 (that is, the offence of supplying water unfit for

human consumption). In this respect, NWL requires an automated, telemetered valve to be installed at the point of entry to allow remote closing-off of the supply from NWL's Control Room.

Reference should be made to Chapter 8 of this Access Code for details of emergency procedures.

#### **3.4.4 Volume measurement**

The Licensee will install and maintain suitable control facilities on its point of entry that are capable of maintaining the flow and pressure conditions as agreed in the access agreement. These requirements will include the installation of a suitable meter, including a valved bypass to facilitate maintenance and repair. The meter will be maintained and calibrated in line with manufacturer's guidance or as specified in the Access Agreement.

NWL will install and maintain an emergency control valve at the point of entry (see also 3.4.3 above and Sections 7.1.3 and 7.2.1).

## 4 LEGAL CONTRACT, ARBITRATION AND DISPUTES RESOLUTION

### 4.1 CONTRACT TERMS

Contract negotiations for a combined access agreement may begin at any stage during the application procedure but the final contract terms will only be agreed after the successful completion by the Licensee of the application stage.

The final terms and conditions of each agreement will be specific to the facts and circumstances of each application, taking into account NWL's Supply System, the needs of NWL's customers and NWL's statutory obligations. The terms and conditions of each agreement will be negotiated by NWL with due regard to the principles set out in NWL's Access Code and to NWL's duty not to show undue preference to, or undue discrimination against, any actual or potential Licensee or customer.

By signing an agreement, both parties agree to be bound by the terms of this Access Code.

The following list of contract terms in 4.1.1 below indicates the types of clauses that are likely to appear in an Agreement, though they may not necessarily appear in the same order. The list is not exhaustive and NWL reserves the right to include additional or alternative clauses or to omit some of the listed clauses if the circumstances of any application by a Licensee require it.

#### 4.1.1 Typical access agreement contents

##### i) Recitals

Recitals are the "whereas" clauses that precede the body of a contract. They explain, in general terms, what the Agreement is about, who the parties are, why they are entering into the Agreement, etc.

##### ii) Definitions

This clause will explain what the key terms and phrases used in the body of the Agreement mean.

##### iii) Conditions precedent

This clause will set out those conditions that must be fulfilled by each party to the Agreement before performance under the Agreement can become due.

##### iv) Permission to access the supply system.

This clause will set out the formal requirements with regard to the following:

- Access will only be granted to licensees holding a relevant WSL licence in accordance with the amended WIA.
- Entrants will not acquire ownership or control of any of NWL's assets.
- Physical details of access will be in accordance with this Access Code, Ofwat's [Access codes guidance](#) and DWI requirements.

- Duration.
- Links with the Access Code. The Contract will refer to appropriate parts of the Access Code.

#### **v) Acceptance of the Access Code**

This clause will provide that both parties must accept and be bound by the provisions of NWL's published Access Code, which will then form part of the Agreement.

#### **vi) Modifications**

This clause will set out the process whereby either party can request changes to the terms of the Agreement after completion.

#### **vii) Ownership of supply system and vesting**

This clause will clarify that ownership of the Supply System remains with NWL and that the Agreement does not confer any responsibilities for ownership, maintenance or other use of the Supply System to the Licensee or to the Licensee's Customer(s).

#### **viii) Material Change**

Linked to clause vi) (Modifications) above.

#### **ix) Liability**

This clause will seek to apportion responsibility for certain events, to exclude liability for certain categories of damages and to place reasonable limits on overall liability. It will seek to address, inter alia, liability, including, where appropriate, indemnities relating to:

- liability for damage and/or injury caused by either party to the other's property and/or personnel;
- liability for damage and/or injury caused to third party property or to the public;
- liability for environmental impairment;
- liquidated damages for breach by the Licensee of measurable requirements.

#### **x) Force Majeure**

This clause will make provision to excuse either party from liability if some unforeseen event beyond the control of that party prevents it from performing its obligations under the Agreement. It will cover natural disasters or other "Acts of God", war, or the failure of third parties such as suppliers and subcontractors to perform their obligations to the contracting party, provided the failure to perform could not be avoided by the exercise of due care by that party.

#### **xi) Exclusions**

Linked to clause ix) (Liability) above. This clause will seek to exclude liability for certain categories of damages and to place reasonable limits on overall liability.

#### **xii) Indemnity**

Linked to clause ix) (Liability) and clause xi) (Exclusions) above. This clause will provide a legal exemption from the penalties or liabilities incurred as a result of the actions of the other party.

#### **xiii) Duration**

This clause will set out the term during which the Agreement will operate.

#### **xiv) Termination**

This clause will set out those events that will enable the Agreement to be brought to an end by either party.

#### **xv) Emergency Suspension**

This clause will provide for the necessary suspension of the operation of the Agreement in certain situations classified as being an emergency.

#### **xvi) Interim Supply Duty**

This clause will provide for NWL to replace the Licensee and become the Interim Supplier to the Licensee's Customer(s) where:

- the contract between the Licensee and the Licensee's Customer is terminated or suspended; or
- The Agreement is terminated or suspended; and
- the Licensee's Customer does not have an agreement with another Licensee.

#### **xvii) Back-up Supply**

Where relevant, this clause will set out the terms under which NWL has agreed to provide a back-up supply.

#### **xviii) Payment**

This clause will set terms of access charges and the arrangements for their payment.

#### **xix) Dispute Resolution**

This clause will set out the procedure to be followed in the event that any dispute or difference concerning the Agreement arises between the Licensee and NWL, in order to determine how such dispute or difference shall be resolved.

#### **xx) Notices**

This clause will deal with the procedure for transmitting formal Notices between the parties, for example specifying that all notices under the Agreement shall be in writing and shall be sent by e-mail, facsimile or first class registered or recorded delivery post to the other party.

#### **xxi) Assignment**

This clause will set out the process for one party assigning its rights and obligations under the Agreement to a third party and the conditions that must be satisfied before consent to such assignment will be granted by the other party.

#### **xxii) Variations**

Linked to clause vi) (Modifications) and clause viii) (Material Change) above.

#### **xxiii) Waiver**

This clause will set out that no failure or delay by either Party in exercising any right, power or privilege under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any right, power or privilege under the Agreement.

#### **xxiv) Severability**

This clause will provide that if any term or provision of the Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of the Agreement but the validity and enforceability of the remainder of the Agreement shall not be affected.

#### **xxv) Entire Agreement**

This clause will provide that the Agreement sets out the entire agreement between the Parties and shall supersede all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter of the Agreement

#### **xxvi) Jurisdiction**

This clause will provide that the construction validity and performance of the Agreement and of the Access Code shall be governed at all times by English Law.

#### **xxvii) Confidentiality**

This clause will make provision for a confidentiality agreement to be signed by both NWL and the Licensee. Where, under the provisions of the Agreement, either Party is required to disclose information to the other, the requirement shall be to only disclose such information as is reasonably necessary to enable each Party to undertake their respective obligations under the Agreement.

#### **xxviii) Insurance**

This clause will require that the Licensee shall at all times from the date of the Agreement effect and maintain with insurers acceptable to NWL sufficient insurance cover in respect of its liabilities under the Agreement, including but without prejudice to the generality of the foregoing:

- Public and Product Liability Insurance;
- Employer's Liability Insurance; and
- Professional Indemnity Insurance.

#### **xxix) Third Party rights**

This clause will specify that unless a right of enforcement is expressly provided for in the Agreement, it is not intended that a third party shall have the right to enforce any term of the Agreement pursuant to the Contract (Rights of Third Parties) Act 1999.



### **xxx) Compensation.**

This clause will specify the contractual penalties that will be applied under a combined supply Access Agreement in the event of a significant or repeated failure by the Applicant to achieve the contracted and/or actual water inputs specified in the Agreement.

## **4.2 ARBITRATION AND DISPUTES RESOLUTION PROCESSES**

### **4.2.1 Negotiation**

Linked to clause xix) (Dispute Resolution) above.

Negotiation, as an initial informal resolution process, will be between appointed representatives of both parties within set timescales, with a view to reaching an amicable resolution of any dispute arising during the Agreement term. Other procedures can be followed if agreement cannot be reached by this process.

### **4.2.2 Conciliation**

Linked to clause xix) (Dispute Resolution) above.

This is a dispute resolution process in which the parties use a neutral third party to improve communication and explore possible solutions to disputes. It is similar to mediation (see below) but can be less formal. It is a non-binding resolution process.

### **4.2.3 Mediation**

Linked to clause xix) (Dispute Resolution) above.

This is an alternative dispute resolution process, utilising a trained mediator who is a neutral third party. Its aim is to reach a solution that both parties agree on. It is more formal than conciliation but is also non-binding.

### **4.2.4 Arbitration**

Linked to clause xix) (Dispute Resolution) above.

This is a formal method of dispute resolution that allows the parties to settle any dispute without court action. A neutral third party arbitrator is appointed by agreement or on application to a recognised organisation of arbitrators. Decisions should be seen as final as there is very limited scope for appeals.

## 5 SUPPLY SYSTEM CONNECTIONS

### 5.1 CONNECTION OF LICENSEE'S SOURCE TO THE SUPPLY SYSTEM

#### 5.1.1 Location of Points of Entry and Exit

The location of points of entry to and points of exit from the supply system will be by agreement between NWL and the Licensee.

#### 5.1.2 Transition period

The period of time from when the access agreement is signed to when satisfactory operation (as specified in the access agreement) has been achieved is the Transition Period. A maximum period will be specified in the access agreement. During this time, all preparatory work will be done and checks carried out. This will require detailed procedures and schedules to be followed by all parties. There may also be intensive monitoring during this time. The type of preparatory work necessary and the degree of monitoring required will vary from case to case.

The Transition Period can be considered to consist of three phases:

- i) From the date of signing the access agreement to the Day of Change;
- ii) The Day of Change (the first 24 hours of the Licensee's Supply being incorporated into NWL's Essential Supply System);
- iii) After the Day of Change until satisfactory operation is achieved.

#### i) Prior to the Day of Change

Depending on the circumstances, the following requirements will have to be satisfied prior to the Day of Change. Should these not be satisfied, then the Access Agreement will be terminated or the Day of Change postponed until such time as the requirements have been satisfied.

#### a) Licences and accreditation

Prior to the Day of Change, the Licensee must have in place:

- Appropriate numbers of skilled staff, with any certification required by DWI, fully trained to operate the Licensee's assets and apply the Licensee's Health and Safety procedures.
- All appropriate licences and permits. These may include abstraction licences and consents to discharge.
- Confirmation from DWI and NWL that they are satisfied that the introduction of the Licensee's source into NWL's supply system can commence.

The Licensee must demonstrate to NWL that it has successfully obtained all required Licences and accreditation.

The Licensee must demonstrate to NWL and DWI that its source and assets will meet regulatory requirements and the requirements set out in the access agreement.

This may include, for example:

- a period of time when treated water from a new works is 'run to waste' whilst the output quality is approved.
- further monitoring of sources or works where 12 months' water quality data is not available.

If there is any doubt that the Licensee's source will meet the required water quality standards, it will not be introduced into NWL's supply system.

#### **b) Preparation of NWL's Supply System**

The work listed in the access agreement as being required to NWL's facilities to enable the common carriage proposal to go ahead will be arranged and managed by NWL (for example, mains reinforcement, pumping augmentation, mains cleaning, or installation of monitoring equipment).

#### **c) Preparation at Points of Entry and Exit**

The Licensee and NWL will install, commission and test all the equipment required at the points of entry, exit and throughout the water supply system (for example, control valves, meters, monitors, and telemetry).

#### **d) Customer notifications**

NWL will inform its existing customers, as appropriate, of the planned changes to their supplies. NWL and the Licensee will exchange information and inform the eligible customer(s) as per the CTP.

#### **e) Regulatory notifications**

NWL and the Licensee will jointly inform all bodies that need to be aware of the planned changes to supply. This will include Ofwat, DWI, Local Authorities, Local Health Authorities and CC Water.

#### **f) Detailed plans and schedules for Day of Change**

A detailed plan and schedule for the Day of Change will be drawn up after discussion between the Licensee and NWL.

#### **g) Communication**

Throughout this phase, the Licensee and NWL will provide nominated contact personnel and deputies who are available during normal office hours.

## ii) The Day of Change

Depending on the circumstances, the following will be required on the Day of Change.

### a) Detailed plan and schedule

The Licensee and NWL will manage the Day of Change in accordance with the detailed plan and schedule drawn up for the Day of Change (see above).

### b) Monitoring

There will be intensive monitoring of pressure, flow and selected water quality parameters during the Day of Change. These arrangements will be specified by, and carried out to the satisfaction of, NWL.

Specific Values that are different to the Target, Warning and Emergency Values may apply for the parameters measured during the Day of Change. These will be specified in the access agreement, together with the actions and procedures that will be undertaken, should parameters be measured outside these limits.

All meters at points of entry and exit will be read on the Day of Change.

Monitoring for regulatory and contractual purposes will commence on the Day of Change.

## iii) After the Day of Change until satisfactory operation is achieved

Depending on the circumstances, the following will be required during the Transition Period after the Day of Change.

### a) Monitoring

There will be a period of more intensive monitoring at all monitoring points. This will continue until NWL is satisfied that the Licensee's introduction of water is satisfactory, as defined in the access agreement, and that allowing access has not caused any material detriment to the water quality or any other Level of Service received by NWL's customers. This will include monitoring of customer complaints.

The level of monitoring and control will be commensurate with the level of risk to public health, the environment, customers and NWL. The areas of responsibility for monitoring will follow those covered by the Licensee's and NWL's Licences and will usually be as follows:

- NWL will monitor water quality at the point of entry. The parameters measured and the frequency of measurement will be, as a minimum, equal to that required by the DWI at the exit from a treatment works and will follow NWL's usual practice. This does not reduce the Licensee's responsibility to monitor those water quality parameters at those points that will enable the Licensee to meet Target Values at the point of entry, as specified in the access agreement.
- NWL will be responsible for monitoring flow at the point(s) of exit.

- Where NWL is performing the role of secondary undertaker, NWL will monitor water quality at the point of exit, before the supply enters the supply system of the primary undertaker. The parameters measured and the frequency of measurement will be, as a minimum, equal to that required by the DWI at the exit from a treatment works and will follow NWL's usual practice. Otherwise, limited water quality monitoring will be carried out.
- NWL will be responsible for all monitoring within its Supply System.
- The Licensee will be responsible for all monitoring of its source and assets within its Supply System.

#### **b) Quality Control**

All monitoring and analysis will be carried out using equipment and procedures approved by NWL. Where third parties are employed, these must also be approved by NWL.

Analytical methods and accuracies are required for all data supplied.

Laboratories must be UKAS DWTS (Drinking Water Testing Specification) accredited or subject to DWI inspection

#### **c) Reporting**

Each party will be responsible for reporting to DWI and other parties (e.g. Local Health Authority), as required by the terms of their Licence.

The Licensee will copy all such correspondence to NWL.

NWL will copy results of monitoring at the point of entry and any results from the point of exit to the Licensee, if required.

#### **5.1.3 Satisfactory Operation**

Once satisfactory operation has been achieved, the combined supply operation will continue in accordance with regulatory requirements and the terms of the access agreement.

In some cases, the impact of a Licensee's input on the water quality in NWL's supply system may take some time to become apparent. If, after the scheme goes "live", detrimental effects on water quality are recorded or there are problems with consumer acceptability, the Licensee must suspend its input until the situation can be rectified.

### **5.2 CONNECTION OF QUALIFYING PREMISES TO THE NETWORK**

If the qualifying premises are already connected to NWL's water supply system, then the connection will already exist. Should additional monitoring facilities be required,

these will be specified in the access agreement, together with responsibilities and timescales for installation.

If the qualifying premises are not already connected to NWL's water supply system, then they must be connected in accordance with NWL's existing arrangements for connection of new premises.

Costs for connecting premises to the network appear on NWL's website under:

<http://www.nwl.co.uk/devwatermainsandservices.aspx>  
(North East operating area) and

<http://www.eswater.co.uk/Watermainsandservices.aspx>  
(Essex & Suffolk operating areas).

Should additional monitoring facilities be required over and above normal requirements, these will be set out in the access agreement, together with responsibilities and timescales for installation. Installation must be undertaken, and the Licensee's customer ready to take supply, before the Day of Change.

Standard Licence Condition 5 requires that the Licensee inform sewerage undertakers of any premises connecting to the distribution system for the first time, so that they can bill the new customers and connect them if necessary.

### **5.3 CONNECTION OF SECONDARY UNDERTAKER'S SUPPLY SYSTEM TO THE PRIMARY UNDERTAKER'S SUPPLY SYSTEM**

Where NWL is the primary undertaker, connection of a supply obtained from a secondary undertaker to NWL's supply system will be undertaken in accordance with normal practice for a treated water bulk supply arrangement with another undertaker. The connection must be made before the Day of Change.

The general process set out in 5.1 for connection of a Licensee's source to NWL's supply system also applies to the connection of a source obtained from a secondary undertaker. It will be the Licensee's responsibility to ensure that water quality and hydraulic requirements at the point of entry are met. The Licensee will therefore need to ensure that the terms of its agreement with the relevant secondary undertaker are compatible with meeting the obligations in its agreement with NWL.

## 6 CUSTOMER TRANSFER PROTOCOL

### 6.1 PRINCIPLES

Once an access agreement has been concluded, the process of transferring customers between suppliers under the Water Supply Licensing framework is the same, whether for combined or wholesale supplies, and is governed by the Customer Transfer Protocol (CTP). The obligation to adhere to the CTP is imposed, in the case of appointed water companies, by Condition S of their Instruments of Appointment and, in the case of licensees, by Standard Licence Condition 6.

The Customer Transfer Protocol (CTP) provides a clear, simple and standardised process for the timely and efficient transfer of customers between:

- (a) any water undertaker and any licensee; and
- (b) any two licensees.

For detailed information, please refer to Ofwat's [Customer Transfer Protocol](#) and [supporting information](#).

### 6.2 RULES OF BEHAVIOUR

All licensees and water undertakers are required to comply with the rules of behaviour, as specified in the CTP as amended from time to time.

### 6.3 DATA TRANSFER

The CTP specifies the data flows, the data items required within each data flow and the timescales that apply for transmission of those data flows. All licensees and water undertakers must comply with those requirements.

The CTP also identifies the information required by sewerage undertakers relating to the transfer of customers between water undertakers and licensees or between licensees.

All licensees and water undertakers must give details of the name and contact details (which must include an e-mail address) of the person to whom licensees and water undertakers should send all CTP data flows in the data format prescribed by the CTP. For example:

Company details:  
Contact name            -----  
E-mail                    Tradingmanager@company.co.uk  
Telephone                01-----

The relevant contact details for NWL, for both the Northumbrian and Essex & Suffolk operating areas are:

Competition Manager  
Northumbrian Water Limited  
Boldon House  
Wheatlands Way  
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## 6.4 REGISTRATION AND OPERATIONAL PROCESSES

All water undertakers and licensees must follow the operational processes in the CTP for effective customer transfer and the resolution of disputes on transfer.



## **7 CONTROL AND BALANCING OF SUPPLY SYSTEM**

### **7.1 SUPPLY SYSTEM MANAGEMENT**

In discharging its duties under WIA 91, NWL must retain operational control of the water supply system. NWL must effectively balance inputs to and outputs from the water supply system and manage water quality within the water supply system. Whilst NWL will therefore retain responsibility for the running of the water supply system, it is essential that licensees co-operate to ensure that water supply system operations are not compromised and can be carried out with optimum efficiency.

#### **7.1.1 Unbilled water**

##### **i) Leakage**

Where the Licensee's proposal results in significant changes to leakage levels (for example where there are significantly higher pressures in NWL's water supply system as a result of the Licensee's input), there will be additional or avoided costs due to that proposal and this will be taken into account in determining the price for access.

##### **ii) Unauthorised use of water**

NWL will manage the impact of the unauthorised use of water from its water supply system. The incidence of unauthorised use of water should not be affected by a common carriage arrangement and therefore should not have an impact on the access price.

##### **iii) Fire water**

The volume of water required for fire fighting and hydrant flushing is likely to be the same before and after the implementation of a common carriage arrangement and therefore the price for access will not be affected.

The Licensee will not be required to provide or pay for any water legitimately used by the Licensee's customer for fire-fighting purposes.

#### **7.1.2 Security of supply**

##### **i) Drought and water resource plans**

NWL will remain responsible for producing and maintaining drought and water resources management plans. Under sections 37C and 39C of the amended WIA, the Licensee has a duty to provide a Water Undertaker with such information as required for the purposes of preparing or revising its drought and water resources management plans.

As part of a Licensee's application, it is important that the Licensee provides robust details of the capacity and reliability of its proposed source(s) and assets for the duration of the access agreement. The information required from the Licensee would generally be similar to that required by the EA from undertakers for their Water Resources Management Plans and Drought Plans. The information required includes but is not limited to:

- An annual demand forecast for the duration of the proposed access agreement. In deriving the demand forecast, the Licensee should adopt the methodology in the Environment Agency's "[Water Resources Planning Guidelines](#)" and reports referenced therein and any updated versions or other amendments of that or other relevant guidance that EA may produce.
- Names and locations of the resources the Licensee intends to use and details of licences, permits or agreements it holds relating to those resources.
- A robust yield assessment of its proposed resource(s), with supporting data and calculations. The assessment shall be made using a methodology that is consistent with "Reassessment of Water Company Yields", Environment Agency (1997).
- An appropriate risk assessment to assess likely frequency and duration of outage of supply for maintenance, power failure, source failure or other reasons. This must take into account potential risks to the raw water source(s) and to the Licensee's assets, including treatment works' processes, pumping plant, storage tanks and pipelines.
- A forecast of the margin of dry year deployable output over peak week demand of its customers for each year of the access agreement.

Other data may be requested from the Licensee in order to ensure a proper assessment. This will depend on the specific circumstances of the application. The information required from the Licensee will be discussed in detail with the Licensee on a case-by-case basis.

This information has a number of purposes, including:

- To enable NWL to revise its Water Resources Management Plan and Drought Plan and to ensure that security of supply is maintained for all customers after the introduction of the common carriage arrangement;
- To establish whether the Licensee will be able to supply the proposed volumes;
- To establish if NWL will be required to supply any shortfall in volumes between the Licensee's input to the system and its customer's or customers' demands on an ongoing basis or in an emergency;
- To inform the calculation of ARROW costs.

## ii) Drought and water resource planning

During the contract period, the Licensee should periodically evaluate the risks associated with its resources and assets and ensure that appropriate steps are taken to manage these risks. The Licensee should inform NWL without delay of any changes to the yield of its resources and to the risk of outage.

The Licensee will be required to update resource yield, outage and demand information from time to time throughout the duration of the access agreement, in order to inform NWL's revisions of its Water Resources Management Plan and Drought Plan. NWL will endeavour to provide as much notice as possible of such requirements and expects that the Licensee will provide the information promptly.

NWL will retain responsibility for drought planning and the ability to apply for drought orders and hosepipe bans. While the Licensee and NWL will agree the level of service to be provided to the Licensee's customer(s) with respect to interruptions to supply in general, under Standard Licence Condition 4 (Emergencies and drought), the Licensee must comply with reasonable instructions from a relevant Undertaker in relation to matters specified in statutory drought plans which are not the subject of a drought order or drought permit. Should the Licensee question the reasonableness of any instruction from the Undertaker, this can be referred to Ofwat for determination.

It is expected that any measures applied to NWL's customers in terms of restrictions on non-essential use (e.g. hosepipe bans) will also apply to the Licensee's customer(s) in the same resource zone.

Arrangements and responsibilities for dealing with outages or reductions of NWL's or the Licensee's supplies will vary depending on the specific circumstances of the common carriage arrangement and will be clearly specified in the access agreement. This will include arrangements for managing available supplies.

### 7.1.3 Telemetry requirements for supply system control

Operational information for the Licensee's water supply will be required by NWL to facilitate system control, prevent water quality and supply problems and for contract administration. Some information will not be required in real time and will be provided at specified intervals via agreed communication channels. However, some information is critical to NWL's ongoing operation of the system and will be required in real time.

Information requirements will be case-specific and requirements (e.g. parameter, unit, frequency, required accuracy and means of communication) will be specified in the access agreement.

Typically, flow and pressure information will be required to be monitored on a real time basis at the point of entry and communicated to NWL's Control Room via an appropriate telemetry link. Technical details of the telemetry requirements will be specified by NWL but the costs will be borne by the Licensee.

NWL will install and maintain an automated valve at the point of entry to allow remote closing-off of the Licensee's supply from NWL's Control Room (see also Section 3.4.3).

It is likely that NWL will require the Licensee to monitor specific water quality parameters in real time at its treatment works' exit, with alarms for breaches of prescribed values communicated to NWL's Control Room via an appropriate telemetry link. This is in addition to monitoring and control required by Water Quality Regulations or required by the Licensee to ensure treated water quality at the point of exit complies with the water quality standards specified in the Access Agreement.

Monitoring and telemetry equipment installed by the Licensee for connection to NWL's telemetry system should be compatible with the equipment used by NWL in the supply area concerned. It should also be of an equivalent reliability to that installed by NWL.

NWL uses a number of makes and specifications of telemetry equipment and these change over time as these assets are replaced. During the application process,

NWL will inform the Licensee of the make and specification of equipment applying in that particular case.

The access agreement will include details of responsibilities and arrangements for communication in an emergency situation, including when telemetry is not functioning (see also Section 8.5).

#### 7.1.4 Secondary connections

Since a Licensee's supply authorisation covers use of an undertaker's water supply system to supply eligible customers only, this places restrictions on the extent to which secondary connections can be legally made. An eligible customer may be able to resell water to others situated within the eligible premises through its own private supply system where they are tenants, or if they own separate premises but are part of an overall co-located, co-managed set of premises for which there is a single agreed overall manager (the customer) responsible for payment of water supply charges.

Otherwise, the Licensee should advise its customers that they could be committing an offence in reselling water to other parties, since this would still be using NWL's water supply system to supply customers. Section 66I of the amended WIA prohibits use of an undertaker's supply system for the purpose of supplying water, except by the undertaker or a licensee in pursuance of its licence. Licensees should advise customers to refer to [Ofwat's Guidance on eligibility](#) if there is any possibility of secondary connections being made.

#### 7.1.5 Supply system maps and plans

The Licensee will share with NWL (subject to appropriate conditions regarding security and copyright) maps, plans and information regarding its sources and assets where this is required to allow NWL to make a proper assessment of the Licensee's application.

NWL will share with the Licensee (subject to appropriate conditions regarding security and copyright) maps, plans and information from investigations undertaken as part of the application process, where this is required to assist the Licensee to understand conclusions in the application assessment report.

#### 7.1.6 Point of entry controls and failure modes

Failure modes at the point of entry will be specified in the access agreement for water quality and hydraulic parameters. This will include Warning and Emergency Values (see below and section 8.1).

The access agreement will specify the action to be taken by the Licensee and NWL when Warning and Emergency values for each parameter are breached. Actions specified will cover both operational intervention and communications.

NWL reserves the right to suspend, without prior notice, the introduction of water into its supply system if it has reasonable cause to suspect that continued introduction would put it at risk of supplying unwholesome water or at risk of committing an offence under section 70 WIA91 (that is, the offence of supplying water unfit for human consumption).

Points for taking water samples will be provided at the point of entry and access afforded to NWL personnel at all times. The sample points will meet Water Supply (Water Quality) Regulations 2000 and all amendments thereto.

## **7.2 METERING SERVICES**

### **7.2.1 Meter asset management**

#### **i) Responsibilities for metering and meter ownership**

The capital, operating and maintenance costs of all new metering, system control, sampling points and other facilities required as a result of a combined supply agreement will be borne by the Licensee.

The detailed requirements and costs for metering, system control and sampling points will vary on a case-by-case basis. These will be established at the application stage for a combined supply arrangement.

An appropriate bulk meter and automated control valve will be installed at the point of entry, together with other facilities as required, including sample points. The type, size and installation arrangements for the apparatus will depend on case specific circumstances (e.g. the minimum and maximum flows to be measured and the physical characteristics of the installation site and NWL's water supply system). The meter and control valve will have a valved bypass fitted to allow maintenance without interrupting the Licensee's supply of water into NWL's water supply system. The specification and arrangement of the meter and other facilities will be in accordance with NWL's practice current at the time.

NWL will require information from the meter and control valve to be communicated by telemetry to its Control Room to facilitate system control (see also section 7.1.3).

NWL will own the control valve and telemetry and will be responsible for its maintenance and replacement in accordance with NWL's practice current at the time. The Licensee will normally own and be responsible for the calibration, maintenance and replacement of the bulk meter at the point of entry. NWL will periodically require evidence that the bulk meter is properly calibrated.

An appropriate meter is required at each point of exit from NWL's water supply system. In the majority of cases, it is likely that the Licensee's customer(s) will be transferred from NWL (or another licensee) and will already have a meter owned and maintained by NWL. In such cases, NWL will continue to own, maintain and replace the meter.

Where the Licensee's customer is not already connected to NWL's water supply system, an appropriate meter will be installed at the point of exit at NWL's expense. The type, size and installation arrangements will depend on case-specific circumstances (e.g. the minimum and maximum flows to be measured and the physical characteristics of the installation site and NWL's water supply system). The meter specification and arrangement will be in accordance with NWL's practice current at the time. After installation, NWL will own, maintain and replace the meter in accordance with its practice current at the time.

In some cases, other meters or control valves may be required on NWL's water supply system as a result of the common carriage proposal. This may be required to facilitate water supply system management and control. In such cases, NWL will own, maintain and replace the meters, valves and associated apparatus.

The Licensee will be responsible for any flow monitoring on its assets required for operational purposes.

## **ii) Meter installation**

### **a) At point of entry**

Where it is required to install a meter, control valve or other facilities (e.g. sampling points) on the point of entry, this can be carried out by either NWL or the Licensee. However, the connection to NWL's live network will be undertaken by NWL to ensure that neither water quality nor service to all customers is compromised. The specification and installation of the meter and other facilities must be to NWL's satisfaction.

Because the details of the arrangements at the point of entry will vary on a case-by-case basis, it is not possible to provide costs in this Access Code. These will be provided at the application stage.

### **b) At point of exit**

Where it is required to install a meter, control valve or other facilities on NWL's live water supply system at the point of exit, this will be carried out by NWL to ensure water quality and service to all customers are not compromised.

Because the details of the arrangements at the point of exit will vary on a case-by-case basis, it is not possible to provide costs in this Access Code. These will be provided at the application stage.

### **c) At other points**

If meters, control valves or other facilities are required elsewhere on NWL's water supply system as a result of the combined supply proposal, these will be designed and installed by NWL.

Because the details of such facilities will vary on a case-by-case basis, it is not possible to provide costs in this Access Code. These will be provided at the application stage.

The Licensee will be responsible for the design, installation and costs of any flow monitoring facilities required on its assets.

## **7.2.2 Meter calibration and verification**

NWL will verify the accuracy of any meter at the request of the Licensee. However, as with NWL's own customers, if a meter is found to be reading within tolerance, a charge will be payable. The charge will be that applying for the period in question as detailed in NWL's Charges Scheme. NWL's Charges Scheme for 2012-13 is available on NWL's website via the following link:

[http://www.nwl.co.uk/assets/documents/Charges\\_Scheme\\_2012-13.pdf](http://www.nwl.co.uk/assets/documents/Charges_Scheme_2012-13.pdf)

### 7.2.3 Meter reading and meter reading verification

The Licensee will normally be responsible for reading bulk meters at points of entry. Meter readings must be provided to NWL on a monthly basis, for the purposes of reconciliation with readings taken from the meters at the points of exit. If the bulk meter readings appear to conflict with integrated flow readings obtained by telemetry, NWL will query the bulk meter reading. In this event, NWL will expect to work with the Licensee to resolve the discrepancy; the Licensee may also be asked to provide recent independent evidence of calibration.

The Licensee will normally be responsible for reading meters at the point(s) of exit, and such readings must be provided to NWL and the sewerage undertaker (if this is not NWL) on a monthly basis. Either NWL or the sewerage undertaker may wish to query a meter reading if this appears to conflict with expected use by the customer. In this event, NWL will read the meter and may use an adjusted value for the purposes of reconciling flows with bulk meters and/or calculating access charges. NWL will advise the sewerage undertaker (if this is not NWL) of the revised meter reading.

If NWL or the sewerage undertaker (where this is not NWL) consider it necessary, NWL will re-calibrate the meter(s) and inform the Licensee. The Licensee may also request that NWL re-calibrates meters on its customers' premises if it is concerned over the accuracy of the meter(s). NWL must be allowed access to all customer meters for these purposes.

## 7.3 SUPPLY SYSTEM BALANCING

### 7.3.1 Strategic balancing

#### i) Annual supply planning

NWL has a number of water resource zones and a number of sources and treatment works within those zones. The use of these sources and treatment works is optimised to minimise costs as far as possible, whilst keeping within licensed abstraction volumes and maintaining security of supply for customers. In some cases, operating rules agreed with the EA must be adhered to (e.g. the Kielder Operating Agreement for the majority of impounded and river sources in the North East operating area and the Ely-Ouse to Essex Transfer Scheme in the Essex operating area).

An application from a Licensee for a combined supply agreement will contain information on the demands of its customer(s) and the yield and reliability of its sources and assets (see section 3.3 for details). Based on this information, NWL will assess the impact of the proposed introduction of water into its supply system on its Water Resources Management Plan, Drought Plan and on its strategy for resource utilisation.

Capital works or changes in operational practice may be required to facilitate the integration of the Licensee's source into NWL's supply system in order to ensure the efficient and effective utilisation of all sources. The costs of any capital works will be payable by the Licensee before access takes place and changes in operational costs (whether positive or negative) will be reflected in the access price.

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To facilitate the ongoing effective management of water resources, it is required that the Licensee inform NWL without delay if it has any concerns at any time that it may not be able to introduce water at contracted volumes for any reason.

In order to do this, the Licensee must continually assess risks to its supplies including source status (e.g. borehole level, river flow and impounding reservoir storage compared to the normal position at that time of year) and potential outages due to raw water quality or asset failure. The Licensee must also inform NWL as far in advance as possible of any planned outages for asset maintenance.

Reference should be made to Section 7.1.2 for the information requirements in respect of NWL's Water Resources Management Plan and Drought Plan.

## **ii) Use of strategic supplies**

Sections 66G and 66H WIA91 allow Ofwat to designate as strategic an introduction of certain water supplies by a licensee into a water undertaker's supply system. The trigger for designation as a strategic supply is that, without the introduction being made, there is a substantial risk that the water undertaker would be unable to maintain water supplies to its own customers for domestic and non-domestic purposes as well as supplying the licensee's customers with water for domestic purposes. This situation may arise when the undertaker defers the development of a new resource or demand management measures because of the introduction of water supplies to its supply system by the licensee.

Designation of a licensee's water supply as strategic means that the licensee would become subject to special administration procedures (see sections 23-26 WIA91) if, for example, it became insolvent.

While an application for a strategic supply designation can be made at any time, NWL will discuss with the Licensee at the application stage for combined access whether (and when) a supply might be strategic, as this may affect the access charge. Provision will be made within the access agreement allowing discussion of strategic supply status at any time during the life of the agreement.

Further information on the designation and de-designation process can be found in Ofwat's [Strategic supplies guidance](#).

## **iii) Interim duty to supply and back-up supplies**

Should the Licensee's supply into NWL's water supply system cease, NWL will continue to supply the Licensee's customers with water for all purposes for a period of three months, in accordance with section 63AC of the amended WIA, provided this does not put at risk NWL's ability to supply its other customers. This is commonly referred to as the Interim Duty to Supply. At the end of this period, the customer may apply for a supply to be made under either section 52 or section 55 of WIA91.

If the Licensee's supply has been designated a strategic supply and NWL is able through Special Administration or otherwise to ensure its continued functioning, NWL will offer to provide supplies under section 55 to the Licensee's ex-customers.

However, the duty to supply for non-domestic purposes beyond the interim 3 month period in section 63AC does not apply if it would put at risk NWL's ability to meet its existing supply obligations and its probable future obligations to supply water for domestic purposes or require unreasonable expenditure to do so.



The Licensee or its customers should not rely on the undertaker's interim duty to supply to provide them with a reliable long-term alternative supply, should the Licensee's supply cease. Should the Licensee or its customers wish NWL to maintain the capability to provide a back-up supply, then NWL will consider this proposal. This would require NWL to retain sufficient capacity in its system for the eventuality that the Licensee's supply could cease. This is an optional service and the costs of providing such a back-up supply would be considered on a case-by-case basis, taking account of the Licensee's or its customers' precise requirements.

#### **iv) Interruptible customers and interruptions to supply**

In some cases, the Licensee's customer may be willing to accept supply interruptions consistent with specified notice periods, frequency and maximum duration. In particular circumstances, these interruptions may assist NWL in the management of peak demands.

NWL does not believe that there are many cases where an interruptible supply would bring significant benefit (there are few actual or potential supply problems caused by peak demand alone in NWL's area of supply). However, NWL is willing to consider any proposal for an interruptible supply.

To be viable, there would have to be a clear, quantifiable benefit to NWL from the interruptible supply, such as deferral of a capital scheme to extend resource, treatment, pumping, or mains capacity. The Licensee (and its customer) would have to understand that NWL would be relying on the interruption to maintain supplies to its customers and the supply would be interrupted in the circumstances specified in the agreement, regardless of the Licensee's customer's position at the time.

Should a viable interruptible supply be identified, the avoided cost would be reflected in the access price.

### **7.3.2 Flow balancing and reconciliation processes**

#### **i) Supply system usage forecasts for combined supplies**

During the application process for combined supply arrangements, the Licensee should provide demand forecasts for each of its customers for the duration of the access agreement.

The Licensee and NWL will also agree case-specific arrangements in the access agreement for flows to be balanced over time. This will specify the Licensee's inputs at the point of entry and the balancing period. If the Licensee is not proposing to meet the full volumetric requirements of its customer(s) over the balancing period, it must enter into a wholesale agreement with NWL to supply the shortfall. However, the Licensee must propose to supply in total at least 5 megalitres per year to each customer and the Licensee may not introduce into NWL's supply system more water than its customers actually use.

Details of information requirements are provided in section 3.3.

During the period of the access agreement, the Licensee should consult with its customers and at least annually provide NWL with an update of demand forecasts for the remaining duration of the access agreement, together with any proposed changes to the Licensee's input to the system (see also 7.3.1 (i)). The update on demands will include revised details of maximum, average and minimum values for

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the average, monthly, weekly and daily demands and a normal diurnal flow profile, for each point of exit. Details of any changes in seasonal demand patterns are also required.

The Licensee should also ask its customers to inform it of any proposed significant departures from the forecast demands provided by the Licensee to NWL. The Licensee should inform NWL of any such departures without delay.

It will be necessary for the Licensee to discuss with NWL the consequences on flow balancing or other contractual issues of any significant changes in its customers' demands or of its input to NWL's supply system.

#### **ii) Imbalance accounting**

The volume introduced to NWL's system at the points of entry, and the demand of the Licensee's customer(s) at the point(s) of exit, will be compared over the agreed balancing period, which will normally be one month.

#### **iii) Reconciliation processes**

The Access Agreement will specify, as appropriate, financial and other arrangements to deal with differences between the Licensee's input (contracted and/or actual) and its customers' usage (forecast and/or actual), but NWL will expect small variances to be corrected by adjustments to supply in the month following. Large variances may be corrected by agreement over longer periods, or, in the case of significant or repeated under-supply, be subject to contractual penalties.

## **8 SUPPLY SYSTEM MAINTENANCE AND EMERGENCY PROCEDURES**

### **8.1 DIAGNOSIS OF SYSTEM ISSUES**

#### **8.1.1 Obligations with respect to diagnosis of supply system problems**

##### **i) Responsibility of NWL**

NWL retains the responsibility for the operation, maintenance and control of its supply system in its area of appointment.

NWL has facilities and procedures in place to monitor its supply system operation and to investigate and remedy system problems when these arise. The responsibility for diagnosing problems on NWL's supply system affecting either its customers or those of the Licensee remains with NWL. However, in some cases it may be necessary for a combined licensee to cooperate with NWL by supplying operational information or modifying its inputs to NWL's system (see (ii) below).

NWL will inform the Licensee without delay regarding any actual or potential problems with its operations that might have an impact on service to the Licensee's customers. In emergencies, NWL will also communicate such information directly to the Licensee's customers.

Ensuring the continuous supply of water of appropriate quality is a 24 hour, 365 days per annum operation. NWL has appropriate management, water quality, operational and maintenance staff available at all times to diagnose and deal with any problems on its supply system.

##### **ii) Responsibility of the Licensee**

To comply with the standard conditions of its Water Supply Licence, the Licensee must cooperate with NWL in its role as supply system operator. The Licensee must carry out the activities authorized by its licence in a manner that does not actually or potentially jeopardize the proper, efficient and economical performance by NWL of its functions, including the management of its supply system.

The Licensee should inform NWL without delay regarding any actual or potential problems with its operations that might have an impact on the operation of NWL's supply system or the quality of water within it. The Licensee will be required to meet values specified in the access agreement for key parameters at the point of entry. Target, Warning and Emergency values for each parameter will be specified, as appropriate, in the access agreement, together with clear procedures and responsibilities for action should a Warning or Emergency Value be breached. These procedures will provide clear communication requirements between the Licensee, NWL and regulatory bodies.

Should a problem occur in NWL's supply system, the Licensee will be required to provide information to NWL on the Licensee's operations on request, if this is necessary to assist with diagnosis of the cause of the problem. The Licensee will also be required to vary its input to the supply system if this is necessary to facilitate rectification of the problem.

Ensuring the continuous supply of water of appropriate quality is a 24 hour, 365 days per annum operation. The Licensee must ensure it has appropriate management, water quality, operational and maintenance staff available at all times to diagnose and deal with any problems on its assets.

### 8.1.2 Quality issues

NWL and the Licensee have responsibility for regulatory monitoring of the water leaving their respective treatment works, in service reservoirs and at the customers' taps. The results of this monitoring have to be reported to DWI, as required under the Water Undertakers (Information) Direction 2004.

NWL and the Licensee will also carry out operational monitoring of water quality to ensure that water at the point of entry and throughout NWL's supply system continually meets both regulatory standards and other standards for water quality, as set out in the access agreement.

The Licensee will be required to meet values specified in the access agreement for key water quality parameters at the point of entry. Target, Warning and Emergency values for each water quality parameter will be specified, as appropriate, in the access agreement, together with clear procedures and responsibilities for action should a Warning or Emergency Value be breached. These procedures will provide clear communication requirements between the Licensee, NWL and regulatory bodies.

The early exchange of information relating to water quality issues is of paramount importance. The exact requirements will vary from agreement to agreement and will be set out in the access agreement.

When public health is at risk, NWL will take charge of customer contact to ensure all customers served from the facilities are swiftly informed, for example, of the need to boil the water. The Licensee must ensure that NWL has an up to date list of the Licensee's customers at all times, including contact details and those identified as special consumers.

### 8.1.3 Hydraulic issues

NWL and the Licensee will undertake operational monitoring of pressures and flows to ensure these parameters at the points of entry and exit meet the requirements set out in the access agreement.

The Licensee will be required to meet values specified in the access agreement for flow and pressure at the point of entry. Target, Warning and Emergency values will be specified, as appropriate, in the access agreement, together with clear procedures and responsibilities for action should a Warning or Emergency Value be breached. These procedures will provide clear communication requirements. between the Licensee, NWL and regulatory bodies.

The Licensee should always operate its assets to avoid sudden pressure and flow surges into NWL's supply system. It may be necessary in some cases for the Licensee to install appropriate facilities to prevent such occurrences (e.g. "soft start" control on pumps or a surge vessel). Such requirements will be identified at the application stage and specified in the Access Agreement. Should the Licensee decide to replace or alter its assets during the contract period, it should liaise with

NWL to ensure the replacement facilities will be compatible with NWL's supply system and operation.

In some cases, it may also be necessary for the Licensee to inform NWL prior to stopping, starting or varying inputs at the point of entry. Similarly, in some cases it may be necessary for NWL to inform the Licensee if flow or pressures in the supply system are to be changed, as this may have an impact on the flows entering NWL's supply system. Such requirements will be specified in the access agreement.

The early exchange of information relating to hydraulic issues is essential. The exact requirements will vary from agreement to agreement and will be set out in the access agreement.

Reference should also be made to Chapter 7, where control and balancing of the supply system is discussed.

#### **8.1.4 Real time information capture systems**

Operational information for the Licensee's water supply will be required by NWL to facilitate system control, prevent and diagnose water quality and supply problems and for contract administration. Some information will not be required in real time and will be provided at specified intervals via agreed communication channels. However, some information is critical to NWL's ongoing operation of the system and will be required in real time.

Information requirements will be case-specific (e.g. parameter, unit, frequency, required accuracy, means of communication and format of information presentation) and will be specified in the access agreement.

Typically, flow and pressure information will be required to be monitored on a real time basis at the point of entry and communicated to NWL's Control Room via an appropriate telemetry link (see section 7.1.3).

It is likely that NWL will require the Licensee to monitor specific water quality parameters on a real time basis at its treatment works' exit, with alarms for breaches of prescribed values communicated to NWL's Control Room via an appropriate telemetry link. This is in addition to monitoring and control required by Water Quality Regulations or required by the Licensee to ensure treated water quality at the point of entry complies with the water quality standards specified in the access agreement.

Monitoring and telemetry equipment installed by the Licensee for connection to NWL's telemetry system should be compatible with the equipment used by NWL in the supply area concerned. It should also be of an equivalent reliability to that installed by NWL.

NWL uses a number of makes and specifications of telemetry equipment and these change over time as these assets are replaced. During the application process, NWL will inform the Licensee of the make and specification of equipment applying in that particular case.

The Access Agreement will include details of responsibilities and arrangements for communication in an emergency situation, including situations when telemetry is not functioning (see also Section 8.5).

### 8.1.5 Reporting procedures

Contact arrangements for the customers of the Licensee are covered in Chapter 9, except in relation to emergencies, which are covered in 8.5 and 8.6 below. Section 8.5 also covers the reporting responsibilities of the Licensee and of NWL in relation to emergency situations.

NWL and the Licensee are required to notify relevant bodies, as detailed in the Water Undertakers (Information) Direction 2004 and the Water Supply (Water Quality) Regulations, of any incident that may affect drinking water quality or the sufficiency of supplies.

## 8.2 PLANNED SYSTEM MAINTENANCE

### 8.2.1 Obligations with respect to planned maintenance

#### i) Responsibility of NWL

NWL has comprehensive policies and procedures for the operation, monitoring, review, refurbishment and replacement of the assets in its supply system. The aim is to continue to meet regulatory water quality standards and to provide a reliable supply of water to the standards required by Ofwat and as set out in the Monitoring Plan applying at the time.

The effectiveness of NWL's maintenance regime is monitored closely by Ofwat, in terms of reliability and availability, customer experience and environmental impact. Information on these is available from Ofwat's website.

NWL will undertake the planned maintenance necessary to provide service levels to the Licensee's customers agreed in the access agreement. The operational service levels provided to the Licensee's customers (e.g. pressure, water quality, security of supply) will not normally differ from those provided to NWL's customers in the same supply area.

If planned maintenance is proposed by NWL on its supply system that will or may affect either the Licensee's introduction of water to the system or the Licensee's customers, NWL will inform the Licensee in advance and wherever possible will undertake the work at a mutually acceptable time. The minimum notification period will be included in the access agreement.

The access agreement will set out the procedures for planned maintenance, including responsibilities for communications and how interruptions to supply will be managed between the parties, should the need arise.

#### ii) Responsibility of the Licensee

The Licensee must undertake asset management processes required to enable it to meet in a reliable manner the water quality standards, hydraulic parameters and other requirements set out in the access agreement.

The Licensee must submit with its application for access, details of the asset management processes it will apply for the operation, monitoring, review, refurbishment or replacement of the assets used to facilitate access. This will enable

NWL to assess whether the Licensee's assets will remain capable of meeting the terms of the access agreement throughout its duration.

The Licensee is required by Standard Licence Condition 2(3)(b) to have sufficient product and public liability insurance for the activities authorised by its Licence. That insurance should cover instances in which the Licensee fails to meet the standards agreed in the access agreement, due to inadequate asset maintenance.

If planned maintenance is proposed by the Licensee on its assets that affects NWL's supply system operation (e.g. the introduction of water at the point of entry is to stop or flow and pressure reduce), the Licensee will inform NWL in advance and wherever possible will undertake the work at a mutually acceptable time. The minimum notification period will be included in the access agreement.

If NWL needs to undertake planned maintenance on its supply system that will or may affect either the Licensee's introduction of water to the system or the Licensee's customers, the Licensee will, wherever possible, accommodate this work, provided the work is planned in advance and undertaken at a mutually acceptable time.

The access agreement will set out the procedures for planned maintenance, including responsibilities for communications and how interruptions to supply will be managed between the parties, should the need arise.

### **8.2.2 Specification of assets**

The Licensee and NWL will identify and agree the relevant Licensee's assets required for access. It is these assets that must be subject to an appropriate planned maintenance regime to enable the performance standards set out in the access agreement to be met.

### **8.2.3 Maintenance standards**

The effectiveness of NWL's maintenance regime is monitored closely by Ofwat, in terms of reliability and availability, customer experience and environmental impact. Information on these is available from Ofwat's website.

Unless otherwise specified in the access agreement, NWL will generally provide the same standard of service to licensees and their customers as to its own non-domestic customers. However, licensees and their customers, not being customers of NWL, will not be eligible for the compensation payments outlined in our customer charter (unless specifically provided for in the access agreement)..

It is expected that the Licensee will adopt a suitable maintenance regime that enables the performance standards set out in the access agreement to be met. NWL's current practice will be used as a benchmark when assessing the Licensee's proposals at the application stage.

It is expected that a precautionary approach to asset refurbishment or replacement (i.e. replacement before failure) will be taken where public health may be affected.

### **8.2.4 Risk assessment processes**

The Licensee will provide promptly any operational information required by NWL in order to undertake risk assessments and plan maintenance on its supply system. This information will be requested in writing in reasonable time for the information to be provided.

Failure by the Licensee to cooperate with NWL in supplying information essential for overall management for the supply network could constitute a breach of the Licensee's licence and may prompt enforcement action by Ofwat.

## **8.3 UNPLANNED SYSTEM MAINTENANCE**

### **8.3.1 Obligations with respect to unplanned maintenance**

#### **i) Responsibility of NWL**

From time to time, unplanned maintenance may be required by NWL on its supply system to carry out essential repairs. If this affects either the Licensee's introduction of water to the supply system or the Licensee's customers, NWL will inform the Licensee as soon as practicable and will provide updates as the situation develops.

The parties will discuss the impact of the unplanned works and work together to minimise the impact on all customers.

NWL will have the necessary arrangements in place to undertake the essential repairs required to protect public health and minimise interruptions to supply. This will include access to appropriate skilled personnel and materials on a 24-hour basis.

The Access Agreement will set out the procedures for dealing with unplanned maintenance, including responsibilities for communications and how interruptions to supply will be managed between the parties, should the need arise.

#### **ii) Responsibility of the Licensee**

From time to time, unplanned maintenance may be required by the Licensee on its assets to carry out essential repairs. If this affects NWL's supply system operation (e.g. the introduction of water at the point of entry is to stop or flow and pressure reduce), the Licensee will inform NWL as soon as practicable and will provide updates as the situation develops.

The parties will discuss the impact of the unplanned works and work together to minimise the impact on all customers.

The Licensee will have the necessary arrangements in place to undertake the essential repairs required to protect public health and minimise interruptions to supply. This will include access to appropriate skilled personnel and materials on a 24-hour basis.

The Licensee is required by Standard Licence Condition 2(3)(b) to have sufficient product and public liability insurance for the activities authorised by its Licence. That insurance should cover instances in which the Licensee fails to meet the standards agreed in the Access Agreement due to the lack of adequate asset maintenance.

### **8.3.2 Risk assessment processes**

The Licensee will provide promptly any operational information required by NWL in order to undertake risk assessments for unplanned maintenance on its supply



system. This information will be requested verbally and must be provided as quickly as possible.

Failure by the Licensee to cooperate with NWL in supplying information essential for overall management for the supply network could constitute a breach of the Licensee's licence and may prompt enforcement action by Ofwat.

### **8.3.3 Communications**

Requirements, responsibilities and processes for communicating with regulators and customers will be clearly set out in the access agreement.

Communication procedures in emergency situations are covered in 8.5.1 below.

## **8.4 SAFETY ASPECTS OF PLANNED, UNPLANNED AND EMERGENCY WORK**

NWL and the Licensee must comply with all relevant health and safety legislation and other applicable requirements in all of their activities. The Licensee must inform the Health and Safety Executive of all reportable lost time, accidents and the like.

When undertaking all planned, unplanned and emergency work, the health and safety of the public, contractors and employees will take precedence over all other considerations. This applies to both the Licensee and NWL.

NWL has comprehensive policies and procedures in place to manage health and safety. This includes the proper training of all employees. The application of NWL's health and safety policies and procedures is monitored and action taken where necessary to ensure they are followed. Policies and procedures are also updated from time to time to take into account new regulations and improvements in practice.

It is expected that the Licensee will also have appropriate health and safety policies and procedures in place, including the proper training of employees

## **8.5 EMERGENCY PROCEDURES AND SECURITY**

### **8.5.1 Emergency procedures and responsibilities**

NWL is responsible for the management of all incidents and emergencies that affect the supply system and for the declaration of the status of an incident and establishment of the incident management team. Notices to customers, the DWI health authorities, fire and rescue service and other parties that are to be notified will be issued by NWL.

Emergency procedures may be invoked when measured values for water quality fall outside prescribed values or water supplies to customers are interrupted (or there is a risk that these things may happen).

The Licensee will be required to meet values specified in the access agreement for key parameters at the point of entry. Target, Warning and Emergency values for each parameter will be specified, as appropriate, in the access agreement, together with clear procedures and responsibilities for action should a Warning or Emergency

Value be breached. These procedures will provide clear communication requirements between the Licensee, NWL and regulatory bodies.

The Licensee should immediately inform NWL if it becomes aware of any actual or potential Incident, which affects or is likely to affect water quality. An Incident includes regulatory infringements which would put the Licensee or NWL at risk of supplying water which is unwholesome or unfit for human consumption within the meaning of sections 67 and 70 WIA91.

NWL reserves the right to suspend, without prior notice, the introduction of water into its supply system if it has reasonable cause to suspect that continued introduction would put it at risk of supplying unwholesome water or at risk of committing an offence under section 70 WIA91.

Prior to commencing the combined supply agreement, the Licensee and NWL will define responsibilities and procedures for notifying DWI of an Incident under the Water Undertakers (Information) Direction 2004. They will also define responsibilities and procedures for the notification of other bodies such as EHOs, CCDCs, Ofwat, HSE and CCW and agree representation on any Outbreak Control Team or Incident Control Team.

Responsibilities for communication with customers during an Incident or Emergency will be defined by the Licensee and NWL prior to commencing the combined supply agreement. When public health is at risk, NWL will take charge of all customer contact to ensure all customers are swiftly informed, for example, of the need to boil water. The Licensee must ensure that NWL has an up to date list of the Licensee's customers at all times, including contact details and those identified as special consumers.

When NWL has an emergency situation or Incident on its supply system, the Licensee will cooperate by varying or stopping its input to NWL's supply system, if requested to do so by NWL.

Both NWL and the Licensee will ensure that appropriate personnel (senior management, technical and maintenance personnel) are available to deal with emergencies and Incidents on a 365 day per annum, 24 hour per day basis (see also 8.1.5). They will also ensure that appropriate equipment and materials are available to inform customers and effect repairs. Both parties will be expected to work closely and diligently to manage the emergency and ensure the situation is returned to normal as soon as practicable.

Before commencing the combined supply arrangement, the Licensee will be thoroughly briefed by NWL on any relevant emergency action plans and contact details. Likewise, the Licensee will brief NWL on its emergency action plans and contact details. Depending on the nature of the common carriage arrangement, NWL may request the Licensee to demonstrate its emergency procedures in order to ensure that appropriate arrangements are in place.

From time to time, NWL may request the Licensee to participate in emergency exercises and it is expected that the Licensee will cooperate. Similarly, NWL will participate in any emergency exercises that the Licensee may arrange from time to time.

The Licensee's emergency plans and procedures must be independently audited each year in accordance with the directions made under the WIA91.

### 8.5.2 Security considerations

The Licensee and NWL will work together to comply with nationally agreed security standards and, where appropriate, those measures required for specific local circumstances.

In particular:

- The Licensee will comply with all Water UK, DEFRA, UK Security Service, Association of Chief Police Officers (ACPO) and local Constabulary security requirements.
- The Licensee will establish agreed response and deployment plans for each of its assets with the local Constabulary appropriate to the asset.
- The Licensee will agree with NWL, and will strictly adhere to, an appropriate response protocol for handling and responding to security alarm signals generated at the Licensee's assets.
- The Licensee will agree with NWL, and will strictly adhere to, an appropriate response protocol for handling and responding to instructions received from NWL regarding security alarm signals generated at NWL assets.
- If the Licensee has any potable water storage facilities that fall under the Water UK definition of a Service Reservoir or a site designated by the Cabinet Office as being of strategic national importance, the Licensee will ensure that security alarms generated from these assets are received at a 24-hour Alarm Monitoring Centre compliant with Security Service Advice Notes.
- In the event of a Security Alert Level escalation being notified to NWL, the Licensee's security-cleared member of staff will be informed and will respond in accordance with the requirements of the appropriate Security Service Advice Notes as soon as is reasonably practicable.
- In the event of the Licensee receiving notification of a Security Alert Level escalation from any party other than NWL, the Licensee will inform NWL as soon as is reasonably practicable.
- In the event of a security alert being initiated by the Licensee (whether or not due to the negligence of the Licensee) any resulting costs incurred by NWL shall be recharged to the Licensee.

## **8.6 CUSTOMER PROTECTION**

### **8.6.1 Special consumers**

NWL will not discriminate between the Licensee's customers and its own and, unless agreed otherwise, will as far as possible maintain the same level of service to all customers served from the water supply system. However, during any interruption to or contamination of supply, preference will be given if possible, to maintaining supplies to premises such as hospitals, nursing homes and to other customers (generally disabled or elderly) who have registered with us that they may be particularly vulnerable in such situations. It will be the Licensee's responsibility to advise NWL of the presence of such customers ("special consumers", who regularly require water urgently on medical or other grounds) on the premises of the customers it serves.

### **8.6.2 Large-scale customer warning procedures**

NWL will warn all customers at risk in an emergency situation (e.g. a notification of the need to boil water or of an interruption to supply), including the Licensee's customers if necessary.

### **8.6.3 Emergency compensation payments**

The access agreement will set out details of any circumstances in which NWL will pay compensation to the Licensee for a failure to provide agreed service levels to the Licensee's customers. Any such compensation will be paid to the Licensee who may pass it onto its customers, as appropriate.

The access agreement will also set out details of any circumstances where the Licensee will pay compensation to NWL for a failure to provide agreed service levels at the point of entry or where the Licensee is responsible for a failure of service levels to NWL's customers. Any such compensation will be paid to NWL who may pass it onto its customers, as appropriate.

### **8.6.4 Emergency operational planning exercises**

This is covered under section 8.5.

## **8.7 SUPPORT PROCESSES**

### **8.7.1 Arrangements for media liaison**

When dealing with emergency events or Incidents affecting the supply network serving the Licensee's customers, the responsibility for issuing media statements will lie with NWL, unless agreed otherwise. Where relevant, media statements will be agreed by both parties before being issued. The communication of accurate and consistent information to customers must be of paramount importance.

### **8.7.2 Arrangements for dissemination of severe weather warnings**

Should either the Licensee or NWL learn of a severe weather warning, it should inform the other without delay by telephone.

### **8.7.3 Emergency contacts**

This is covered in section 8.5.1.

## 9 CUSTOMER CONTACT ARRANGEMENTS

### 9.1 CUSTOMER CONTACT ARRANGEMENTS FOR OPERATIONAL QUERIES AND COMPLAINTS

The licensee will normally be responsible for communicating with its customers on water supply matters. All routine water supply service enquires from customers of the licensee should be directed to the licensee. Where issues relate to elements of the water supply service provided by NWL, the licensee should refer these issues to NWL as necessary. Where issues relate to services wholly provided by NWL (e.g. sewerage services) the Licensee should advise the customer to contact NWL directly. The Licensee should ensure that its customers are informed of which organisation to contact for specific queries.

Where customers of the licensee inappropriately contact NWL directly on water supply matters, they will be referred to the Licensee.

#### 9.1.1 Customer meter reading

Responsibilities for reading meters, validating and communicating meter readings are set out in section 7.2.3.

#### 9.1.2 Billing and debt collection

Where a transfer proposal is made under the [Customer Transfer Protocol](#) (CTP) and NWL is the 'old' supplier, NWL may object if there is outstanding debt due from the customer. Alternatively, the Licensee can agree to take on the outstanding debt, in which case NWL will assign the debt to the Licensee as the new supplier.

Following the successful completion of a customer transfer from NWL to the Licensee under the CTP, NWL will send to the customer a final account and thereafter bill the Licensee on a monthly basis in respect of access charges, as provided for in the access agreement between NWL and the Licensee.

NWL will normally treat licensees no differently to its own eligible customers, albeit that they are not customers, unless there are justifiable reasons for doing otherwise. However, in relation to non-payment of outstanding charges, NWL's Charges Scheme provides, ultimately, for the disconnection of non-household premises. The right to disconnect non-domestic customers for non-payment derives from sections 55 and 61 WIA91. However, supplies to licensees are not made under section 55 WIA91 but rather under sections 66A-66C WIA91 and do not provide for the undertaker to disconnect premises, since it is supplying the licensee and it is the licensee, in turn, that supplies eligible premises.

To address this issue, the access agreement will provide for termination of the agreement, amongst other things, in the event that the Licensee is unable to pay its debts. In order to show no undue preference to licensees, NWL will seek to invoke this provision in circumstances where it would normally effect disconnection of premises, were the Licensee its own customer.

In the event that an Access Agreement were terminated, NWL would provide an interim supply to the affected premises, if required, subject to the conditions of

section 63AC of the amended WIA (see 7.3.1 (iii) for a discussion of the interim supply duty).

### 9.1.3 Operational issues

#### i) Water supply queries

Unless otherwise agreed as part of an access agreement, NWL will not directly contact the Licensee's customer(s) for routine operational purposes, nor will NWL expect to be contacted directly by the Licensee's customer(s) in connection with routine operational queries or complaints. The normal communication route for these purposes will be via the Licensee. Arrangements for emergency situations are covered in 8.5 and 8.6 above.

The indicative combined supply access prices provided in Chapter 10, Appendix A-4.2 do not cover the provision of operational advice and support to the Licensee for the purposes of customer contact. It will be for the Licensee to decide what level and frequency of additional advice and support it requires. NWL will levy a charge to cover the additional advice and support on a cost-reflective basis.

#### ii) Sewerage queries

Customers who have switched water supplier nevertheless remain customers of the sewerage undertaker holding the sewerage appointment in their area. If this is NWL, then NWL will continue to be responsible for responding to customer queries regarding the sewerage service, including any trade effluent matters. If NWL needs to contact the customer for any purpose connected with the sewerage service, it will do so directly.

### 9.1.4 Complaint handling processes

A customer who has switched water supplier from NWL to a licensee is no longer a customer of NWL in respect of water supply. Any complaint made by the customer and passed on to NWL by the Licensee will be dealt with promptly in the context of the access agreement but will not count as a formal complaint against NWL for the purposes of returns made to Ofwat.

Licensees should also ensure that their customers are aware that they are no longer eligible for Guaranteed Standards Scheme (GSS) payments. They should, however, ensure that their customers are aware that if they have a complaint that is not resolved to their satisfaction by the Licensee, they may put their complaint in writing to the Consumer Council for Water (CCWater).

### 9.1.5 Obligations on NWL

Any operational queries or complaints made by the customer and passed on to NWL by the Licensee will be investigated promptly and a response will be provided to the Licensee as soon as possible. If there are water quality implications, NWL will advise DWI in accordance with normal practice.

NWL will ensure that the Licensee is provided with an up-to-date contact list of NWL personnel for normal and emergency contact purposes.

### 9.1.6 Obligations on licensees

It is the Licensee's responsibility to handle queries and complaints from its own customers, but some issues may have wider implications for the water supply system and may need to be reported to DWI or Ofwat. NWL expects the Licensee to act responsibly and competently in such cases, advising NWL immediately of any situations communicated to it by customers that may be reportable, or that may otherwise have implications for other water supply system users.

### 9.1.7 Disconnection

NWL may disconnect customers' premises if necessary for the purpose of carrying out works, where it is reasonable to do so (Section 60 WIA91), at the request of the consumer (section 62 WIA91) and to prevent contamination or waste (Section 75 WIA91).

If NWL terminates the access agreement with the licensee, the interim supply duty provisions (Section 63AC WIA91) will immediately apply, allowing the customer to continue to receive water for up to 3 months. However, the interim supply duty does not apply if it would put at risk NWL's ability to meet its existing supply obligations and its probable future obligations to supply water for domestic purposes or if it would require unreasonable expenditure to do so.

## 9.2 CUSTOMER CONTACT ARRANGEMENTS FOR EMERGENCIES AND EVENTS

This is covered under sections 8.5 and 8.6.



## APPENDICES TO PART 3

A-3.1 Glossary of defined terms (combined supplies)

A-3.2 Pro forma applications for combined supply access

## APPENDIX A-3.1

### GLOSSARY OF DEFINED TERMS (COMBINED SUPPLIES)

**Access:** The wholesale supply of water by a water undertaker to a licensee for the purpose of making a retail supply of water to the premises of the licensee's customer and the introduction of water by the licensee into a water undertaker's supply system for that purpose (common carriage).

**Access agreement:** An agreement between a water undertaker and a licensee for access by a licensee to a water undertaker's supply system pursuant to the Retail Authorisation and Supplementary Authorisation.

**Access code:** A water undertaker's document that sets out all principal aspects of access to its supply system and the terms and conditions on which it will grant access to its supply system by a licensee. The access code comprises the standard terms and conditions common to all water undertakers and the terms and conditions specific to that water undertaker.

**Access terms:** The terms under which a water undertaker and a licensee agree access to a water undertaker's supply system.

**Adjoining supply system:** Supply systems of other water undertakers with direct physical connections to the water undertaker's own supply system.

**ARROW costs:** Expenses that can be **A**voided or **R**educed, or any amount that is **R**ecoverable in some **O**ther **W**ay (other than from other customers of the water undertaker) (see section 66E(3) WIA91).

**Back-syphonage:** Unwanted syphoning of water into the supply system.

**Back-up supplies:** These are supplies that can be called into operation in the event of failure of the 'duty' supply.

**Boil notices:** A notice issued by the undertaker as a warning that water should be boiled before drinking as a precautionary measure.

**Borehole:** A hole for abstracting groundwater constructed by boring.

**Chemical parameters:** Limits for the level of chemicals found in water. Examples are iron, chlorine, sulphates, pesticides, ammonium compounds.

**Chlorination:** The use of chlorine to disinfect water.

**Coliform bacteria:** A group of bacteria found in the intestine and faeces of most animals. Coliforms can sometimes be found in untreated water. The treatment process removes them and disinfection prevents their reappearance in the distribution system.

**Combined Licence:** A Retail Licence with the Supplementary Authorisation, authorising the holder to introduce water into a water undertaker's supply system and to retail that water to a customer's eligible premises (section 17A(6) WIA91).

**Combined supply:** A supply made pursuant to a combined licence.

**Compensation water:** Water released to the environment to offset impacts of abstraction or to comply with Appointment Conditions (or both).

**Costs principle:** As defined in section 66E of the WIA91.

**Cryptosporidium:** A waterborne microorganism, single celled protozoan parasite, which causes disease and illness.

**Deployable output:** The output of a commissioned water supply source, group of sources or bulk supply under worst historic drought conditions as constrained by: abstraction licence, if applicable; environment; treatment; raw water mains and/or aquifers; pumping plant and/or well/aquifer properties; transfer and/or output main; water quality.

**Disinfection:** The process of treating water with, for example, small amounts of chlorine in order to kill harmful organisms.

**Diurnal variations:** Variations occurring within a daily (24 hrs) cycle.

**Drought:** A prolonged period of dry weather; said to exist if, for at least fifteen days, on each day rainfall has been less than 0.25mm.

**E.Coli:** A bacterium taken as an indicator of faecal contamination.

**Eligible premises:** Premises that satisfy the eligibility requirements in section 17A(3) WIA91. Each of the following three requirements must be satisfied in relation to each of the premises in order for a customer's premises to be eligible:

- The customer's premises must not be "household premises" (as defined in section 17C WIA91).
- When the licensee first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually by the licensee must be not less than 5 megalitres (the "threshold requirement", section 17D WIA91).
- The premises may only be supplied by one licensee (but may also be supplied by one or more water undertakers).

**Fit and proper person:** For the purpose of making an access agreement, a person or party will not be deemed fit and proper if there are any relevant convictions, concerns over technical ability or insufficient financial resources available.

**Fluoridation:** Application of fluoride to drinking water at the request of regional health authorities as a preventative measure against dental decay.

**Groundwater:** For the purposes of an access agreement, groundwater is defined as water abstracted directly from an aquifer by means of a well, borehole or spring.

**Guaranteed Standards Scheme (GSS):** A scheme that lays down the minimum guaranteed standards of service that water companies have to deliver. Water companies have to pay compensation to customers if they fail to meet these standards.

**Hardness:** Characteristics of waters containing dissolved calcium and magnesium salts.

**HSE:** Health and Safety Executive. A government agency responsible for administering all regulations pertaining to health and safety and public security.

**Instrument of Appointment:** The water (and sewerage) companies operate under Instruments of Appointment, granted by the then Secretaries of State for the Environment and for Wales, or by the Director, to provide water and sewerage services in England and Wales. The Instrument of Appointment imposes conditions on the companies, which the Director is required to enforce.

**Interruptible supply points:** These are supply points where a continuous water supply is not necessary.

**Licensee:** A company holding either a retail licence or a combined licence.

**Leakage:** The loss of water from the supply network which escapes other than through a controlled action.

**Major Emergency Procedures:** The Major Emergency Procedures are evoked when the situation or the number of people affected is in excess of those which can be dealt with by the Standard Emergency Procedures.

**Mandatory parameters:** Levels of chemical or biological indicators that must be measured by law. Examples for drinking water are E coli, nitrates, chlorides.

**Microbiological parameters:** Levels of bacteria, for example E coli, coliforms, faecal streptococci, whose presence indicate that the water may be polluted and therefore should not be used as drinking water.

**Non-potable water:** Water which is not intended for domestic or food production purposes.

**Outage:** A temporary loss of usable water output due to planned or unplanned events.

**Pathogen:** An organism which is capable of producing disease.

**Point of entry:** The point at which treated water enters the supply system as defined by the isolation valve provided by the water undertaker.

**Point of exit:** The point at which treated water leaves the supply system. In general, this will be either to specific premises or to the supply system of an adjoining water company.

**Potable:** Water for domestic and food production purposes which is wholesome at the time of supply. This is defined in section 68 of the WIA91 and section 4 of the Water Supply (Water Quality) Regulations.

**Primary water undertaker:** For the purposes of section 66A WIA91 (wholesale water supply by primary water undertaker) and section 66C WIA91 (wholesale water supply by secondary water undertaker), a water undertaker is the primary water undertaker of a licensee if the undertaker's supply system is to be used for the purposes of making the supply to the premises of the licensee's customer.

**Priority supply points:** Supply points as specified by DEFRA.

**Rechlorination:** Usually applied to injection of chlorine to drinking water in the distribution system after it has left the treatment works. Often used to boost chlorine levels at a service reservoir.

**Reconciliation process:** The balancing of actual demand against actual water supplied into the supply system and the associated financial implications.

**Regulatory Compliance Sampling Programme:** This is the annual programme of drinking water sampling which the Water Companies must undertake to comply with the requirements of the Water Supply (Water Quality) Regulations 2000 (for England) and 2001 (for Wales) and subsequent amendments.

**Retail authorisation:** An authorisation to a company to use a water undertaker's supply system for the purpose of supplying water to the eligible premises of customers of the company (section 17A(2) of the WIA91).

**Retail Licence:** A Water Supply Licence giving the holder the Retail Authorisation, entitling the holder to purchase wholesale a supply of water from the water undertaker and to supply it retail to a customer's eligible premises (section 17A(4) of the WIA91).

**Secondary water undertaker:** A water undertaker other than the relevant primary water undertaker (section 66C(1)(a)(i) WIA91).

**Security of supply:** The extent to which water supplies to customers are reliable and not subject to possible restrictions because of a lack of rainfall over a period of time.

**Service reservoirs:** Any reservoir, statutory or otherwise, which is used to store treated drinking water.

**Sewerage undertaker:** A company appointed under the WIA91 to provide sewerage services in respect of a geographical area of England and Wales.

**Special consumers:** As defined in Condition of Appointment R section (8)(6) and Standard Licence Condition 5.

**Standard Emergency Procedure:** These are a set of procedures for dealing with an emergency. The full or partial implementation of the procedures is dependant on the degree of seriousness of the emergency.

**Supplementary Authorisation:** An authorisation to a company to introduce water into a water undertaker's supply system for the purpose of making a retail supply of water to a customer.

**Supply point:** The point at which treated water leaves the supply system. In general this will be either to specific premises or to the supply system of an adjoining water company.

**Supply system:** Any water mains and other pipes used for the purposes of conveying water from a water undertaker's treatment works to its customer's premises and any water mains and other pipes used to convey non-domestic water from any source to premises that are not connected directly or indirectly to any water mains or pipes connected to those treatment works. This term is defined in section 17B(5) WIA91.

**Supply system balancing:** The process of matching the 'water in' against the 'water out' from the supply system.

**Telemetry:** The technology for automatically measuring and transmitting data by radio or other means from remote sources to receiving stations.

**Treated water:** Water of a suitable quality for input to the treated water distribution system, which results in satisfactory DWI compliance at the customer's tap.

**Treated water quality monitoring:** Regular sampling and analysis of untreated and treated water. Examples include daily measurement of free chlorine at treatment works or annual sampling for mercury at customers' taps.

**Treatment works:** Works where raw water from rivers or reservoirs is treated to produce drinking water. Treatment typically includes coagulation, filtration and disinfection.

**Trihalomethanes:** A group of chemicals produced by the reaction of chlorine with natural organic chemicals present in the raw water. The current limit is 100 ug/l averaged over three months.

**Turbidity:** A measure of the optical clarity of water.

**UKWIR:** UK Water Industry Research Limited.

**Ultra-violet disinfection:** Inactivation of microbiological organisms by ultraviolet radiation.

**Unique premises reference number (PRN):** A new number that is assigned to eligible premises for the purpose of identification when transferring within the customer transfer protocol. It consists of three letters identifying the water undertaker (Northumbrian Water is NES), followed by a unique five-digit number for each eligible premises.

**Untreated water:** Raw water not of a suitable quality to enter the supply system.

**Water Fittings Regulations:** The Water Supply (Water Fittings) Regulations 1999. These Regulations replaced the Water Bylaws in England and Wales and are largely enforced by the water undertakers.

**Water resources management plan:** A water undertaker's long term strategic plan for water resource development in its area (see section 37A WIA91).

**Water Supply Licence:** A licence granted to a company, giving it the Retail Authorisation, or both the Retail Authorisation and the Supplementary Authorisation.

**Water Supply (Water Quality) Regulations:** The Water Supply (Water Quality) Regulations, SI 2000 No 3184, amended by SI 2001 No 2885, which apply to water undertakers whose area of supply is wholly or mainly in England; The Water Supply (Water Quality) Regulations 2001, SI 2001 No 3911, which apply to water undertakers whose area of supply is wholly or mainly in Wales. These Regulations specify the standards used to define wholesomeness of drinking water, the level of monitoring required, treatment requirements, reporting requirements and also specify the requirements for using approved substances and products. The DWI enforces these Regulations.

**Water undertaker:** A company appointed under the WIA91 to provide water services to a defined geographic area and which owns the supply system and other infrastructure.

**Wholesale supplies:** Supply of water to a licensee by a water undertaker for the purposes of retail by the licensee to its customer's premises.

## **APPENDIX A-3.2**

### **PRO FORMA APPLICATIONS FOR COMBINED SUPPLY ACCESS**

1. Treated water into NWL's water supply system.
2. Raw water into NWL's Teesside Industrial Raw Water System.



**PRO FORMA APPLICATION  
(TREATED WATER INTO NWL'S WATER SUPPLY SYSTEM)**

<b>Preliminary Notes</b>	
<b>Data to be provided</b>	Please provide detailed information about your proposal including, but not limited to, the information listed below. Full data to evaluate the Licensee's proposals is essential at this stage.
<b>Format of data</b>	All data are to be provided in one loose-leaf paper copy and, where appropriate, in electronic format.
<b>Quality Control</b>	Please provide sufficient supporting documentation to enable NWL to determine the accuracy of estimations. Laboratories must be UKAS DWTS (Drinking Water Testing Specification) accredited or subject to DWI inspection.
<b>Missing data</b>	Please explain reasons for any data deficiencies (e.g. works not yet commissioned) and provide estimates / forecasts where measurements are not available. Clearly mark which data are measured and which data are estimated / forecast.
<b>Contractual / legal</b>	Details will be required on the proposed duration of the Access Agreement between the Licensee and NWL. The Access Agreement will address requirements for Indemnities, Liabilities, bonds and guarantees.

<b>Description of Proposals</b>	Please describe in detail the nature of your proposal including the Points of Entry and Exit proposed.
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Licensee	Name of Licensee: Address:  Telephone no: Fax no: Email address: Company registration no: Contact name: Contact telephone:
Details of Licensee's customer	Name of Licensee's customer(s): Address:  <b>(please enclose signed consents from each customer – see 2.3.1(ii) of the Access Code)</b> Location of Licensee customer's premises, including Ordnance Survey Map Co-ordinates (10 figure):  Is the proposed customer currently connected to the NWL drinking water supply system?  Does NWL currently supply drinking water to the proposed customer?
Point of Entry	Location of the proposed Point of Entry for the Licensee's water into NWL'S WATER supply system, including Ordnance Survey Map Co-ordinates (10 figure):
Point of Exit	Location of the proposed Point(s) of Exit from NWL's water supply system, including Ordnance Survey Map Co-ordinates (10 figure):

<b>Copies of documentation</b>	<b>Environment Agency abstraction licence</b> Copy previously provided with outline application Yes / No Copy attached Yes / No (if not available at this stage please detail progress with obtaining licence)
	<b>Combined Licence to Supply Water</b> Copy previously provided with outline application Yes / No Copy attached Yes / No (if not available at this stage please detail progress with obtaining licence)
<b>List any other documents provided.</b>	

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<b>Water Resources</b>	<p>Provide data to demonstrate that the proposed water resource is sufficient and sustainable meeting the forecast demand of customers over the duration of the Access Agreement and for all likely planning scenarios.</p> <p>When calculating predictions please use methodologies consistent with those contained in "Water Resources Planning Guidelines", Environment Agency 2003 v3.3 and reports referenced therein and "Reassessment of Water Company Yields", Environment Agency 1997.</p> <p>This should also include information on</p> <ul style="list-style-type: none"><li>a) security of supply in the form of a risk assessment to cover likely frequency and duration of outage of supply for maintenance, power failure, source failure, source pollution or other reason.</li><li>b) the margin of output over demand calculated over a yearly basis as forecast of the margin of deployable output over peak week demand of customers.</li></ul>

<b>Hydraulics</b>	<b>Data required on quantity at Point(s) of Entry</b>			
	Please complete the inflow table below to provide an indication of the variation in flow at the Point of Entry. This information should be provided for each year of the Access Agreement. Please also provide a normal daily flow profile of hourly flow at the Point of Entry.			
	<b>Proposed inflow at the Point of Entry</b>			
		<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>
	<i>Annual (MLD)</i>			
	<i>Monthly (MLD)</i>			
<i>Weekly (MLD)</i>				
<i>Daily (MLD)</i>				
<i>Flow rate (l/s)</i>				

	<b>Data required on pressure</b>	
	Tabulate (below) how pressure will vary with flow at the Point of Entry where the supply is directly into NWL's pipework. This is not required when the supply is directly into an NWL service reservoir. Where flows and pressures are likely to change over the duration of the Access Agreement (e.g. when Licensee's customer changes demand requirements) the tabulated information should include the data associated with these changes. As a minimum this table should specify gauge pressures at the minimum, mean and maximum flow rates given in the table above.	
	<b>Flow (l/s)</b>	<b>Gauge Pressure (metres)</b>

	<b>Data required for Point(s) of Exit</b>		
	Please complete the table below to demonstrate the variation in the quantity to be delivered to the Point of Exit. This should information should be provided for each year of the Access Agreement. A separate table should be completed for each Point of Exit. Please also provide a normal daily flow profile of hourly flow at each Point of Exit.		
	<b>Forecast demand at Point of Exit</b>		
	<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>
<i>Annual (MLD)</i>			
<i>Monthly (MLD)</i>			
<i>Weekly (MLD)</i>			
<i>Daily (MLD)</i>			
<i>Flow rate (l/s)</i>			

<b>Water Quality</b>	<p><b>Raw water quality</b></p> <p>At the outline appraisal stage a summary of raw water quality would normally have been provided. If not, this must be provided now together with the raw data associated with the summary. The data summary should also be updated to reflect any sampling undertaken since that time.</p> <p>Please provide all the individual raw data from all monitoring of the raw water during the previous twelve months. This should include all the parameters listed below. Location and date should be recorded. (For further information on the parameters, measurement and analysis please refer to the Water Supply (Water Quality) Regulations 2000 (and all amendments) and the Surface Water Abstraction Directive (75/440/EEC).)</p> <p>Parameters: See Tables 1 and 2 (Environment Agency SWAD tables)</p>
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**Table 1: Surface Water Abstraction Directive  
Summary of Imperative Standards for Classes A1 and A2.**

Parameter	Unit	Imperative Value		Raw Water		
		A1	A2	Min	Max	Mean
Colouration @ 400 nm	Hazen	20	100			
Temperature	mg/l	25	25			
Nitrate	mg/l	50	50			
Ammonia	mg/l	n/a	1.5			
Sulphates	mg/l	250	250			
Cyanide	ug/l	50	50			
Flourides	ug/l	1500	n/a			
Dissolved or emulsified hydrocarbons	ug/l	50	200			
Surfactants	mg/l	0.2	0.2			
Dissolved Iron	ug/l	300	2000			
Total Copper	ug/l	50	n/a			
Total Zinc	ug/l	3000	5000			
Total Arsenic	ug/l	50	50			
Total Cadmium	ug/l	5	5			
Total Chromium	ug/l	50	50			
Total Lead	ug/l	50	50			
Total Selenium	ug/l	10	10			
Total Mercury	ug/l	1	1			
Total Barium	ug/l	100	1000			
Total PAHs (see note1)	ug/l	0.2	0.2			
Total Pesticides (see note 2)	ug/l	1	2.5			
Total Phenols (see note 3)	ug/l	1	5			

Note 1. Total PAHs is the sum of; Benzo (a) pyrene, Benzo (b) fluoranthene, Benzo (ghi) perylene, Benzo (k) fluoranthene, Fluoranthene and Indeno (1,2,3 cd) pyrene.

Note 2. Total Pesticides is the sum of; Parathion, g-HCH and Dieldrin.

Note 3. Total Phenols is the sum of; 2 methyl phenol, 3 methyl phenol, 2 chloro phenol, 2,5 dichlorophenol, 2,4,6 trichlorophenol and 2,5 dimethyl phenol.



**Table 2: Surface Water Abstraction Directive Summary of Guideline Standards for Classes A1 and A2.**

Parameter	Guideline standards			Raw Water		
	Unit	A1	A2	Min	Max	Mean
pH	-	6.5 - 8.5	5.5 - 9.0			
Colouration (@ 400 nm)	Hazen	10	50			
Suspended solids	mg/l	25	n/a			
Temperature	mg/l	22	22			
Conductivity	us/cm	1000	1000			
Odour	Diltns	3	10			
Nitrate	mg/l	25	n/a			
Ammonia	mg/l	0.05	1			
Sulphates	mg/l	150	150			
Chloride	mg/l	200	200			
Flourides	ug/l	700 - 1000	700 - 1700			
Phosphates	mg/l	0.4	0.7			
Dissolved Oxygen	%Satn	>70	>50			
Biochemical Oxygen Demand	mg/l	<3	<5			
Kjeldahl Nitrogen	mg/l	1	2			
Chloroform extractables	mg/l	0.1	0.2			
Dissolved Iron	ug/l	100	1000			
Total Manganese	ug/l	50	100			
Total Copper	ug/l	20	50			
Total Zinc	ug/l	500	1000			
Total Boron	ug/l	1000	1000			

Total Arsenic	ug/l	10	n/a			
Total Cadmium	ug/l	1	1			
Total Mercury	ug/l	0.5	0.5			
Total Phenols (see note 4)	ug/l	n/a	1			
Total coliforms	No/100 ml	50	5000			
Faecal coliforms	No/100 ml	20	2000			
Faecal streptococci	No/100 ml	20	1000			
Salmonella	-	0 in 5l	0 in 1l			

Note 4. Total Phenols is the sum of; 2 methyl phenol, 3 methyl phenol, 2 chloro phenol, 2, 5 dichlorophenol, 2,4,6 trichlorophenol and 2,5 dimethyl phenol.

**Description of existing or proposed treatment processes and other relevant Facilities intended by the Licensee to be used in connection with the proposed access. Describe also how these will be used by the Licensee.**

Provide details of the treatment processes and practices currently applied (or proposed if the works is yet to be commissioned). The objective of this is to demonstrate that the works will provide water that meets all Regulatory requirements and will be compatible with the water in NWL's water supply system. Include details of all other Licensee Facilities, for example storage, pumping, pressure management and standby arrangements.

Data provided to include:

- Results and methodology for assessments of raw water e.g. cryptosporidium, plumbosolvency and radioactivity risk assessments
- Processes (type of treatment, process modelling)
- Details of process monitoring and control procedures
- If available, results from the above monitoring for one year
- Procedures (quality assurance, maintenance, security, emergencies and back-up)
- Plant (manufacture, type) and standby provision
- Chemicals (grade, supplier)
- Environmental obligations
- Fluoridation (if applicable)

**Treated water quality**

At the outline appraisal stage a summary of treated water quality would normally have been provided. If not, this must be provided now together with the raw data associated with this summary. The data summary should also be updated to reflect any sampling undertaken since that time.

Please provide all the individual raw data from all monitoring of the treated water during the previous twelve months. This should include all the parameters listed below. Location and date should be recorded.

(For further information on the parameters, measurement and analysis please refer to the Water Supply (Water Quality) Regulations 2000 (and all amendments).)

Parameters: To comply with the above regulations

Where the treatment works has yet to be commissioned, the Licensee shall provide all available data to demonstrate that the works is capable of producing acceptable water quality. For example, raw water quality data and cryptosporidium risk assessments as described in The Water Supply Regulations, bench scale tests, pilot scale tests, operating procedures, Emergency procedures, target values for water quality at intermediate treatment stages, works exit and the Point of Entry.

**Water quality at the Point of Entry**

Please provide raw sampling data (or estimates /forecasts) where any of the concentrations or values of parameters listed above will differ at the Point of Entry from the water quality at the treatment works.

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<b>Laboratories used</b>	Please list laboratories used for analysis. For each laboratory provide the address and state which parameters were analysed.
<b>Other</b>	Information on any specific requirements at the Point(s) of Exit
Any other relevant information	

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**PRO FORMA APPLICATION  
(RAW WATER INTO NWL'S TEESIDE INDUSTRIAL RAW WATER  
SUPPLY SYSTEM)**

<b>Data to be provided</b>	Please provide detailed information about your proposal including, but not limited to, the information listed below. Full data to evaluate the Licensee's proposal is essential at this stage.
<b>Format of data</b>	All data are to be provided in one loose-leaf paper copy and, where appropriate, in electronic format.
<b>Quality Control</b>	Please provide sufficient supporting documentation to enable NWL to determine the accuracy of estimations. Laboratories must be UKAS DWTS (Drinking Water Testing Specification) accredited or subject to DWI inspection.
<b>Missing data</b>	Please explain reasons for any data deficiencies (e.g. borehole not yet commissioned) and provide estimates / forecasts where measurements are not available. Clearly mark which data are measured and which data are estimated / forecast.
<b>Contractual / legal</b>	Details will be required on the proposed duration of the Access Agreement between the Licensee and NWL. The Access Agreement will address requirements for Indemnities, Liabilities, bonds and guarantees.

**Details of  
Proposals**

Please describe in detail the nature of your proposal including the Points of Entry and Exit proposed.



Licensee	Name of Licensee: Address:  Telephone no: Fax no: Email address: Company registration no: Contact name: Contact telephone:
Details of Licensee's customer	Name of Licensee's customer(s): Address:  (please enclose signed consents from each customer – see 2.3.1(ii) of the Access Code) <hr/> Location of Licensee customer's' premises, including Ordnance Survey Map Co-ordinates (10 figure):  Is the proposed customer currently connected to the NWL drinking water system?  Does NWL currently supply drinking water to the proposed customer?  Is the proposed customer currently connected to the NWL Teesside Industrial Raw water system?  Does NWL currently supply raw water to the proposed customer?
Point of Entry	Location of the proposed Point of Entry for the Licensee's water into NWL's supply system, including Ordnance Survey Map Co-ordinates (10 figure):
Point of Exit	Location of the proposed Point(s) of Exit from NWL's supply system, including Ordnance Survey Map Co-ordinates (10 figure):

<b>Copies of documentation</b>	<b>Environment Agency abstraction licence</b> Copy previously provided with initial application Yes / No Copy attached Yes / No (if not available at this stage please detail progress with obtaining licence)
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	<b>Combined Licence to Supply Water</b> Copy previously provided with initial application Yes / No Copy attached Yes / No (if not available at this stage please detail progress with obtaining licence)
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<b>List any other documents provided.</b>
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<b>Water Resources</b>	<p>Provide data to demonstrate that the proposed water resource is sufficient and sustainable meeting the forecast demand of customers over the duration of the Access Agreement and for all likely planning scenarios.</p> <p>When calculating predictions please use methodologies consistent with those contained in "Water Resources Planning Guidelines", Environment Agency 2003 v3.3 and reports referenced therein and "Reassessment of Water Company Yields", Environment Agency 1997.</p> <p>This should also include information on</p> <ul style="list-style-type: none"><li>a) security of supply in the form of a risk assessment to cover likely frequency and duration of outage of supply for maintenance, power failure, source failure, source pollution or other reason.</li><li>b) the margin of output over demand calculated over a yearly basis as forecast of the margin of deployable output over peak week demand of customers.</li></ul>

<b>Hydraulics</b>	<b>Data required on quantity at Point(s) of Entry</b>			
	Please complete the inflow table below to provide an indication of the variation in flow at the Point of Entry. This information should be provided for each year of the Access Agreement. Please also provide a normal daily flow profile of hourly flow at the Point of Entry.			
	<b>Proposed inflow at the Point of Entry</b>			
		<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>
	<i>Annual (MLD)</i>			
	<i>Monthly (MLD)</i>			
<i>Weekly (MLD)</i>				
<i>Daily (MLD)</i>				
<i>Flow rate (l/s)</i>				

	<b>Data required on pressure</b>	
	Tabulate (below) how pressure will vary with flow at the Point of Entry where the supply is directly into NWL's pipework. This is not required when the supply is directly into an NWL service reservoir. Where flows and pressures are likely to change over the duration of the Access Agreement (e.g. when Licensee's customer changes demand requirements) the tabulated information should include the data associated with these changes. As a minimum this table should specify gauge pressures at the minimum, mean and maximum flow rates given in the table above.	
	<b>Flow (l/s)</b>	<b>Gauge Pressure (metres)</b>

	<b>Data required for Point(s) of Exit</b>		
	Please complete the table below to demonstrate the variation in the quantity to be delivered to the Point of Exit. This information should be provided for each year of the Access Agreement. A separate table should be completed for each Point of Exit. Please also provide a normal daily flow profile of hourly flow at each Point of Exit.		
	<b>Forecast demand at Point of Exit</b>		
	<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>
<i>Annual (MLD)</i>			
<i>Monthly (MLD)</i>			
<i>Weekly (MLD)</i>			
<i>Daily (MLD)</i>			
<i>Flow rate (l/s)</i>			

**Water Quality**

**Raw water quality**

At the outline appraisal stage a summary of raw water quality would normally have been provided. If not, this must be provided now together with the raw data associated with this summary. The data summary should also be updated to reflect any sampling undertaken since that time.

Please provide all the individual raw data from all monitoring of the raw water during the previous twelve months. This should include all the parameters listed below. Location and date should be recorded.

(For further information on the parameters, measurement and analysis please refer to the Water Supply (Water Quality) Regulations 2000 (and all amendments) and the Surface Water Abstraction Directive (75/440/EEC).)

Parameters: see Tables 1 and 2 (Environment Agency SWAD tables)

**Table 1: Surface Water Abstraction Directive  
Summary of Imperative Standards for Classes A1 and A2.**

Parameter	Unit	Imperative Value		Raw Water		
		A1	A2	Min	Max	Mean
Colouration @ 400 nm	Hazen	20	100			
Temperature	mg/l	25	25			
Nitrate	mg/l	50	50			
Ammonia	mg/l	n/a	1.5			
Sulphates	mg/l	250	250			
Cyanide	ug/l	50	50			
Flourides	ug/l	1500	n/a			
Dissolved or emulsified hydrocarbons	ug/l	50	200			
Surfactants	mg/l	0.2	0.2			
Dissolved Iron	ug/l	300	2000			
Total Copper	ug/l	50	n/a			
Total Zinc	ug/l	3000	5000			
Total Arsenic	ug/l	50	50			
Total Cadmium	ug/l	5	5			
Total Chromium	ug/l	50	50			
Total Lead	ug/l	50	50			
Total Selenium	ug/l	10	10			
Total Mercury	ug/l	1	1			
Total Barium	ug/l	100	1000			
Total PAHs (see note1)	ug/l	0.2	0.2			
Total Pesticides (see note 2)	ug/l	1	2.5			
Total Phenols (see note 3)	ug/l	1	5			

Note 1. Total PAHs is the sum of; Benzo (a) pyrene, Benzo (b) fluoranthene, Benzo (ghi) perylene, Benzo (k) fluoranthene, Fluoranthene and Indeno (1,2,3 cd) pyrene.

Note 2. Total Pesticides is the sum of; Parathion, g-HCH and Dieldrin.

Note 3. Total Phenols is the sum of; 2 methyl phenol, 3 methyl phenol, 2 chloro phenol, 2,5 dichlorophenol, 2,4,6 trichlorophenol and 2,5 dimethyl phenol.



**Table 2: Surface Water Abstraction Directive Summary of Guideline Standards for Classes A1 and A2.**

Parameter	Guideline standards			Raw Water		
	Unit	A1	A2	Min	Max	Mean
pH	-	6.5 - 8.5	5.5 - 9.0			
Colouration (@ 400 nm)	Hazen	10	50			
Suspended solids	mg/l	25	n/a			
Temperature	mg/l	22	22			
Conductivity	us/cm	1000	1000			
Odour	Diltns	3	10			
Nitrate	mg/l	25	n/a			
Ammonia	mg/l	0.05	1			
Sulphates	mg/l	150	150			
Chloride	mg/l	200	200			
Flourides	ug/l	700 - 1000	700 - 1700			
Phosphates	mg/l	0.4	0.7			
Dissolved Oxygen	%Satn	>70	>50			
Biochemical Oxygen Demand	mg/l	<3	<5			
Kjeldahl Nitrogen	mg/l	1	2			
Chloroform extractables	mg/l	0.1	0.2			
Dissolved Iron	ug/l	100	1000			
Total Manganese	ug/l	50	100			
Total Copper	ug/l	20	50			
Total Zinc	ug/l	500	1000			
Total Boron	ug/l	1000	1000			

Total Arsenic	ug/l	10	n/a			
Total Cadmium	ug/l	1	1			
Total Mercury	ug/l	0.5	0.5			
Total Phenols (see note 4)	ug/l	n/a	1			
Total coliforms	No/100 ml	50	5000			
Faecal coliforms	No/100 ml	20	2000			
Faecal streptococci	No/100 ml	20	1000			
Salmonella	-	0 in 5l	0 in 1l			

Note 4. Total Phenols is the sum of; 2 methyl phenol, 3 methyl phenol, 2 chloro phenol, 2, 5 dichlorophenol, 2,4,6 trichlorophenol and 2,5 dimethyl phenol.

**Description of existing or proposed treatment processes and other relevant Facilities intended by the Licensee to be used in connection with the proposed access. Describe also how the Licensee will use these.**

e.g. Primary screening of raw water

**Any information on the treatability of the raw water**

e.g.

Results and methodology for assessments of raw water e.g. cryptosporidium risk assessments

Data from bench or pilot scale tests.

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<b>Laboratories used</b>	Please list laboratories used for analysis. For each laboratory provide the address and state which parameters were analysed.
<b>Other</b>	Information on any specific requirements at the Point(s) of Exit
Any other relevant information	

## **PART 4**

# **ACCESS PRICING**

## 10 ACCESS PRICING

### 10.1 INDICATIVE ACCESS PRICES

Ofwat's [Access codes guidance](#) requires that water companies publish indicative access prices for at least four standard volume levels (5, 25, 50 and 500 Ml/year), both for wholesale and combined supplies. These prices are required for 5 years, starting with the current year, and must also show the difference in charges where the licensee chooses to pay in advance, rather than in arrears.

In the case of combined supplies, indicative access prices are additionally required to be published for each water resource zone (WRZ), along with the water supply surplus or deficit information in each WRZ. The latter information will help licensees identify where their input of water to an undertaker's supply system might be most valuable, for example, by allowing the benefit of any deferral of investment in new capacity by the undertaker to be reflected in the access price. Since the timing of a licensee's input of water can have an impact on the access price (for example, deferral of investment may be dependent on that input commencing before a certain date), water companies are required to publish separate access prices for access commencing in each of the next 5 years, commencing with the current year

Water companies are also required to explain the assumptions underlying their calculation of indicative access prices.

### 10.2 CASE-SPECIFIC ACCESS PRICES

These will be prepared in accordance with Ofwat's [Access codes guidance](#) in response to individual, case-specific applications.

For wholesale supplies, case-specific prices will generally be closely aligned to our published indicative access prices, after allowing for any difference between the required annual volume and those standard annual volumes for which indicative prices have been published. Where this is not the case, an explanation of any significant variation will be provided to the Licensee.

In the case of combined supplies, it may be expected that there will be a wide variation in relevant factors between specific cases and these are likely to result in significant variations in actual access prices from the indicative prices published in this Access Code, which are based on standard assumptions.

### 10.3 INDICATIVE WHOLESALE SUPPLY ACCESS PRICES

#### 10.3.1 Calculation methodology

Our starting point for calculating the discount against our published retail charges for wholesale supplies made under the Water Supply Licensing regime is the retail services cost analysis in our most recent Regulatory Accounts. For this version of our Access code, the data used relates to the 2015-16 regulatory year. We have uplifted the figures to 2016-17 price levels for the purpose of calculating the wholesale discounts against our published retail charges for this year.

While the Regulatory Accounts analyses costs separately for household and non-household customers, it does not distinguish between water and sewerage services. Although in a few cases (e.g. trade effluent compliance), costs are specific to one service or the other, for the majority of retail costs we have made what we believe are reasonable allocations between water and sewerage.

We also include an allowance for the cost of credit – i.e. the implied cost of the delay between issuing a bill to a customer and receipt of payment. Because this is not an explicit cost, it is not included in the Regulatory Accounts. However, its inclusion results in a small increase in available wholesale discounts, due to the reduction in the amount outstanding on a lower wholesale bill as compared to the original retail bill. The cost of credit is also relevant to calculating the additional discount available where licensees pay in advance, which Ofwat's revised [Access codes guidance](#) now requires that water companies publish.

We have assumed that all direct costs are potentially avoidable, net of expenses incurred in dealing with the licensee, and also that general and support expenditure (overheads) will reduce proportionately.

We allocate retail costs to customer groups (households and non-households within ranges of consumption) on the basis of their main drivers. For instance, the cost of billing is spread on the basis of the number of bills issued, while the cost of queries and complaints is spread on the basis of number of properties. Some costs, for example account management, are attributable only to subsets of customers, in this example, to those consuming over 50 Ml/year.

### 10.3.2 Assumed payment period

The Common Contract in Ofwat's Access codes guidance provides that the licensee may determine the billing period, provided it is not more than one month, and the date on which it wishes to receive invoices. Although the guidance requires meter readings to be provided by the licensee within 5 working days of the end of the billing period, it does not appear to place any restriction on the length of time between the end of the billing period and the date of invoicing, both of which are of the licensee's choosing. However, upon receipt of the invoice, the guidance requires payment to be made by the licensee within 14 days.

Since the length of time between the end of the billing period and the receipt by the licensee of the water undertaker's invoice is unspecified in the guidance and is at the option of the licensee, this leaves the overall period between the end of the billing period and the receipt of payment by the water undertaker undetermined. However, an assumption needs to be made in this regard in order to calculate the cost of credit, which is a component of the access price.

We think it likely that customers will wish to pay the licensee within a similar timeframe to that which they have become accustomed and, further, that in order to avoid possible cash flow problems, licensees are likely to wish to pay NWL's wholesale charges within a similar period. For comparability with our existing arrangements with customers, in terms of the typical length of time between the end of the billing period and receipt of payment, we have therefore assumed that licensees choose to receive invoices 14 days after supplying meter readings to NWL for the relevant period and will then pay NWL within the following 14 day period specified in Ofwat's guidance. Our indicative access prices reflect this assumption.

For case-specific applications, NWL will make allowance in its quoted access prices for any alternative periods that licensees specify.

### 10.3.3 Payment in advance

Ofwat's guidance now requires water undertakers to make provision in their indicative access prices for licensee's wishing to pay at least 5 working days in advance of the commencement of each billing period.

Because the cash flow benefit of each £1 received earlier rather than later is the same, we have calculated the additional discount where licensees wish to pay in advance as a percentage reduction, which will apply to all indicative access prices, regardless of volume or of whether the arrangement is a wholesale or combined supply. This avoids the need to produce two completely different sets of tables, which might lead to confusion.

As noted in 10.3.2 above, our indicative access prices assume licensees elect to receive their invoices 14 days after supplying meter readings to NWL and then pay NWL 14 days later, as per Ofwat's guidance. On this basis, where licensees alternatively elected to pay NWL 5 working days in advance of the commencement of the billing period, this would typically represent payment 70 days earlier than would otherwise have been the case.

Ofwat's guidance does not specify the discount rate to be used for calculating payments in advance. We propose to use an annual equivalent rate of Bank Rate plus 2%. Bank Rate at the time of publishing this Access Code was 0.5% p.a., giving a total advance payment discount rate of 2.5% p.a., equating to 0.3% for 70 days.

Until such time as Bank Rate changes, therefore, our indicative prices for wholesale and combined supplies will be reduced by 0.3% where payment is made no later than 5 working days before the commencement of the billing period.

### 10.3.4 Indicative wholesale prices for 5 megalitres per year

The Common Contract in Ofwat's Access codes guidance requires licensees to pay for wholesale supplies on a monthly basis. However, NWL's customers at the 5 MI/year level of consumption are typically billed and pay on a quarterly basis.

Were we to calculate indicative access prices on the basis of moving from quarterly billing of the customer to monthly billing of the licensee, this increased frequency would give rise to additional costs (of billing, payment handling and queries) that would substantially reduce the available discount. The prospect of moving to more frequent billing when supplied by the licensee might also deter some customers.

In view of the above, we have calculated the indicative wholesale prices at this consumption level on the basis of maintaining the same billing frequency when a site switches its supply to a licensee. It should be noted that where licensees elect to be billed and to pay at the same frequency that NWL previously billed the customer, where this is other than monthly, this will require a variation to the common contract to that effect.

### 10.3.5 Indicative wholesale prices 2016-17 to 2020-21

Appendix A-4.1 to this chapter contains tables of indicative wholesale prices for each of our three operating areas, Essex, Suffolk and North East, covering the five years

2016-17 to 2020-21, inclusive. As required by Ofwat's Access codes guidance, the tables show wholesale prices (in pence per cubic metre) and the discounts that these represent to our published retail charges for four sample volume levels: 5, 25, 50 and 500 Ml/year.

The retail prices shown in the tables for 2016-17 are based on our actual tariffs in the current year for the volumes concerned. Prices for the following four years, 2017-18 to 2020-21, were determined by Ofwat as part of the price review in 2014.

Figures for all years are shown in the tables at 2016-17 price levels, i.e. before allowance for inflation (RPI).

Ofwat's guidance requires the publication also of indicative wholesale discounts where the same licensee takes over the supply to a second site within the water undertaker's area. Because we assume that all costs are divisible and potentially avoidable (see 10.3.1 above), no additional discount is available for second (or subsequent) sites transferring to the same licensee.

## 10.4 INDICATIVE COMBINED SUPPLY ACCESS PRICES

### 10.4.1 Supply/demand balance in each water resource zone (WRZ)

The supply/demand balance forecasts for each of our 6 WRZs for each year from 2014-15 to 2034-35, inclusive, are shown in Tables A-4.2.1 (Essex & Suffolk, 4 WRZs) and A-4.2.2 (North East, 2 WRZs) of Appendix A-4.2 to this Part 4 of our Access Code. The forecasts are shown both before and after the implementation of our water resources strategy and are taken from the final 2010 Water Resources Management Plans for the Essex & Suffolk and North East regions.

A brief summary of the position in each WRZ follows.

#### i) Essex WRZ

With the delivered extension of the Abberton reservoir in 2014-15, the WRZ maintains a surplus throughout on under both the baseline and plan forecasts.

#### ii) Suffolk, Blyth WRZ

Blyth WRZ maintains a surplus throughout on under both the baseline and plan forecasts.

#### iii) Suffolk, Hartismere WRZ

Under the baseline scenario, Hartismere remains in surplus until 2028-29 from when small but increasing deficits would have arisen. However, under the final planning scenario, these are effectively removed by the cumulative impact of projects undertaken to meet Ofwat's water efficiency targets.

#### iv) Suffolk, Northern/Central WRZ

Under the baseline scenario, the Northern/Central WRZ is in surplus until 2019-20, when it experiences a deficit, returning to a surplus position for the following two years before entering a period of sustained and increasing deficits from 2022-23. However, under the planning scenario, the requirement to meet Ofwat's water efficiency targets effectively delays the onset of these deficits for a further 5 years.



It will, however, be necessary to develop a new resource (currently proposed to be the North Lowestoft Groundwater scheme) in the mid 2020's to ensure that an appropriate supply/demand balance is maintained for the remainder of the planning period (i.e. until 2034/35).

**v) North East, Kielder WRZ**

As can be seen from Table A-4.2.2, the Kielder WRZ is forecast to be comfortably in surplus throughout the period. No investment in new capacity is required.

**vi) North East, Berwick WRZ**

Similarly, Berwick is in surplus throughout and no capacity-related investment is planned for this WRZ.

**10.4.2 Approach to calculating combined supply discounts**

From the above, it can be seen that there are no opportunities to defer capacity related investment within the next five years in any WRZ. As a result, we have calculated the additional discounts (i.e. over and above the discounts for wholesale supplies) for combined supplies on the basis of short-run operating costs only.

We have based our calculations of the additional discounts for combined supplies on the Regulatory Accounts costs of our Annual Return to Ofwat. As costs vary somewhat between our three Operating Areas, we have disaggregated the data from the company level reported in the Annual Return to an operating area level.

We calculate the avoidable costs for combined supply access, over and above those for wholesale supplies, in each area as the total operating costs, excluding those for third party services, as shown in Line 16 of the table under the water resources, raw water distribution and water treatment headings (i.e. all headings except treated water distribution). We convert these to a "per cubic metre" basis by dividing by water delivered in each of the three operating areas.

The avoidable costs so derived are added to our calculated discounts for wholesale supplies in each area. However, as the combined supply access price is lower than the wholesale supply charge, an additional allowance is made for the further savings in the costs of credit and provisions for bad debt.

## APPENDICES TO PART 4

### WHOLESALE SUPPLY PRICES

Wholesale charges are set out in our wholesale charges scheme.

These are set out on our website page:

<https://www.nwl.co.uk/business/Access-code.aspx>

### INDICATIVE COMBINED SUPPLY PRICES

These are set out on our website page:

<https://www.nwl.co.uk/business/Access-code.aspx>



# APPENDIX

## STANDARD CONFIDENTIALITY AGREEMENT

Note:

This document is suitable for both wholesale and combined supplies. A standalone version may be downloaded from our website:

<http://www.nwl.co.uk/bAccesscode.aspx>

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**THIS AGREEMENT** is made this [ ] day of [ ] 20[ ]  
BETWEEN **NORTHUMBRIAN WATER LIMITED** whose Registered Office is Boldon  
House, Wheatlands Way, Pity Me Durham DH1 5FA and [  
] whose Registered Office is [  
].

**WHEREAS** Northumbrian Water Limited and [Licensee] (“the Parties” and  
individually “a Party”) for their mutual benefit may have exchanged and wish further  
to exchange certain information of a confidential nature and wish to protect such  
information in the manner set out in this Agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1 Definitions**

- 1.1 For the purposes of this Agreement the following expressions shall have the following meanings:
- (a) **“Authorised Representative”** shall mean any employee, director, officer or professional and financial advisor of the receiving Party;
  - (b) **“Confidential Information”** shall mean any and all confidential, commercial, financial, marketing, technical, or other information or data of whatever nature relating to the disclosing Party or to the disclosing Party’s business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programmes, specifications, know-how, trade secrets, either Party’s or any associated company’s organisational structure, contractual arrangements or agreements, technical documentation, finances, properties, costs, methods of doing business, personnel, legal affairs, plans, customers, products or processes, and other information concerning the Project, information regarding Northumbrian Water Limited’s actual or proposed network access code or any charges for any network access or, in the case of [ the Licensee], information relating to its actual or proposed customers and borehole locations, whether or not identified as confidential) in any form or medium whether disclosed in writing, orally or by any other means to one Party by the disclosing Party or by a third party on behalf of the disclosing Party whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information);

- (c) **“Project”** shall mean any discussions and negotiations between or within the Parties concerning or in connection with the proposal set out in the Schedule attached hereto.

## **2 Confidentiality Obligations**

2.1 Subject to clause 2.2 in consideration of the mutual exchange and disclosure of Confidential Information each Party undertakes in relation to the Confidential Information disclosed to it by the other Party either

2.1.1 for seven years from the date of this Agreement, or

2.1.2 until such time as the Parties agree that this Agreement shall be superseded by other confidentiality obligations contained in a separate written agreement terminating this Agreement :

- (a) to treat all and any of such Confidential Information as confidential and secret and not use any of such Confidential Information for any purpose other than the purpose of evaluating such Confidential Information in connection with the Project;
- (b) to take all reasonable steps to protect the confidentiality of such Confidential Information and to prevent disclosure of same to unauthorised persons;
- (c) not to disclose any of such Confidential Information in whole or in part to any third party without the prior written consent of the other Party save to its Authorised Representatives who need to know the same for the purpose of evaluating such Confidential Information in connection with the Project;
- (d) to take all reasonable steps to ensure that each Authorised Representative to whom it discloses such Confidential Information is made aware of the provisions of this Agreement and observes the obligations contained therein.

2.2 In the event of one Party visiting any of the establishments of the other Party, the visiting Party undertakes as follows. Any further information relating to the Project which may come to its knowledge as a result of any such visit, inclusive of the form, materials and design of the various elements of any relevant plant and equipment which may be seen at such establishments as well as the plant as a whole, the methods of operation thereof and the various applications thereof, shall be considered to be Confidential Information for the purposes of this Agreement.

- 2.3 The obligations of confidentiality and the prohibitions against use undertaken in this Agreement by the receiving Party shall not apply to any Confidential Information which:
- (a) is or subsequently comes into the public domain otherwise than as a result of any breach of this Agreement by the receiving Party or any of its Authorised Representatives;
  - (b) is already known to the receiving Party prior to disclosure which prior knowledge the receiving Party can clearly demonstrate with written material;
  - (c) becomes known to the receiving Party by disclosure from a third party who has a lawful right to receive and disclose the Confidential Information;
  - (d) is required to be disclosed by law or by any regulatory authority provided that the receiving Party informs the disclosing Party in advance of the circumstances of the disclosure and exactly what is to be disclosed and uses all reasonable endeavours to obtain confidentiality undertakings from the recipients in respect of the Confidential Information disclosed; or
  - (e) the disclosing Party agrees in writing may be disclosed.

### **3 Intellectual Property**

- 3.1 Nothing in this Agreement shall be construed to grant either Party any right or licence any patent, know-how, trademark, copyright or other intellectual property right of the other Party.

### **4 Return of Information**

- 4.1 Each Party shall within one week of a request from the other Party in writing give to the other Party or (at the other Party's discretion) itself destroy all the Confidential Information of the other Party and all copies thereof in its possession, custody or control including for the avoidance of doubt Confidential information contained within computers, word processors or other devices (including computer discs or other information storage equipment).
- 4.2 The return of Confidential Information shall not release either Party from its other obligations under this Agreement.

## **5 No Representation, Warranty or Licence**

- 5.1 No representation or warranty is made or given by either Party to the other as to the accuracy or completeness of the Confidential Information disclosed by it to the other or as the reasonableness of any assumptions on which the same is based and each of the Parties agrees that neither the disclosing Party nor its Authorised Representatives shall have any liability to it (or its Authorised Representatives) resulting from the use of such Confidential Information save as expressly agreed in writing.
- 5.2 This Agreement only governs the rights and obligations of the Parties with respect to the Information disclosed and does not purport to be a licence to use such Information for any purpose except for the Project. Should the Parties enter into any licence or other similar agreements in the future such agreements shall supersede this Agreement and shall contain similar provisions for the protection of the Parties' Information.

## **6 Reference to the Parties**

- 6.1 Save as required by law or any regulatory body, neither of the Parties shall make any announcement, public statements or press releases of any kind in relation to the Confidential Information disclosed to it by the other of the Project nor shall they mention the name of the other Party in connection with the Project or disclose the existence of the Project or the existence of this Agreement without the prior written consent of the other Party.

## **7 No Contract**

- 7.1 No documents or information made available to the one Party or its Authorised Representatives by the other will constitute an offer or invitation or form the basis of any contract.



## **8 Notices**

- 8.1 All notices under this Agreement shall be in writing, sent by facsimile or first class registered or recorded delivery post to the Party being served to its facsimile number mentioned below or at its address specified above or at such other facsimile number or address of which such Party shall have given notice as aforesaid, and marked for the attention of the person holding the position of that Party's signatory to this Agreement. The date of service shall be deemed to be the next business day following the day on which the notice was posted or immediately upon receipt of the fax confirmation if sent by facsimile.

## **9 Consequences of Breach**

- 9.1 In consideration of either Party disclosing the Information to the other the receiving Party further agrees to indemnify the disclosing Party against any breach of its obligations under any clause of this Agreement.
- 9.2 Each Party recognises that in addition to all other remedies that the disclosing Party may be entitled to as a matter of law the disclosing Party shall be entitled to seek specific performance and any other form of equitable relief to enforce this Agreement. The receiving Party acknowledges that damages may be insufficient remedy for any breach of this Agreement.
- 9.3 No proof of special damages shall be necessary for the enforcement of this Agreement.

## **10 No Waiver**

- 10.1 No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any right, power or privilege hereunder or otherwise.

## **11 Variation**

- 1.1 No variation or amendment to this Agreement shall be effective unless in writing and signed by authorised signatories for the Parties.

**12 Non-assignment**

12.1 This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part by either Party without prior written consent of the other Party.

**13 Entire Agreement**

13.1 This Agreement sets out the entire agreement between the Parties in respect of the Confidential Information disclosed by either Party to the other and supersedes all previous understandings and undertakings in such respect whether oral or in writing, and no representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as set out in this Agreement.

**14 Costs**

14.1 Each Party shall bear its own legal and other costs incurred in relation to the preparation and completion of this Agreement.

**15 Severance**

15.1 Each provision of this Agreement is severable and distinct from the others. The Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law it shall to that extent be deemed not to form part of this Agreement but it and all the other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not therefore be affected or impaired.

16 **Governing Law**

16.1 The construction, validity and performance of this Agreement shall be governed at all times by English Law and the English Courts shall have non exclusive jurisdiction in respect thereof.

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

**SIGNED** on behalf of Northumbrian Water Limited

(Signature)

(Position)

(Date)

**SIGNED** on behalf of [ ]

(Signature)

(Position)

(Date)

## **The Schedule**

[Define the Project]