

Template of Agreement between Scottish Water and Utility Connection Provider

A signed agreement between Scottish Water and the Utility Connection Provider and is part of the accreditation process. Work cannot be undertaken under the scheme without this being in place.

THIS AGREEMENT is made between:

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

[full company name] (company registered number ●) whose registered office is at ● (the **Company**)

WHEREAS:

- A. SW is a public water supplier in Scotland.
- B. SW is a party to Wholesale Services Agreements with certain Licensed Providers, in terms of which those Licensed Providers are entitled to provide specified water metering services and water connection services in respect of their customers' eligible properties.
- C. In providing those services, such a Licensed Provider must (if not itself appropriately Accredited) engage a utility connection provider (also known as a "UCP") which is suitably Accredited to carry out the necessary work activities.
- D. The Company is, or is seeking to become, an Accredited Entity, and intends to undertake UCP Works.
- E. It is a requirement of SW and WIRS that each Accredited Entity enters into an agreement with SW before commencing any UCP Works.

NOW IT IS AGREED as follows:

1. Definitions

- 1.1 For the purposes of this agreement (including the recitals), the following terms have the meanings specified:

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

Accredited means independently evaluated and accredited by Lloyds Register (or other authorising body) under WIRS as competent to carry out UCP Works or certain categories of UCP Works (whether or not also accredited in relation to other activities);

Accredited Entity means a company which is currently Accredited;

Codes means the Operational Code, the Disconnections Document and the Market Code (as defined in the Operational Code);

Commission means the Water Industry Commission for Scotland;

Connections Activity means activities relating to the making of a connection to the public water supply system in respect of eligible properties consistent with the scope of works set out in the WIRS Requirements Document, as it applies in Scotland;

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

Defect has the meaning specified in clause 4.2;

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

eligible property means (a) any premises which are eligible premises within the meaning of section 27 of the 2005 Act, and (b) any site on which a development comprising eligible premises (within the meaning of the said section 27) is being, or is going to be, carried out);

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

Licensed Provider means a water services provider, as defined in section 6(2) of the 2005 Act, which is entitled under its Wholesale Services Agreement to provide Water Metering Services and Water Connection Services (as defined in that Wholesale Services Agreement);

Metering Activity means activities undertaken by an Accredited Entity relating to SW revenue meters in respect of eligible properties consistent with the scope of works set out in the WIRS Requirements Document, as it applies in Scotland;

Meter Installation means UCP Works comprising the installation of a new water meter, other than an installation carried out as part of, or associated with, provision of a water connection to which Process 1B, 3B or 5B2 of the Operational Code applies;

Operational Code means the code designated as such by or under the Water Services (Codes and Services) Directions 2007, as in force from time to time;

public water supply system has the meaning specified in section 28 of the 2005 Act;

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

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

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

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

Wholesale Services Agreement means an agreement entered into pursuant to section 16 of the 2005 Act;

WIRS means the Water Industry Registration Scheme, or other accreditation scheme approved by SW, as amended from time to time;

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

1.2 In this agreement:

- (a) references to any legislation (including any delegated or subordinated legislation) are to that legislation as amended or re-enacted from time to time; and
- (b) the words "include" and "including" are to be construed without limitation to the generality of the preceding words.

2. **General standards for Company's work**

2.1 The Company agrees that if it is engaged as an Accredited Entity by a Licensed Provider to undertake UCP Works, it shall carry out and complete the relevant work (including the provision of information and data to the Licensed Provider):

- (a) in compliance with WIRS, including the WIRS Requirements Document;
- (b) in compliance with all published SW or national technical and procedural standards, specifications and codes of practice, as amended from time to time (**standards and guidance**), including:
 - (i) SW's Water Connections Code for Scotland (which outlines the requirements for Accredited Entities who are undertaking new water supply connections in Scotland);

- (ii) SW's Meter Code of Practice (which outlines the requirements for Accredited Entities who are undertaking metering service activities in relation to eligible properties in Scotland); and
 - (ii) SW's Distribution Operations Management Strategies (DOMS) (which sets out SW's operational requirements for managing the water network distribution system)[*please check title – it seems to vary; this version is taken from the Water Connections Code*];
- (c) in compliance with all applicable legal and regulatory requirements (including any requirement regarding the giving of notice or the obtaining of any consent or licence (other than obtaining permission from the customer of the Licensed Provider));
- (d) in a manner consistent with the requirements of the Operational Code and (where relevant) the Disconnections Document;
- (e) in a manner that:
 - (i) avoids danger, and minimises disturbance, to the public;
 - (ii) is not likely to be injurious to health, or to cause damage to property; and
 - (iii) does not adversely affect the existing public water supply system or the water therein;
- (f) in a manner consistent with SW discharging its statutory duties and its core functions (as defined in section 70(2) of the Water Industry (Scotland) Act 2002); and
- (g) in accordance with good industry practice.

2.2 The Company shall:

- (a) not undertake any UCP Works which fall within the parameters of a WIRS registration scope for which the Company is not Accredited;
- (b) inform SW as soon as reasonably practicable if, at any time, it becomes unable to perform its obligations under clause 2.1 in respect of any UCP Works which it is undertaking or due to undertake, including where such inability to perform is caused by the actions or instructions of the relevant Licensed Provider; and
- (c) notify SW of any damage to property caused by the carrying out of UCP Works by the Company (**Damage to Property**).

3. **Suspension of work**

SW may direct the Company to suspend UCP Works if:

- (a) the works are not being carried out in accordance with the requirements of clause 2.1 in any material respect, or are being carried out incorrectly as a result of incorrect instructions to the Company by a Licensed Provider;
- (b) there is an unplanned interruption to the supply of water through the public water supply system, and the continuation of the works is likely to delay or prevent the resumption of supplies; or
- (c) continuation of the work is likely to be injurious to health or the quality of a public drinking water supply, or likely to cause a failure of, or damage to, the public water supply system.

4. **Correcting damage and defects**

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

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

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

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

- (a) SW gives notice to the Company under clause 4.1 or 4.2 and the Company fails to comply with the notice within the period specified by SW under clause 4.3; or
- (b) SW considers it requisite or expedient that the Damage to Property or Defect be made good or corrected (as the case may be) as soon as possible,

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

4.5 SW shall not be entitled to give a notice to the Company under clause 4.1 or 4.2 after the expiry of the Remediation Period. If SW exercises its right under clause 4.4 to have Damage to Property or Defects made good without giving notice to the Company, the Company shall

not be liable under clause 4.4 to pay any costs which are incurred by SW after the expiry of the Remediation Period.

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

5. **Indemnity against third party claims**

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

- (a) any claim or action by any third party (including any Licensed Provider) against SW; and
- (b) liability of every kind for breach of any Act, regulation, Code, code of practice, byelaw or other requirement,

arising out of any failure by the Company to carry out UCP Works in accordance with the requirements of clause 2.1.

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

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

6. **Recovery of excess charges**

6.1 This clause 6 applies where:

- (a) the Company charges a Licensed Provider for carrying out UCP Works as contractor for the Licensed Provider;
- (b) the Licensed Provider recovers those charges from SW under the Wholesale Services Agreement between SW and the Licensed Provider; and
- (c) the extent of the UCP Works carried out, and charged for, by the Company is greater than the scope of UCP Works prescribed in the standards and guidance.

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

7. **Disputes**

- 7.1 All questions, disputes or differences which may arise at any time in relation to this Agreement (**Dispute**) shall be referred in the first instance to a director or senior manager of each party who will attempt in good faith to resolve any issue.
- 7.2 If the designated representatives have not settled the Dispute within ten days of their first attempt to resolve the matter, they shall consider whether, and if so how, the Dispute shall be referred to alternative dispute resolution.
- 7.3 If the parties do not agree upon reference to alternative dispute resolution within five days, they shall have no further obligation to follow the foregoing resolution procedure, and formal court proceedings may be commenced with regard to the Dispute.
- 7.4 This clause 7 shall not impose any pre-condition on either party or otherwise prevent or delay either party from commencing court proceedings in relation to any Dispute in which that party requires either (i) an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act, or (ii) a decree for a liquidated sum to which there is no stateable defence.

8. **General**

- 8.1 Except as set out in clause 3, WIRS or the standards and guidance, SW shall have no authority to give instructions to, or supervise, the Company or any employee, agent or sub-contractor of the Company in relation to the carrying out of UCP Works (but without prejudice to SW's statutory powers and discretions).
- 8.2 The Company acknowledges that if it is appointed by a Licensed Provider to undertake UCP Works, SW will not be the employer of the Company, and will not be the Client for the purposes of the Construction Design and Management Regulations 1994.
- 8.3 The Company must verify that any entity instructing it to carry out UCP Works as its contractor is a Licensed Provider. A list of Licensed Providers is available on www.scotlandontap.gov.uk or www.watercommission.co.uk, and a list of Licensed Providers is available from SW on request.
- 8.4 The Company may not bind SW in any way in its dealings with the Licensed Provider, the Licensed Provider's customer or client, or any other person, and will not hold itself out as acting as agent or contractor for SW.
- 8.5 In the event of any unsatisfactory UCP Works or any other non-compliance with this Agreement on the part of the Company, SW shall be entitled to notify the matter to administrators of WIRS.

- 8.6 The indemnity in clause 5 shall survive termination or expiry of this agreement.
- 8.7 The provisions of this Agreement are without prejudice to the rights and responsibilities of the accreditation body under WIRS in relation to assessing, auditing, monitoring and investigating Accredited Entities and UCP Works.
- 8.8 Any notice to be given under this agreement shall:
- (a) in the case of notice by SW, be deemed to be duly given if delivered by hand at, or sent by registered post or recorded delivery to, the above-mentioned address of the Company or to the principal business address of the Company for the time being; and
 - (b) in the case of notice by the Company, be deemed to be duly given if it is addressed to the Corporate Secretary and Head of Legal and delivered by hand at, or sent by registered post or recorded delivery to, the above-mentioned address of SW or to the principal business address of SW for the time being.

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

- 8.9 The construction, validity and performance of this agreement shall be governed by Scots law, and, subject to clause 7, the parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF, this agreement consisting of this and the preceding seven pages is executed as follows:

Subscribed on behalf of SCOTTISH WATER

by.....

one of its directors

(signature).....

at.....

on.....201[]

before this witness:

Signature:

Name:

Address:

.....

Subscribed on behalf of [*insert name of Company*]

by.....

one of its directors

(signature).....

at

on.....201[]

before this witness:

Signature:

Name:

Address:

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