



SCHEME OF TERMS AND CONDITIONS

1. INTRODUCTION

- 1.1 This Deemed Contract sets out the terms and conditions that will apply if we supply and you receive the Services to the Site when you have not entered into a formal agreement with us.
- 1.2 You understand and agree that this Deemed contract is legally binding and you must comply with the obligations and responsibilities placed on you by this Deemed Contract. If you do not, we may take legal action against you.
- 1.3 This Deemed Contract should be read in conjunction with the relevant provisions of the Act, the Exit Regulations and the Retail Exit Code and is subject to revision from time to time in accordance with such provisions and/or the Relevant Law.

2. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

2.1 Definitions:

Act: the Water Industry Act 1991

Authority: Water Services Regulation Authority (Ofwat).

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

BW: Bristol Water plc incorporated and registered in England with company number 02662226 whose registered address is Bridgwater Road, Bristol, BS13 7AT.

BW Charges Scheme: the Charges Scheme produced by BW pursuant to the Act (if applicable to you).

Charges Scheme: either the BW Charges Scheme or the WWSL Charges Scheme whichever is applicable to you in connection with the Site.

Customer / You / Your: the person (or people) or business receiving or wanting to receive the Services from us.

Deemed Contract: these deemed contract terms and conditions and the Charges Scheme, together the agreement entered into between you and us.

Due Date: the payment date specified on your invoice.

Eligible Premises: premises other than household premises as more particularly defined in the Wholesale Retail Code.

Eligible Exit Area Customers: the owner or occupier of Eligible Premises in the Exit Area.

Equipment: any equipment which is connected to the network and used to provide or access the Services.

Exit Area: the area of appointment of the Relevant Undertaker that has exited the retail market in accordance with the Exit Regulations.

Exit Date: 1 April 2017

Exit Regulations: The Water and Sewerage Undertakers (Exit from Non-Household Retail Market) Market Regulations 2016.

Good Industry Practice: using the degree of skill, care and diligence and using such standards, methods and practices reasonably and/or ordinarily exercised or used by experienced and competent organisations engaged in similar activities under similar circumstances and conditions.

Initial Period: the period from and including 1 April 2017 to and including 31 March 2020.

LE: an Eligible Exit Area Customer not being a Transferred Customers or a SME.

Licence: a water supply licence or a sewerage licence.

Licensee: the holder of a Licence.

Permitted Adjustment: the sum of:

- (a) the change in the Wholesale Charges payable by us; and
- (b) any change in charges that the Relevant Undertaker for the Exit Area in which your Site is located would have been entitled or required to make pursuant to the Authority's determination of Price Controls for Business Retail Activities (made under the Relevant Undertaker's appointment) that was notified to the Relevant Undertaker on 15 December 2016 (save that, for the purposes of calculating the Permitted Adjustment, references to "wholesale revenue" in that determination shall be read as references to the Wholesale Charges payable by us).

Privacy Policy: our privacy policy published on our website, http://water2business.co.uk/Privacy_policy in accordance with the relevant data protection legislation as amended from time to time.

Relevant Law: any statute, regulation, bylaw, ordinance or subordinate legislation which is in force for the time being or which may be introduced from time to time to which you or us are subject.

Relevant Undertaker: WWSL or BW as the case may be.

Retail Exit Code: the code issued by the Authority pursuant to Regulation 30 of the Exit

Regulations including such updates, revisions, additions, amendments and modifications from time to time.

Services: the supply of retail water and/or sewerage services and related services to an Eligible Premises.

Scheme of Terms and Conditions: the scheme or schemes made by Licensees pursuant to Regulation 29 of the Exit Regulations.

Site: the location at which you receive the Services, which is an Eligible Premises.

SME: an Eligible Exit Area Customer with fewer than 250 employees.

Transferred Customers: the owner or occupier of Eligible Premises which were transferred by a Relevant Undertaker to us on the Exit Date.

We / Us / Our: Water 2 Business Limited (registered in England with company number 08518831). Our registered address is 21e Somerset Square, Nailsea, Bristol, BS48 1RQ.

Wholesale Charges: as defined in the Wholesale Retail Code.

Wholesale Retail Code: the code issued by the Authority under sections 66DA and 117F of the Act.

WWSL: Wessex Water Services Limited incorporated and registered in England with company number 02366648 whose registered address is Wessex Water Operations Centre, Claverton Down Road, Claverton Down, Bath, BA2 7 WW.

WWSL Charges Scheme: the Charges Scheme produced by WWSL pursuant to the Act (if applicable to you).

2.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the **terms including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or **term** preceding those **terms**.

(e) A reference to **writing** or **written** includes faxes and emails.

3. BASIS OF CONTRACT

3.1 This Deemed Contract is made in accordance with Regulation 29 of the Exit Regulations and /or the Retail Exit Code.

3.2 This Deemed Contract shall:

- (a) only apply to you if you have not entered into an agreement with us, and we are providing you with the Services; and
- (b) be binding from the Exit Date and continue on a rolling basis unless it is terminated or discontinued in accordance with these terms.

3.3 This Deemed Contract in conjunction with our charges scheme constitute the agreement between you and us for the supply of the Services to your Site.

4. SERVICES

4.1 We, (as a Licensee) shall supply the Services to you at your Site from the Exit Date on the terms set out in this Deemed Contract.

4.2 We shall provide the Services in accordance with Good Industry Practice and in a manner that complies with all Relevant Laws. Our guaranteed standards of service can be found on our website, http://water2business.co.uk/Publications/Customer_promise_leaflet.

4.3 We may vary the Services at any time for technical, operational or other reasons. Where we vary the Services, we will try to give you notice of this where reasonably possible.

4.4 By receiving the Services, you confirm that you are the owner or occupier of the Site and agree to be bound by the terms of this Deemed Contract.

5. CUSTOMER'S OBLIGATIONS

5.1 You shall:

- (a) pay us (without deduction or set off) for the Services we supply to you (whether estimated or measured) in accordance with *Clause 6*;
- (b) comply with any obligations placed on you by this Deemed Contract, any regulatory conditions and other laws, licences, conditions, codes, regulations and Trade Effluent Consents relevant to the provision of or use of the Service and indemnify us in respect of any costs or damages incurred by us as a result of your failure to do so;
- (c) promptly notify us if you intend to significantly increase usage at your Site;

- (d) provide us with reasonable assistance to enable us to carry out the Services;
- (e) provide meter readings for your site (if applicable) if requested by us to do so;
- (f) promptly notify us of any changes in your Site which may result in it no longer being an Eligible Premises;
- (g) allow us or our agents full rights of access to the Site for the purposes of installation, maintenance, disconnection or inspection of Equipment, meter reading or meter testing;
- (h) take reasonable care to keep the Equipment, meter or meter reading equipment (whether it belongs to us or not) free from damage or interference and shall indemnify us for any cost incurred by us arising from your failure to do so; and
- (i) (if the property is rented) provide us with your landlord's details prior to vacating the Site, otherwise you may remain liable for any charges incurred until there is a new tenant.

6. CHARGES AND PAYMENT

6.1 You shall be charged for the Services in accordance with our charges scheme, unless we agree otherwise with you. We shall be entitled to adjust the charges (payable by you) in our charges scheme on 1 April each year by the Permitted Adjustment.

6.2 Subject to *Clause 6.4*, if you are a Transferred Customer or a SME, the charges payable by you during the Initial Period under this Deemed Contract shall not exceed the charges that would be payable by you on the Exit Date to the Relevant Undertaker in accordance with its Charges Scheme.

6.3 If you are a LE, the charges payable by you shall be reasonable, with no undue preference or undue discrimination shown compared with any of our other customers of the same customer class.

6.4 You may choose to pay different charges in another of our scheme to those you would otherwise be liable for.

6.5 Unless otherwise agreed:

- (a) we shall send you an invoice with your charges for the relevant period by the same method as immediately before the Exit Date; and
- (b) you shall pay the charges and any other sum set out in each invoice to us by the same method as immediately before the Exit Date.

6.6 The charges stated are exclusive of any applicable tax (including VAT), duty or levy, which shall be added to sums due to us as appropriate at the prevailing rate.

6.7 If you do not pay our invoices in full by the Due Date, we shall be entitled to charge you interest on any sums payable at the rate of 4% per annum above the base lending rate of the Bank of England that applies from time to time (to be applied on a daily basis).

6.8 If you dispute any charges relating to your invoice, you must notify us in writing with your reasons and shall act in good faith at all times. Any disputed amounts remain due and payable.

6.9 Where we owe you a credit under this Deemed Contract, we may set-off the credit against any amounts that you owe us under this Deemed Contract. You may not set-off any charges you owe us against any amounts.

6.10 Where we supply you with both water and sewerage Services, and the Deemed Contract is terminated in respect of one of them, you will continue to pay the charges for the supply that continues.

7. METER

7.1 We shall use the reading shown on the meter (if applicable) to calculate your water charges under this Deemed Contract, unless the meter is found to be inaccurate.

7.2 Where a meter is installed but a reading is unavailable, we shall use an estimate based on historic consumption market data to calculate your charges.

7.3 You may request us (in writing) to test the accuracy of your meter. You shall be responsible for such costs should the accuracy of the meter when tested fall within the prescribed limits of error but not otherwise.

7.4 Should the test show that the meter is inaccurate, we shall adjust your charges in your invoices to you from the penultimate date on which the meter was last read.

8. DISCONNECTIONS AND RECONNECTIONS

8.1 We may discontinue your Services only if:

- (a) we would be entitled to make a request pursuant to section 61(1ZB) of the Act; or
- (b) you have consented to or have requested the discontinuance; or
- (c) we sell or otherwise transfer ownership of all or parts of our business to another Licensee who offers a supply to you on equivalent terms to this Deemed Contract.

8.2 Not less than 2 months prior to us discontinuing your Services pursuant to *Clause 8.1(c)*, we shall write to you with the following information:

- (a) the name and contact details of the new Licensee to whom we are selling or otherwise transferring ownership to of all or part of our business;
- (b) the date on which our supply will be discontinued and supply from the new Licensee will commence, if you do not elect to switch to another provider for the Services;
- (c) a copy of this Deemed Contract and confirmation that the new Licensee will supply on an equivalent Scheme of Terms and Conditions;
- (d) your right to switch to another provider of the Services at any time; and
- (e) that alternative terms and conditions from this Deemed Contract may be available from the new Licensee and information about how such alternative terms and conditions may be obtained.

8.3 You may request a copy of alternative terms and conditions from us (or the new Licensee, if *Clause 8.2* applies) we have available and we (or the new Licensee) shall provide these within 10 Business Days after receipt of your request.

8.4 We may temporarily disconnect your Services if:

- (a) you do not pay to us any amount when due [after receipt of a disconnection warning notice]; or
- (b) you refuse to allow us access to a meter.

8.5 You may ask us to reconnect the supply of your water and / or sewerage Services provided that:

- (a) the circumstances leading to the disconnection have been resolved;
- (b) any breach of water bye-laws or consents have been remedied; and
- (c) you have paid the appropriate reconnection fee.

9. INDEMNITY

9.1 You shall indemnify us for all expenses, including all legal, professional fees, collection costs and administration charges, incurred by us as a result of your failure to pay our fees when due in accordance with *Clause 6*.

9.2 This *Clause 9* shall survive termination of this Deemed Contract.

10. LIABILITY

10.1 Nothing in this Deemed Contract shall exclude or limit the liability of any party for death or personal injury resulting from the negligence of that party or your liability for any sums properly due to us under this Deemed Contract.

10.2 Subject to clauses providing for indemnities or payments to be made, neither you nor we will be liable to each other for indirect or consequential loss arising in connection with this Deemed Contract (whether resulting from breach of this Deemed Contract, negligence or otherwise).

10.3 [Our maximum aggregate liability to you will be limited to the sum equal to the total amount of charges which have been paid by you to us during the previous period of twelve months.]

11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time during this Deemed Contract and for a period of five years after termination of this Deemed Contract, disclose to any person any confidential information concerning the business, affairs, **customers**, clients or suppliers of the other party, except as permitted by *Clause 11.2*.

11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Deemed Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this *Clause 11*; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Deemed Contract.

12. TERMINATION

12.1 Without affecting any other right or remedy available to it, we may terminate this Deemed Contract with immediate effect by giving written notice to you if you:

- (i) fail to pay your bills due to us under this Deemed Contract by the due date specified in your invoice, and do not pay such amount in full with 14 days of us informing you of this failure; or
- (ii) you are in breach of any of the terms of this Deemed Contract (other than for failure to pay), and (if the breach is capable of remedy) you do not remedy the breach within 14 days of us informing you of this breach; or
- (iii) become Insolvent, or
- (iv) any of the termination reasons set out in the Licence apply.

12.2 You may end this Deemed Contract at any time by transferring away to another Licensee or to another of our scheme. You remain liable for all charges during the period you were with us.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of this Deemed Contract, you shall pay all sums outstanding due under this Deemed Contract.

13.2 Termination of this Deemed Contract shall not affect you or our rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Deemed Contract which existed at or before the date of termination.

13.3 Any provision of this Deemed Contract that expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect.

14. FORCE MAJEURE

14.1 Neither party shall be in breach of this Deemed Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control.

14.2 If the period of delay or non-performance continues materially to affect you for more than six months, we may terminate this Deemed Contract in whole or in part (as it relates to Eligible Premises affected by the Force Majeure event).

14.3 The parties shall not be relieved by reason of the Force Majeure Event from any obligation to indemnify or make payment.

15. NOTICES

15.1 All notices given by us or you in relation to the Contract must, unless otherwise stated in this Contract, be:

- (a) in writing and addressed and sent to the recipient's address or email address as notified; and
- (b) sent by hand or courier or prepaid post or email.

15.2 All notices or other communications sent will be deemed to have been received:

- (a) where delivered by hand or courier, when delivered; and
- (b) where sent by post, on the third day following the day of posting;

(c) where sent by email, on receipt by the recipient's email server, unless receipt would otherwise occur outside of normal working hours, in which case receipt will be deemed to have occurred at 0900 hours on the next normal business day.

15.3 Letters sent to us should be sent to Water 2 Business Limited, 21e Somerset Square, Nailsea, Bristol, BS48 1RQ.

15.4 These notice requirements will not apply to service of legal process.

16. GENERAL

16.1 **Assignment and other dealings.** We may transfer this Deemed Contract (or our future rights and obligations under this Deemed Contract) and sub-contract any of our obligations without your consent. You must not transfer any of your rights and obligations under this Deemed Contract without our prior written consent.

16.2 **Data.** All personal information we may collect will be collected, used and held in accordance with our Privacy Policy. However, we reserve the right to share certain information with credit referencing agencies and you agree for us to do so.

16.3 **Severance.** If a provision of this Deemed Contract is declared invalid or illegal or unenforceable, that provision will be deemed omitted from this Deemed Contract, and the other provisions will continue to apply.

16.4 **Waiver.** No delay or failure by either us or you in exercising any right or remedy under this Deemed Contract will operate as a waiver of such right or remedy. Any single or partial exercise will not prevent any further exercise of the same right or remedy, or the exercise of any other right or remedy.

16.5 **Third party rights.** No provisions in this Deemed Contract shall be enforceable by any third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

16.6 **Governing law.** This Deemed Contract shall be governed by and construed in accordance with the law of England.

16.7 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deemed Contract.