

Deemed Contract Scheme

The Water Industry Commission for Scotland (the **Commission**), in the exercise of the powers conferred upon it by section 20B of the Water Services etc. (Scotland) Act 2005 (the **2005 Act**) (and following consultation undertaken in accordance with section 20B(4) of the 2005 Act) hereby makes the following scheme:

Part A - Initial Provisions

1. This scheme makes provision in respect of any arrangements (a **Deemed Contract**) deemed by section 20A(4) of the 2005 Act to have been made between (i) a water services or (as the case may be) sewerage services provider (a **Licensed Provider**), and (ii) the occupier of particular eligible premises, or if the premises are unoccupied, the owner of the premises (the **Customer**), for the provision to the premises of the services to which subsection 20A(2) or (as the case may be) 20A(3) relates.
2. Words and expressions defined in the 2005 Act or in the Standard Licence Conditions determined by the Commission under paragraph 2(2) of schedule 2 to the 2005 Act (**SLCs**) shall (unless otherwise provided) have the same meaning when used in this scheme.
3. Part B of this scheme sets out the terms and conditions to be incorporated into any Deemed Contract pursuant to section 20A(5) of the 2005 Act.
4. Part C of this scheme specifies the basis on which a particular Licensed Provider is to be designated in connection with section 20B(2)(a) of the 2005 Act.
5. Pursuant to section 20B(2)(b) of the 2005 Act, Part D of this scheme (i) fixes, in respect of the services to which any Deemed Contract relates, the maximum charges that may be recovered by a Licensed Provider in respect of those services, and (ii) allows a Licensed Provider to set the particular charges that are to be recovered by it in respect of those services.

Part B - Terms and Conditions

6. The provisions of this Part B shall be construed in accordance with section 20A of the 2005 Act and shall come into effect, in relation to any Deemed Contract, as from the day on which that Deemed Contract comes into effect in accordance with section 20A(6) of the 2005 Act.
7. During the Deemed Contract Term (as defined below), the Licensed Provider will comply with all of its statutory and regulatory obligations including (but not limited to) obligations arising under: the SLCs; the 2005 Act and the terms of the Disconnections Document as defined in SLC A11. The Customer shall provide the Licensed Provider with such assistance as the Licensed Provider shall reasonably require in order to comply with such obligations. The duty on the Customer in this paragraph 7 shall survive termination of the Deemed Contract as described in paragraph 19.
8. For the duration of the Deemed Contract Term (as defined below), the Licensed Provider shall provide to the Customer the relevant default services (as defined in SLC B1) at the relevant default standard (as defined in that condition) and the terms and conditions in the Deemed Contract shall apply in respect of such services only.

9. The Licensed Provider shall have no liability to the Customer in respect of, or arising from, the provision of (or any failure or deficiency in the provision of) water services or (as the case may be) sewerage services at any time other than during the Deemed Contract Term (as defined below).
10. The Customer shall pay the Licensed Provider (i) the charges fixed by the Licensed Provider for the default services provided by it during the Deemed Contract Term (as defined below), providing such charges are fixed in accordance with paragraph 20 below, and (ii) any applicable Value Added Tax ("VAT", which includes any tax in substitution therefor) in accordance with paragraph 21.
11. The Licensed Provider shall elect to invoice the Customer for the charges (and any applicable VAT) due for the services provided by it during the Deemed Contract Term (as defined below) either (i) in arrears, or (ii) in advance.
12. Where the Licenced Provider has elected to invoice the Customer in arrears, (i) the Licensed Provider shall issue the Customer with its first invoice no later than ten weeks following the **Relevant Day**, being either (a) the Applicable Day (as defined below), or (b) the day the Licensed Provider is notified of a change of occupancy or ownership in respect of the premises, (ii) the Licensed Provider shall invoice the Customer no less than two times per annum, and (iii) the Customer shall pay the charges (and any applicable VAT) within the period (being no less than twenty one days) specified in the relevant invoice.
13. Where the Licenced Provider has elected to invoice the Customer in advance, (i) the Licensed Provider shall issue the Customer with its first invoice (a) where the Relevant Day falls on or before the date which is nineteen Business Days prior to the start of the first calendar month following the Relevant Day (**Month X**), no later than fourteen Business Days prior to the start of Month X, or (b) where the Relevant Day falls after the date which is nineteen Business Days prior to the start of Month X, no later than fourteen Business Days prior to the start of the subsequent calendar month following Month X), (ii) the Licensed Provider shall invoice the Customer no less than twelve times per annum (except where the Relevant Day falls after the date which is nineteen Business Days prior to the start of Month X, in which case during the first twelve month period of the Deemed Contract Term (as defined below) the Licensed Provider shall invoice the Customer no less than eleven times), and (iii) the Customer shall pay the charges (and any applicable VAT) within the period (being no less than ten Business Days) specified in the relevant invoice. A **Business Day** is any day other than a Saturday or Sunday or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.
14. Where the actual usage of the Customer is not known by the Licenced Provider at the time an invoice is raised, the Licensed Provider shall determine the charges (and any applicable VAT) to be included on each invoice based on its reasonable estimate of the services the Customer will use and/or has used in the period covered by the invoice, subject always to paragraph 10.
15. Each invoice issued by the Licensed Provider shall include a statement which (i) identifies that the arrangement between the parties is governed by the Deemed Contract, and (ii) advises that the Customer may contact the Licensed Provider to positively agree an alternative arrangement for the provision of water services or (as the case may be) sewerage services.

16. The Deemed Contract and any dispute or claim arising out of or in connection with the Deemed Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.

Part C - Designation of Licensed Provider

17. The party who shall be designated as the Licensed Provider in respect of a Deemed Contract with a particular Customer shall be the water or (as the case may be) sewerage services provider (i) to whom the supply point in respect of that Customer's premises has been allocated, in the circumstances specified by or under the Market Code, by or at the instance of the Central Market Agency, or (ii) who is registered in the supply point register as being the water services or (as the case may be) sewerage services provider for the supply point in respect of that Customer's premises on the day the Customer acquired the premises. For the avoidance of doubt, for the purpose of this paragraph 17, (a) "acquired" by an occupier shall mean where an occupier takes occupation of a premises or where an occupied premises which was previously disconnected is reconnected, and (b) "acquired" by an owner shall mean where an owner takes ownership of a vacant premises, or where a premises which the owner already owns becomes vacant by virtue of an occupier ending their occupation of such premises where no new occupier takes occupation or where a vacant premises which was previously disconnected is reconnected. The **Applicable Day** is the later of (i) the day the supply point was so allocated to the Licensed Provider or the day the Customer acquired the premises (as relevant), and (ii) the day the Deemed Contract came into effect in accordance with section 20A(6) of the 2005 Act.
18. Any arrangement whereby the Licensed Provider has been providing designated services to the Customer pursuant to paragraphs 7 and 8 of SLC B1 in respect of a supply point shall cease to have effect on the Applicable Day relevant to such supply point (the **SLC Agreement End Date**). This paragraph 18 is without prejudice to any rights, remedies, obligations or liabilities that the Licensed Provider and/or the Customer have accrued up to the SLC Agreement End Date.
19. The Deemed Contract between the Customer and the Licensed Provider identified in accordance with paragraph 17 above shall terminate on the day (i) such Licensed Provider ceases to be registered in the supply point register as being the water services or (as the case may be) sewerage services provider for the supply point in respect of that Customer's premises (referred to in the market code as the "Registration End Date"), (ii) the Customer's occupancy or ownership (as the case may be) in the premises ceases, (iii) an occupier takes occupation of the vacant premises which is the subject of the Deemed Contract, where the Customer for the purpose of the Deemed Contract is the owner of the vacant premises, (iv) the Customer positively agrees an alternative arrangement with a licensed provider with regards to the provision of water or (as the case may be) sewerage services to the premises, or (v) the water or (as the case may be) sewerage services provided to the premises are permanently disconnected in accordance with the Disconnections' Document as defined in SLC A11 (the **Termination Date**).

Part D - Fixing of Charges

20. A Licensed Provider shall be entitled to fix charges for the provision of the services to which the Deemed Contract relates, and demand and recover such charges, providing such charges (i) do not exceed the default maximum tariff (as defined in SLC B1), (ii) are exclusive of VAT, and (iii) are notified by the Licensed Provider to the Customer prior to or on the date of issue of the first invoice in accordance with paragraph 12 or paragraph 13 above (as relevant). Such notice shall be in a document which is

separate to the first invoice (albeit it may be issued to the Customer at the same time as the first invoice) and shall specify the period during which such charges will apply, which period may commence before or after the date of the notice.

21. In addition to the charges fixed in accordance with paragraph 20 above, the Licensed Provider shall be entitled to demand and recover any applicable VAT in respect of the provision of the services to which the charges relate at the appropriate rate in effect from time to time.
22. A Licensed Provider shall not be entitled to demand or recover from the Customer any charges (or any applicable VAT) in respect of water or (as the case may be) sewerage services provided (a) prior to the Applicable Day; or (b) after the Termination Date (the period between the Applicable Day and the Termination Date is referred to as the **Deemed Contract Term**).
23. A Licensed Provider's right to demand or recover charges (and any applicable VAT) from the Customer in respect of water or (as the case may be) sewerage services provided during the Deemed Contract Term shall survive termination of the Deemed Contract as described in paragraph 19.

Part E - Final Provisions

24. The Commission shall, as soon as practicable after making this scheme (and any Replacement Scheme as defined below), (a) in a manner appropriate for bringing the scheme (or Replacement Scheme) to the attention of persons likely to be affected by it, publish a notice stating its effect, and (b) send a copy of the scheme (or Replacement Scheme) to (i) every water or sewerage services provider, (ii) Scottish Water, and (iii) any other person who requests it.
25. This scheme (and any Replacement Scheme) may be revised by the Commission from time to time in accordance with section 20B of the 2005 Act and the resulting scheme is referred to herein as the **Replacement Scheme**. Any Deemed Contract which is in place on the date this scheme (or a Replacement Scheme) is revised (such date being referred to in this paragraph 25 as the **Replacement Date**) shall be deemed to have been revised on and from the Replacement Date to incorporate and reflect the terms of the Replacement Scheme.
26. Enquiries regarding this scheme should be sent to enquiries@watercommission.co.uk or in writing to:

Water Industry Commission for Scotland
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Moray House
Forthside Way
Stirling
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