



# Network Access Code

## Version 15.0

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# PART 1:

## OVERVIEW

### Role of the Network Access Code

This network access code sets out the basis under which Southern Water will consider permitting a Licensee to have access to the water supply system. The code follows the guidance issued by Ofwat pursuant to Section 66D(4) of the Water Industry Act 1991. (WIA91)

The code sets out the principles that will be followed to establish that:-

- customers to be supplied by a Licensee are eligible;
- financial terms for the access to the supply system are agreed;
- arrangements for the continuity, availability, quality and constancy of the supply to the Licensee's customer are satisfactory;
- the interests of Southern Water and its customers are protected;
- a legal access agreement is entered into by Southern Water and the Licensee allowing the use of a defined part of the water supply system to supply water to the Licensee's customer.

The Network Access Code incorporates by reference the operational code and common contract which a licensee is entitled to utilise for wholesale access.

The Network Access Code sets out the standard details that must apply to access arrangements and identifies those areas where case specific details can be agreed. This approach provides a framework within which a licensee can progress an application in confidence that the access agreement will meet all mandatory requirements yet allowing discretion appropriate to the specific arrangement. It does not constitute a legal agreement but is intended to assist licensees in the preparation of an access agreement. A staged approach is set out with progressively greater level of detail to enable continuing assessment of the viability of proposals, whilst minimising costs and preserving confidentiality of all parties.

Above all, the code recognises that water is essential to sustain life. It is a health product and has a variable "shelf-life". A safe, secure and reliable supply of water is essential for both domestic and non-domestic customers. The code sets out important

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environmental aspects in taking water out of the environment and social obligations in the supply of water, such as fire-fighting water, which have to be met.

Southern Water is aware that the Network Access Code will evolve as Ofwat issues new guidance. The WIA91 requires Southern Water to follow the guidance issued by Ofwat and future developments and modifications to the Code will remain consistent with the published guidance. An annual review of the Code will be carried out and the Code may be modified at any time.

The Code will be published on the Southern Water website and copies will be provided on request, free of charge.

## Relevant framework documents

The primary legislative framework is set out in the WIA91, including the Licensing of water suppliers and the obligations on the Licensee, the water undertakers, Ofwat and the quality regulators. The Act also provides for the making of secondary legislation and the issue of statutory guidance. New conditions of appointment and standard Water Supply Licence conditions further define arrangements for a Licensee to provide water supplies to customers. Ofwat may also issue non-statutory guidance and it is recognised that compliance with non-statutory guidance will be considered in any determination of disputes.

Specific attention is drawn to the guidance that has been issued by Ofwat. This Network Access Code includes guidance consistent with Ofwat requirements and potential Licensees should also ensure they are familiar with legislation and other guidance that will determine their eligibility to become licensed, the eligibility of potential customers and the duties and obligations of all parties.

Issued primary and secondary legislation ([www.hmsso.gov.uk](http://www.hmsso.gov.uk)) and guidance and associated documents includes:-

### **i) Primary and secondary legislation**

[Water Act 2014](#)

[Water Industry Act 1991](#)

[The Water Supply \(Exceptions from Supply System Prohibitions\) Regulations 2005](#)

[The Water Supply Licence \(New Customer Exception\) Regulations 2005](#)

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[The Water Supply Licence \(Application\) Regulations 2005](#)

[The Water Supply \(Water Fittings\) Regulations 1999](#)

[Competition Act 1998](#)

**ii) Statutory and non-statutory guidance**

Guidance on Access Codes incorporating the common contract

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

Water supply licensing –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/wslpublications/gud\\_pro\\_wslapplic.pdf](http://www.ofwat.gov.uk/competition/wsl/wslpublications/gud_pro_wslapplic.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)

Customer Transfer Protocol Supporting Information

[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)

Procedure for handling water supply licensing determinations

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

Guidance on Secondary Supplies

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

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

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[The application of the Competition Act in the water and sewerage sectors \(March 2010\) - The Office of Fair Trading](#)

### iii) **Conditions of Appointment**

Company Instrument of Appointment

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

[http://www.ofwat.gov.uk/industrystructure/licences/amendments/lic\\_lmd\\_srn\\_sec13.pdf](http://www.ofwat.gov.uk/industrystructure/licences/amendments/lic_lmd_srn_sec13.pdf)

### iv) **Other relevant documents**

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

[http://dwi.defra.gov.uk/stakeholders/information-letters/2004/13\\_2004.pdf](http://dwi.defra.gov.uk/stakeholders/information-letters/2004/13_2004.pdf)

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

[http://dwi.defra.gov.uk/stakeholders/guidance-and-codes-of-practice/WS\(WQ\)%20Regulations%20England2010.pdf](http://dwi.defra.gov.uk/stakeholders/guidance-and-codes-of-practice/WS(WQ)%20Regulations%20England2010.pdf)

- DWI Guidance on the Notification of Events

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

- DWI Guidance to the Water Undertakers (Information) Direction 2004

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

DWI Guidance on the Water Quality Aspects of Common Carriage

<http://dwi.defra.gov.uk/stakeholders/guidance-and-codes-of-practice/common%20carriage.pdf>

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## Role of Key Industry Players

### 1.3.1 Water undertaker

Southern Water is the appointed water undertaker covering parts of the counties of Kent, Sussex, Hampshire and the Isle of Wight. It is responsible for the public water supply network in this area. Chapter 2A WIA91 places duties and obligations on water undertakers subject to certain conditions. Southern Water is obliged to provide the following services subject to the conditions detailed below:

#### **i) Primary undertaker**

##### **a) Wholesale water supply**

Where a licensee requests Southern Water to provide a supply of water, under section 66A WIA91, and the premises are within Southern Water's area, Southern Water has a duty to take steps necessary to enable provision of the supply, and having taken those steps to provide the supply.

The terms and conditions on which Southern Water carries out these duties are agreed with the licensee in accordance with Ofwat's access code guidance and the costs principle. Where the licensee wishes, he is entitled to use the common contract as set out in the Ofwat access code guidance.

##### **b) Introduction of water into water undertaker's supply system**

Where a licensee requests Southern Water's permission to introduce water into its supply system, under section 66B WIA91, and in line with the requirements of the retail authorisation aspects of the combined license, Southern Water has a duty to take steps to enable the licensee to make the introduction of water into the supply system and having taken such steps to permit the introduction of water into its supply system, as requested.

Where a combined licensee requests Southern Water to permit the introduction of water, as supplied by a neighbouring secondary undertaker, into its supply system for the purposes of supplying its customers within Southern Water's area, Southern Water has a duty to take steps to enable the licensee to make the introduction of the water into its system. This is in accordance with section 66C WIA91. These steps may include connecting Southern Water's supply system to the neighbouring secondary undertaker's supply system. Having taken such steps, Southern Water has a duty to permit the introduction of water into its supply system, as requested. Where appropriate, the licensee, primary water undertaker and secondary undertaker may agree trilaterally the terms and conditions of access.

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The terms and conditions on which Southern Water carries out these duties are agreed with the licensee in accordance with Ofwat's access code guidance and the costs principle.

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**ii) Secondary undertaker**

Where a combined licensee requests Southern Water to provide a supply of water to enable it to supply its customers' premises by using a neighbouring primary water undertaker's supply system, under section 66C and in accordance with its retail authorisation, Southern Water has a duty to take steps to enable the provision of the supply, and having taken those steps to provide that supply.

The terms and conditions on which Southern Water carries out these duties in its capacity as a primary or secondary undertaker are agreed with the licensee in accordance with Ofwat's access code guidance and the costs principle. The introduction by a licensee into Southern Water's water supply system, of a supply obtained from a secondary undertaker involves two transactions, governed by separate agreements:

1. The secondary undertaker sells water to the licensee.
2. The licensee introduces that water into the primary water undertaker's water supply system.

Where appropriate, the licensee, primary water undertaker and secondary undertaker may agree trilaterally the terms and conditions of access.

Licensees shall identify and communicate at the earliest stages if a secondary undertaker is likely to be included within an application. This will enable potential secondary undertakers to consult at the earliest opportunity with relevant parties including the primary undertaker, the EA and the DWI, if necessary.

The secondary undertaker will need to understand the demand requirements of the licensee and an indication of the point to which connection to the primary undertaker's supply system is required. It will also need to discuss with the primary undertaker details of the transfer, including the design of pipework and any pumping arrangements that may be required, any water quality issues and whether any facilities need to be constructed.

If Southern Water is identified as a secondary undertaker within an access application, Southern Water expects to be involved as necessary in discussions with the licensee and the primary undertaker. Southern Water expects to receive copies of relevant details during the initial and detailed application stages for comment and to be able to request further details as necessary.

**iii) Conditions under which duties do not apply**

Section 66A WIA91 documents the circumstances under which the wholesale water supply duty by a primary undertaker does not apply.

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, 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 Southern Water would:

- require Southern Water 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 Southern Water'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.

Under sections 66B and 66C WIA91, a primary undertaker has no duty to permit the introduction of water by a combined licensee into its supply system, and under section 66C WIA91 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 undertakers supply system:

- would require Southern Water, 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
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- 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.



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## 1.3.2 Licensee

Licensees are the entrant suppliers under the WSL regime. Licensees are responsible for obtaining a licence appropriate to the activities to be undertaken and will have undergone an assessment of their financial and technical compliance by the appropriate regulatory bodies (Ofwat/DWI). Licensees must comply with the terms of their licence, relevant legislation and the contractual arrangements as set out in access agreements.

Section 66I WIA91 prohibits unauthorised use of a water undertaker's supply system for the purpose of supplying water to a customer's premises, unless done so by the water undertaker or by a licensee under the terms of its licence. Under section 66I (3) WIA91, unauthorised use for the purpose of supplying water to a customer's premises is a criminal offence. Licensees have a duty to assure themselves that the terms of their licence allow for the use of Southern Water's supply system.

Section 66J WIA91 prohibits unauthorised introduction of water into a water undertaker's supply system. Introduction of water is only permitted by the primary water undertaker itself, or by a licensee under the terms of its licence, or by another water undertaker under an agreement for a bulk water supply. Under 66J WIA91, contravention of this prohibition is a criminal offence. Licensees have a duty to assure themselves that the terms of their licence allow for the introduction of water into Southern Water's supply system.

Licensees share responsibility with Southern Water for compliance with the Water Quality Regulations for the water they input in the supply system and for the wholesale supply of water to the customer's tap.

Licensees have a duty to comply with the eligibility requirements as specified in section 17A (3) WIA91 relating to non-household premises, the threshold requirement, and supply by only one licensee.

## 1.3.3 Ofwat

The Water Services Regulation Authority (Ofwat) is the economic regulator of the water industry in England and Wales.

Under the Water Industry Act 1991 Ofwat has a primary duty to "further the consumer objective". This is "to protect the interests of consumers, wherever appropriate by

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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 WSL regime.

Ofwat is responsible for granting water supply licences for wholesale and combined services. In doing so, Ofwat will assess whether the applicant has the appropriate skills and competencies required.

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. Further information is available on Ofwat’s website under Water Supply Licensing: [www.ofwat.gov.uk](http://www.ofwat.gov.uk)

### 1.3.4 Drinking Water Inspectorate (DWI)

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 initial 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.

Overall, 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.defra.gov.uk](http://www.dwi.defra.gov.uk)

### 1.3.5 Environment Agency (EA)

The Environment Agency has a duty to secure the proper use of water resources in England and Wales. They monitor water in the environment and issue 'abstraction licences' to regulate who can take water from the environment and how much they can take.

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Water undertakers produce Drought Plans every three years, which 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; which identify available resources, forecast demand and set out how future deficits may be addressed through either resource development or demand management options. The Environment Agency also reviews these plans and advises the Government on their adequacy. The production and publication of the Water Resources Management Plans became a statutory requirement in 2006.

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. 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. There is a need to ensure that water resources are safeguarded and that abstractions do not damage the environment.

Secondary supplies (under section 66C of the Water Industry Act 1991) are meant to encourage 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 Environment Agency 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.

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

DEFRA is the government department responsible for WSL legislation.

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The Secretary of State has issued statutory instruments which govern the competition regime. The Secretary of State may issue further instruments in the future which may affect the regime. Where this is the case, Southern Water will revise this access code to reflect relevant changes.

## Definition of Services

Southern Water will offer services to a licensee for the purposes of supplying water to the licensee's eligible customers, subject to terms and conditions agreed with the licensee in accordance with Ofwat's access code guidance and the costs principle. These services are defined in terms of Southern Water being either the primary undertaker (section 66A and 66B of the WIA91) or a secondary undertaker (section 66C of the WIA91).

### Primary water undertaker

#### **i) Wholesale water supply**

Southern Water will take steps to enable the provision of the supply, and having taken those steps, provide the supply of water in accordance with section 66A of the WIA91 to the licensee for supply to the licensee's eligible customers.

#### **ii) Introduction of water into the supply system**

Southern Water will take steps to enable the licensee to make the introduction of water into the supply system, and having taken such steps permit the introduction of water into its supply system, in accordance with section 66B of the WIA91 for the purposes of supply to the licensee's eligible customers.

Southern Water will take steps, and having taken such steps, permit the introduction of water, as supplied by a secondary undertaker, into its supply system, in accordance with section 66C of the WIA91, for the purposes of supply to the licensee's eligible customers. In some circumstances, steps may include laying such pipes and constructing such other works as are necessary to connect the supply with the pipes in the area of the secondary undertaker.

### Secondary water undertaker

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Southern Water will make available a supply of water to a licensee, for supply to the licensee's eligible customers, within the area of appointment of another water undertaker in accordance with section 66C of the WIA91. Southern Water will lay such pipes and construct such other works as are necessary to connect the supply with the pipes in the area of the primary undertaker.

#### **1.4.2.1 Primary water undertaker**

- i) Definition of potable and non-potable water combined supply arrangements.
- ii) Definition of potable and non-potable water wholesale supply arrangements.

#### **1.4.2.2 Secondary water undertaker**

- i) Definition of potable and non-potable water wholesale supply arrangements including bulk export of potable and non-potable water.

## PART 2

### Confirming Eligibility

#### General

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; and
- 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 the 'threshold'; 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:

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

Note the threshold mentioned above is currently 5 Ml/a.

#### 2.1 Supply arrangements for licensees

- Section 17A WIA91 prohibits the supply of an eligible premise by more than one licensee. However, a premise may be supplied by a single licensee and one or more undertakers. Supply arrangements for licensees will be discussed in detail and determined during the application process.

#### 2.2 Attachment to the supply system

- Customers can only be supplied if they are connected to the Southern Water supply system. It is not expected that it will be necessary to change the arrangements for customers already connected to the Southern Water supply system. Where a customer needs to be newly connected to the supply system, then the Southern Water standard arrangements will apply.
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- The arrangements for connecting the licensee to the supply system will be determined during the detailed application stage. For a customer's premises to be eligible to be supplied under a combined supply agreement there must be a physical link between the customer's premises and the point at which the licensee's supply is introduced into the Southern Water supply system.
- There is a *direct* physical link, between the point of introduction of the licensee's supply and the customer premises, if there is adequate capacity in the supply system to meet the full demand without change to the existing operation of the network.
- Where there is a physical link but the capacity of the connected pipes are not adequate to meet the full demand from the customer, or where network changes are required then there may be a link by *displacement*. The ability for the licensee to make the supply by displacement will be assessed during the application process. Factors to be considered will include the implications for water quality, especially through mixing of supplies and flow reversal, overall security of supply, change in operational risk from outages, and the maintenance of flexibility of supply and operations. Overall, the network flows must balance after the introduction of the supply by the licensee, and the means for this to be achieved will be considered during the examination of the application. The costs for making the connection will be determined during the examination of the licensee's application.

**PART 3**

NOT USED



**PART 4:**

**NOT USED**

**PART 5:****3 COMBINED SUPPLIES****3.1 Application for Access to, or Use of System****3.1.1 Process requirements**

An application from a licensee for access will follow a staged approach:

- Introduction stage – the licensee should contact Southern Water with an expression of interest to negotiate terms for access.
- Application Stage – the licensee makes a formal application to Southern Water.
- Contract negotiations – terms are discussed and agreed or rejected. This stage may begin at the application stage.
- Initial contact with Southern Water should be made to:

Markets & Competition Manager

Southern Water Services Ltd

Southern House

Yeoman Road,

Worthing, West Sussex

BN13 3NX

Tel: 01903 272351

email: [wslenquiries@southernwater.co.uk](mailto:wslenquiries@southernwater.co.uk)

The progress of an application through the stages is explained in detail below. To facilitate the application process the following information should be noted.

**3.1.1.1 Confidentiality Agreement**

- A confidentiality agreement will be required before Southern Water can consider an initial application. The purpose of this agreement is to ensure that neither party
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discloses without consent or misuses information received from the other. A breach of confidentiality could give rise to legal proceedings for breach of contract. The terms of the confidentiality agreement will be negotiated and agreed during the Introduction stage of the application. A draft agreement is included as Appendix A.

### 3.1.1.2 Timescales

The target timescales, as working days, for activities to be completed by Southern Water during each of the key application stages are set out in Table 1. The duration of activities assumes that full information has been received from the licensee.

<b>Table 1 - Timescales</b>		
<b>Stage</b>	<b>Sub-stage</b>	<b>Target (days)</b>
Combined Supply		
Stage 1 Initial Contact (Introduction) (Target for overall completion – 20 days)	Arrange preliminary meeting	10 (from request)
	Issue confidentiality agreement	10
	Issue information requirements	10
Stage 2 Application  Targets for overall completion: Common carriage – 50 days Wholesale supply by secondary undertaker – 50 days	Common carriage:	
	Verify physical link	10
	Assess scope of studies to evaluate water quality implications	10
	Assess scope of liaison with the EA / DWI	10
	Wholesale supply from secondary undertaker:	
	Verify physical link	10
Assess scope of studies to evaluate water quality implications	10	
Stage 3 Contract negotiation Target for completion – 40 days	Meet to discuss terms of draft agreement.	15 (from request)
	SW Issue signed contract	10 (from agreement of terms)
	Contract returned signed by licensee	10 (from receipt)
	Send customer a notice of intended change of supplier.	5 (from signing of contract)

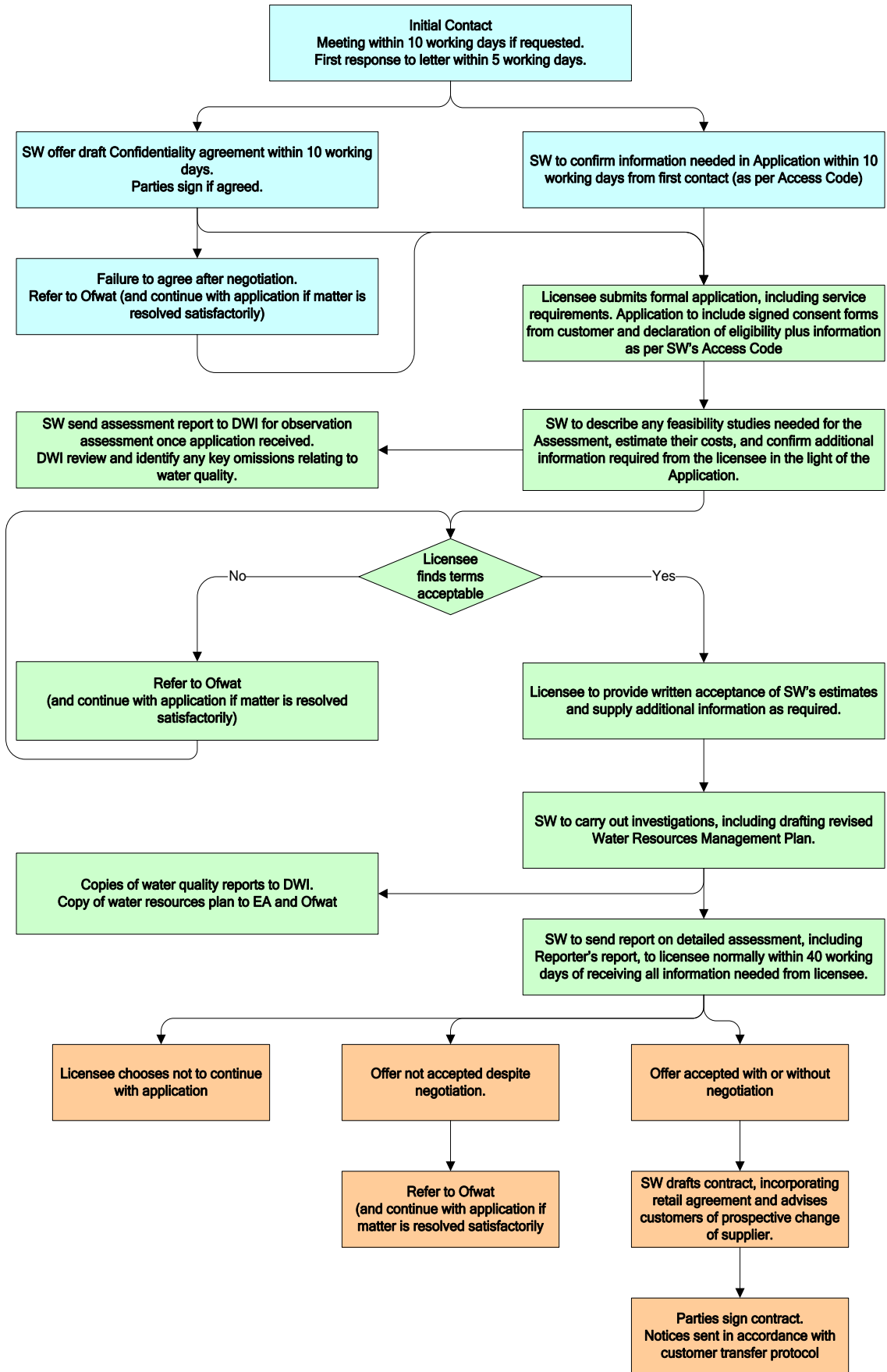
### **3.1.1.3 Application Fees**

At the present time Southern Water will not seek to recover from licensees a charge for progressing an application. However as per page 50 of the Ofwat Access Code Guidance Southern Water may charge for any feasibility study required.

### **3.1.1.4 Credit provisions and credit limit**

Southern Water reserves the right to carry out credit checks and to impose an appropriate credit limit.

### 3.1.2 Application Process



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### 3.1.2.1 Overview

- We aim to deal with the application in good faith and with best efforts. Clearly, the procedure outlined in this Code can only be indicative and will need to be adapted to suit specific cases. Southern Water will agree with the applicant any significant variations to this procedure as necessary.
- Southern Water will indicate to the applicant the person who will be the point of contact at each stage in the process. Southern Water will also indicate the number of copies of documents required at each stage, once Stage 1 is complete.
- At any stage, Southern Water reserves the right to consult with Ofwat, the Drinking Water Inspectorate or the Environment Agency. The applicant would be informed of an approach to any such regulator in advance.
- If at any stage, the applicant is of the view that a disagreement exists between the applicant and Southern Water, then the process outlined in Section 5.6.3 covering disputes and appeals is to be followed.

### 3.1.2.2 Stage 1 – Initial contact

- In the first instance, the applicant would be required to write to Southern Water indicating that it has a specific interest in using part of Southern Water's water supply system to supply a proposed customer.
- The aims of this stage are to understand the broad outline of the applicant's proposals, to verify that the interest is genuine and to assist the applicant to understand the process and issues to be addressed.
- Southern Water will respond to the initial interest either in writing, or by a specific one-off meeting.
- Appropriate information may be sought from the applicant at this stage to further Southern Water's understanding of the broad objectives of the proposal. This would include:
  - Confirmation of the licensee's details
  - Involvement of a secondary or primary water undertaker
  - Extent of potential involvement of the DWI
  - Extent of potential involvement by the Environment Agency
- As each application has to be dealt with on a case-by-case basis, Southern Water will also set out any variations to this procedure as the application progresses, which will need to be followed in the light of Southern Water's better understanding of the applicant's interest.

- The applicant will be invited to discuss the extent of the information required in the light of the proposed application, although it will be for the applicant to decide the detail of discussion in advance of entering into a confidentiality agreement.
- For straightforward applications, Southern Water would not normally expect to charge the applicant for responding to the introduction. The costs incurred by Southern Water in this stage would be recovered at a later stage as indicated below, if the applicant wished to proceed further.
- If the licensee is familiar with the procedures within Southern Water then it might be possible to move to an application with a minimum of discussion prior to making the application.
- A confidentiality agreement will be discussed and put in place to enable the application to proceed to further stages.

### **3.1.2.3 Stage 2 – Application**

The aims of this stage are for the applicant to demonstrate that the premises to be supplied are eligible, that the customer has expressed an interest in the licensee becoming its new supplier and for Southern Water to evaluate if the application is feasible. Plus clarify any issues arising from the initial feedback and to clarify information required for the specific, detailed application prior to Southern Water specifying and executing studies and testing to determine the proposed terms for access, including:

- to verify that the applicant's proposals will not have a material effect on, or be an unacceptable risk to, Southern Water's customers in term of water quality, standards of service, continuity and security of supply, and other rights;
- to provide the applicant with a firm price for use of the network, and
- to identify any reinforcement, or other similar work, which may be required to support the use of Southern Water's network by the applicant for the purposes of his business.
- Information requirements
- The licensee will be expected to provide a signed letter of consent from the customer dated no more than two months before the application which will also contain a waiver by the customer of any restrictions on disclosure by Southern Water to the licensee of information held by Southern Water which is necessary to disclose to the licensee for the purposes of the proposed new supply arrangements.



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- The applicant should provide the information as set out in the template of information requirements provided at Stage 1. There may be a need for clarification of the information provided or requirement for further detail or new information.
  - The applicant should specify what level of service is required from Southern Water in order for the licensee to advise the customer of the service that will be provided. This might include issues of water quality, pressure of supply, risk of interruption of supply or of supply restrictions. The applicant should define the frequency at which future operational data should be provided so that he will be able to keep the customer well informed.
  - Where there is involvement of another water undertaker, the extent of facilities to enable the introduction of the secondary supply should be identified.
  - If Southern Water considers that the supply is likely to constitute a strategic supply, it will be discussed with the applicant. Irrespective of early identification of a possible strategic supply, Southern Water may make a subsequent application to Ofwat in respect of the designation of the supply as strategic.
  - Southern Water will consider the information provided and request clarification and any further detail to enable the application to proceed. Any other water undertaker involved in the proposal should similarly be consulted and will also submit their assessment of the proposal.
  - It is important that Southern Water can obtain a clear understanding of the proposal at the earliest time to be able to formulate sound proposals.
  - It is expected that there will be discussion with the DWI and the Environment Agency during this detailed assessment.

The applicant will have indicated to Southern Water that he is willing to proceed to the next stage.

- If an examination of the application indicates that access to the network as requested is potentially viable, then detailed hydraulic and quality modelling may be required, depending on the particular application. If this is the case, then Southern Water will normally assess such aspects as:
  - the capacity of the network to accept the proposed input.
  - the compatibility of the water proposed to be input with existing water in the network.
  - the extent to which network modifications are necessary to accommodate the proposed input and an estimate of the costs of such modifications.
  - the likely impact on levels of service and the range of water quality parameters normally experienced by Southern Water's customers in the network.

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- volume, flow rate and pressure constraints imposed by the system.
  - the adequacy of safety, security and contingency plans.
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- Initial information for this examination will be gained from the detailed investigation questionnaire and, in assessing the application, Southern Water reserves the right to request further, reasonable information necessary to determine the application, although the expectation is that the answers to the detailed investigation questions will suffice. The applicant should keep Southern Water informed of any changes to information supplied at this or preceding stage of the application. If changes in the information require further investigation or modification of indicative prices then Southern Water will advise the applicant of such changes before continuing with the examination.
  - On receipt of information, Southern Water will indicate the scope of the studies required to confirm the viability of the application and to evaluate works necessary to enable the application. An estimate of the costs of studies and the likely date of when the studies and detailed modelling will have been completed will be given to the applicant. Southern Water will also discuss with the applicant the format of any reports of the investigations, as such reports may have a significant bearing on the costs of studies. For more complex cases, it may be necessary to progress the investigations in phases to avoid incurring unnecessary costs when a proposal can only be implemented after completion of significant reinforcement or other works. Southern Water will maintain a dialogue with the applicant to enable informed choices to be made. Schedules of payment of the costs of investigation may be agreed.
  - On conclusion of the detailed examination, Southern Water will indicate whether the application is viable and, if so, the required charges for access to and use of the network as requested. Southern Water will also indicate if system reinforcement is required and provide an estimate of the cost of the design and construction of the reinforcement for the applicant to confirm if they wish to continue the application.
  - The applicant will be expected to advise the arrangements made in respect of the sewerage undertaker.
  - In the event that the examination determines that the application is not viable, the applicant has the right of appeal following the procedure set out in this document in Section 5.6.3 of this code.

#### **3.1.2.4 Stage 3 – Contract Negotiations**

The purpose of this stage is to agree the technical arrangements for the resolution of water quality, water resource and system reinforcement issues and to set out the contract for the future supply to the customer, including:-

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- Payment terms
  - Arrangements for dealing with outstanding debt
  - A service level agreement
  - Agreement of a transfer date
  - If the applicant wishes to proceed further then, at an appropriate time in relation to the development of the Access Agreement, he will be required to finance the design work necessary to take the system reinforcement to the pre-tender stage, thus deriving a firmer price for the work.
  - The applicant will finance such system reinforcement as is necessary to accommodate his flows without prejudice to the service and conditions enjoyed by Southern Water's customers. The system reinforcement will need to be fully commissioned and accepted by Southern Water before the entrant can make any use of the water supply network.
  - A comprehensive schedule of operating procedures between the applicant and the Southern Water will be prepared and agreed. Sections 5.2 and 5.3 of this code give an indication of the work to be covered.
  - Southern Water will offer terms to the applicant, open to discussion for a period of 15 working days. Any suggested change to the draft contract will be discussed with the applicant and revised terms agreed, if appropriate.
  - When there is agreement of the firm offer then Southern Water will inform the customer of the intended change of supplier and the expected date of transfer.
  - Southern Water will normally send to the licensee a signed contract within ten working days of agreement of the terms. If there are exceptional circumstances to delay the preparation of the contract, then Southern Water will advise the licensee of the expected date for issue of the contract.
  - If, despite negotiations, the licensee is unable to agree the terms offered by Southern Water, the licensee may refer the matter to Ofwat for determination.

#### 3.1.2.4.1 Role of the DWI

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

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Overall, 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.defra.gov.uk](http://www.dwi.defra.gov.uk).

The DWI has issued information letter (06/09) giving guidance on the water quality aspects of common carriage. Southern Water will follow this guidance when examining a detailed application. In particular, there will be special attention to Southern Water retaining overall control of the system and avoidance of mixing of waters that are incompatible.

#### 3.1.2.4.2 Role of the Environment Agency

The Environment Agency has a duty to secure the proper use of water resources in England and Wales. They monitor water in the environment and issue '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 which 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 which identify available resources, forecast demand and set out how future deficits may be addressed through either resource development or demand management options. The Environment Agency also reviews these plans and advises the Government on their adequacy. The production of the Water Resources Management Plans became a statutory requirement in 2006.

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. 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. There is a need to ensure that water resources are safeguarded and that abstractions do not damage the environment.

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Secondary supplies (under Section 66C of the Water Industry Act 1991) are meant to encourage 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 Environment Agency 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 [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk).

#### 3.1.2.4.3 Role of the Secondary Water Undertaker

Any secondary undertaker will be expected to comply fully with the terms of the licence to operate and to fully comply with all relevant legislation. In particular, the secondary undertaker is expected to fully comply with the Water Supply (Water Quality) Regulations and the Information Direction under Section 202 of WIA91.

Southern Water will contact a secondary undertaker and will request such information as is reasonable to assess the compatibility of the supply with water to be supplied by Southern Water. It is expected that the licensee will co-operate in obtaining necessary information from the secondary undertaker.

#### 3.1.2.5 Objections and rejection process

- Southern Water, the licensee or any secondary undertaker may find that during the application stages there is an impediment to the granting of access. The DWI, the Environment Agency and the proposed customer might also raise issues that must be satisfied before the application can proceed to final agreement for access to the Southern Water supply system.

Circumstances that may arise include:

- Provisions under sections 66A to C of WIA 91 apply.

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- There is no acceptable physical link between the point of entry and the point of exit of the proposed supply.
  - Water quality concerns cannot be satisfied either because of the assessments by the DWI or following the analysis of water quality and resource security issues carried out by Southern Water.
  - The premises are found to be ineligible.
  - There is insufficient data provided by the licensee to enable Southern Water to make a full assessment and there are unresolved risks to Southern Water customers.
  - Another licensee makes a prior and successful application for access in respect of the same customer.

Southern Water will advise the licensee of the cause for any objection and invite means to satisfy the objection if this is appropriate. It is expected that the staged approach to completing any application will ensure that any significant issues are discovered at an early stage to minimise abortive costs and time. To this end, Southern Water will alert the licensee to missing or inadequate information within five days of receiving the information for simple applications and within ten days where more complex issues are involved. Notwithstanding, Southern Water will notify the licensee at the earliest time that there might be a concern for the validity of the application.

#### **3.1.2.6 Application process – arbitration and dispute resolution**

- Section 5.6.3 of this code sets out the procedures for negotiation, arbitration and dispute resolution, both by determination by Ofwat and through informal and formal procedures between Southern Water and the licensee. These procedures will be applied at any stage of the examination of an application if the licensee wishes to resolve a disputed issue.

#### **3.1.2.7 Multiple applications**

- It is possible that more than one licensee may wish to make application for access in respect of the same customer. Also, an application may be made in respect of a different customer within the same resource area. The progress and sequence of agreement with the separate licensees and eligible premises may affect the access price. A licensee should indicate if and how the timing of the separate applications should be managed where a licensee makes application in respect of more than one customer within the same resources area.

- Southern Water will not discriminate or favour any licensee over another and will treat each application in turn of when it was initially received and in turn of when any requested further information is received. Every effort will be made to maintain the timescales for progress of an application as set out in Table 1A and Table 1B.
- Within the terms of the confidentiality agreement it will be Southern Water's intention to protect a licensee from incurring abortive costs due to another licensee making an application in advance.

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### 3.1.3 Access Criteria

#### 3.1.3.1 Water Quality Input Specification

Southern Water must be satisfied that water introduced into its system will be compatible with existing supplies and that there will be no deleterious effect due to interaction of the water supply with mains and services. Due to the diversity of water quality throughout the Southern Water area of supply and the historic conditioning of networks by water supplies, it is not possible to give a single specification of water quality to be input into the system by a licensee. The compatibility of supplies will be considered in Stage 2 –Application of a combined supply proposal. The examination of water quality, to be confident it can be accepted into the Southern Water system, is complex and where necessary the advice of the DWI will be sought.

The following initial requirement should be noted:

- Supplies within Southern Water are disinfected with chlorine. Supplies of water disinfected by chloramination will not be accepted.
- Some 90% of supplies within Southern Water are treated with ortho-phosphoric acid to reduce plumbosolvency. It is probable that the supply by a licensee will need to be treated to reduce plumbosolvency. The process of optimisation of phosphate dose is in progress and the residual required for any supply will be specific to the entry point into the supply.
- Currently no supply of water receives fluoridation at the request of a Strategic Health Authority and on this basis supplies of artificially fluoridated water will not be accepted. If a Strategic Health Authority makes a request for fluoridation of supplies the licensee shall co-operate with Southern Water and the health authority to evaluate the feasibility and cost to add fluoride. The licensee may be required to add fluoride to the incoming supply and it is anticipated that the associated costs would be recoverable from the relevant Strategic Health Authority

In assessing water quality, the first requirement is to have sufficient data on which to base decisions. The general requirements include:-

- The applicant will provide water quality data for the treated water and, if appropriate, the raw water showing the annual minimum, mean, median and maximum concentrations or values for each parameter listed in Schedules 1 and 2 of the Water Supply (Water Quality) Regulations 2000.
  - These data should cover a period of three years and if the data are not current then monitoring surveys should be carried out to demonstrate that the data provided are representative of the current water quality. Where data do not cover a period of
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three years the licensee will be expected to demonstrate the probable variation in quality parameters due to seasonal and annual fluctuations in weather patterns, river flows, water levels and other environmental factors.

- For the data provided, the annual number of samples for each parameter should be, as a minimum, at the respective 'standard' frequency specified in the Water Supply (Water Quality) Regulations for that parameter. Detailed requirements are available on request.
- Southern Water will advise the applicant of any additional monitoring that is required, to enable the assessment of the impact of the incoming supply on the receiving water.
- All water quality samples should be taken and analysed in accordance with the requirements of the technical specifications and protocols specified in the Water Supply (Water Quality) Regulations 2000 or as advised by the DWI through information letters. The laboratory and methods of analysis should meet the requirement set out in Appendix 1 of the current edition of "Guidance on the Water Supply (Water Quality) Regulations 2000" published by the DWI.

Water quality standards will be specified by Southern Water in accordance with the requirements of Regulation 4 of the Water Supply (Water Quality) Regulations 2000.

- Southern Water will only accept incoming supplies if the water quality is compatible with the receiving water supply.
- Southern Water reserves the right to specify tighter water quality standards than Regulation 4 of the Water Supply (Water Quality) Regulations 2000, as appropriate, to ensure that the water received by customers meets the right standards. This is in accordance with Southern Water's current operating practice to minimise problems in the distribution system and to ensure compliance at the customer's tap.
- Southern Water will set standards, where appropriate, to minimise corrosion and mixing effects and to ensure microbiological quality is maintained and customer complaints do not occur.
- Where local practice includes dosing of orthophosphate, the applicant will be advised of these requirements including the target concentrations and acceptable performance standards to be achieved.
- In circumstances where blending of nitrate, or another parameter, is carried out in the receiving distribution system the applicant will be advised of the acceptable range in concentrations or values for the relevant parameters.
- On completion of the Stage 3 assessment, acceptable ranges in concentrations or values will be agreed for each parameter to define the acceptable water quality for the incoming supply and will be set out in the Access Agreement.

The assessment of water quality will establish the impact that changes to waters conveyed by distribution systems might have on water quality. The new supply may displace the existing supply and create a new hydraulically discrete zone or there may be mixing with Southern Water's supply. The issues that need to be considered relate to:-

- the interactions of the water with the components of the network and how this may impact on water quality, asset condition and asset life; and
- to the interactions between two waters when they mix.

Where the applicant's water is sufficiently similar to Southern Water's water it is unlikely that there will be significant water quality problems associated with the interactions of the waters and network. However, in all cases, both short term and longer term effects will be considered and, where necessary, mitigation measures identified to ensure continuing serviceability of assets and avoidance of deterioration of water quality. Both hydraulic and water quality modelling may be used to inform the water quality assessment.

#### 3.1.3.1.1 Customer acceptability

Consideration will be given to any effect on the taste, odour and appearance of the water supplied to customers. It is desirable, for example, that customers receive water of a hardness and mineral content to which they are accustomed. However, such compatibility may be essential in achieving effective plumbosolvency control.

Consideration will be given to maintaining any existing quality agreements with non-domestic customers. Some manufacturers need to know the chemical composition of water delivered. A change to a different composition can normally be handled, providing there is consultation and advance warning of the changes. For these customers, frequent or unplanned changes need to be avoided.

#### 3.1.3.1.2 Raw water risk assessment and pollution prevention

For all sources of raw water used by the applicant to supply water through Southern Water's network, a satisfactory risk assessment must be carried out with respect to possible pollution and measures in place, to ensure the protection of raw water from pollution. These risk assessments should consider sources of pollution and their impact on water quality. Procedures must be in place for the appropriate management of the identified risks. These procedures must be agreed with Southern Water

Specifically, each source must have a risk assessment carried out in accordance with Regulation 27 of the Water Supply (Water Quality) Regulations, 2000 (Cryptosporidium) and the associated protocols. This risk assessment must be submitted to the Drinking Water Inspectorate. If the source is identified as being at 'significant risk', as defined by the Regulations, then continuous sampling devices must be installed and operated by the entrant in accordance with the Regulations.

### 3.1.3.1.3 Temporary Derogation of Standards

It is recognised that, due to exceptional circumstances, there may be a need for temporary derogation of standards. Regular reports on the monitoring of water supplies and liaison meetings will be arranged between Southern Water and the licensee to review compliance with the standards included in the access agreement and to identify any trends in performance or change of circumstance that might indicate deviation outside the agreed standards. If necessary, the matters may be discussed with the DWI to determine if there is a need for investigation, authorised departure and remedial action.

An emergency procedure will be agreed to ensure that any risk to water quality is minimised, including the immediate cessation of the supply from the licensee. Southern Water reserves the right to immediately suspend the introduction of a supply if there is a risk of supplying unwholesome water or water unfit for human consumption.

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### **3.1.3.2 Water flow and pressure**

Southern Water will carry out distribution modelling of the network relevant to the introduction of the licensee's supply. In some cases it may also be necessary to carry out modelling at trunk main or strategic and/or resource level to determine the full impact of the new supply.

The network modelling will inform the minimum pressure and pressure envelope for the supply and typical diurnal variation in flow/pressure to balance the system. Seasonal variation in flow and pressure may also be considered. Specific requirements will be included in the access agreement. The licensee may be required to provide pressure-logging data applicable to the point of entry, to enable Southern Water to carry-out modelling of the proposed supply. Continuous flow and pressure monitoring at the point of entry may be specified in the access agreement

### **3.1.3.3 Water quality sampling and monitoring**

In addition to monitoring prescribed in the Water Supply (Water Quality) Regulations 2000, it is required for the licensee to carry out supplementary monitoring for operational purposes to satisfy Southern Water there is adequate control over the quality of water to be input into the supply system. This will include monitoring of parameters at a frequency and at points not specified within the Regulations, including stage samples at treatment works. The extent of additional monitoring to be reported to Southern Water and reviewed with the licensee will be agreed on a site-specific basis subject to consideration of the source of water and complexity of treatment, consideration of issues of stability when introduced into the Southern Water supply system and the availability of long-term prior data on the quality of the incoming supply.

The licensee may arrange the collection of samples and analysis of samples subject to complying with the relevant technical specification and protocols specified in the Regulations or as advised by the DWI. Where the DWI does not publish a relevant standard then the licensee shall demonstrate standards and procedures equivalent to those used by Southern Water.

The licensee must provide access to a sampling point at the point of entry to the Southern Water system to enable Southern Water to collect samples, although consideration will be given to the use of the licensee's treated water sampling point. Southern Water will provide a specification for the point of entry sampling point.

Records of water quality sampling and sample data must be retained for not less than six years or a longer period specified by the DWI.

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#### **3.1.3.4 Volume measurement**

The flow metering at the point of entry to the Southern Water system will be specified against the flow and variation of flow rate into the Southern Water system. The input measurement meter will be installed in accordance with the Southern Water specification for flow meters and will include in-situ meter calibration facilities.

The flow will be logged electronically and linked to the Southern Water telemetry system, in accordance with the Company standards.

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## **3.2 Control and Balancing of the Supply System**

### **3.2.1 General**

Southern Water retains full responsibility for the operation, maintenance and control of the supply system in the Area of Appointment. As a requirement of its Water Supply Licence, the licensee must co-operate with Southern Water to facilitate the execution of duties by Southern Water and must carry out activities in a manner that will not put at risk the functions of Southern Water.

Southern Water will explore with the licensee how practical arrangements can best be put into effect to ensure each party is able to satisfy its obligations. This will include the possibility of linking telemetry systems, sharing of telemetry data and establishing secure alarm and warning systems and communication procedures. Specific arrangements will be agreed on a case-by-case basis according to circumstances, including the complexity of the licensee's supply arrangements and of the Southern Water supply system.

Arrangements for the management of the supply system will include consideration of the following issues:

### **3.2.2 Supply system management**

#### **3.2.2.1 Unbilled Water**

##### **3.2.2.1.1 Leakage**

The licensee is expected to input a volume of water equivalent to the volume taken out, as recorded on the customer's meter or aggregate of customers' meters. It is acknowledged that water is lost through leakage from Southern Water's mains and through services connected to the mains between the point of entry and the point of exit. The licensee is not required to increase his supply over and above the volume taken by the customer(s) to compensate for leakage from the Southern Water system.

##### **3.2.2.1.2 Unauthorised water use**

It is recognised that a small proportion of water is taken illegally from the Southern Water system, for example by illegal hydrant use. The licensee is not required to increase his supply over and above the volume taken by the customer(s) to compensate for water taken illegally from the Southern Water system.

##### **3.2.2.1.3 Fire Water**

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Southern Water is required to supply water for fire-fighting purposes and no charge can be made for fire-fighting or for the testing of fire-fighting installations. In some circumstances, it is necessary for a customer to use high flow rates to test fire-fighting installations. The licensee should have procedures in place to inform Southern Water of abnormal demands from the licensee's customer to enable Southern Water to assess any impact on operations and to plan accordingly.

Southern Water may request the licensee to temporarily increase supply, if the supply from a licensee is required to assist in fire-fighting, especially where the supply to the location of the fire is reliant on the supply from the licensee. An estimate of the additional supply made for the purposes of fire-fighting will be agreed with the licensee and discounted from water supplied for charging purposes.

### **3.2.2.2 Drought and Water Resource Plans**

#### **3.2.2.2.1 Drought Plans**

Southern Water remains solely responsible for preparing and maintaining a drought plan in accordance with the requirement of the Environment Agency.

To enable the preparation of the drought plan, it will be necessary for Southern Water to have a full understanding of the reliability and design condition of the supply to be made by the licensee. This information will be used by Southern Water to identify the trigger points for action set out within the plan. The licensee will be required to supply Southern Water with data on the performance of the source of supply during a drought condition and may be required to provide additional and specific information to enable Southern Water to prepare submissions and supporting data for submissions for drought orders and permits.

Southern Water will bring to the attention of the licensee any circumstance where the licensee's supply is less robust against drought scenarios than the Southern Water supply. This will be taken into consideration in the treatment of the licensee's customer under drought conditions, as set out in the access agreement.

Southern Water will take into account any additional security that may be available from the licensee's supply, where it is more robust against the drought scenario than the Southern Water supply, and may enter into an agreement in respect of supplies under drought conditions.

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Drought plans are to be updated and formally re-submitted at intervals of three years and Southern Water will periodically review the drought plan according to new information and the licensee is expected to co-operate in the provision of data.

Southern Water will apply any restrictions on non-essential use, as implemented in accordance with a drought order, without discrimination across all customers, including those of the licensee.

#### 3.2.2.2.2 Resource planning

Southern Water is responsible for producing a water resource plan and for the periodic review and update of the plan. The Environment Agency publishes guidelines for the production of resource plans.

To enable the preparation of the resources plan it will be necessary for Southern Water to have a full understanding of the reliability and design condition of the supply to be made by the licensee and of the future demand by its customer(s). The licensee is expected to co-operate in the provision of data for the preparation of the plan and for review of the plan, in accordance with the timescales notified by Southern Water.

It is expected that the information provided during the application process will meet the substantial part of the information requirement for Southern Water to use in the preparation of the plan. However, if the licensee's supply is significant in the context of the resource area into which it is introduced, there may be a need for more detailed information and study to align the licensee's design data to be consistent with the Southern Water modelling methodology. An assessment of the sensitivity of the resources plan to the supply from the licensee and the customer demand will be made during the application process and any specific requirements for more detailed information will be notified to the licensee.

#### 3.2.2.3 Telemetry requirements for supply system control

To enable Southern Water to effectively manage the water supply system, it will be necessary for the licensee to make available to Southern Water information on the status and availability of the incoming supply. As a minimum, the flow into the Southern Water system shall be made available on the Southern Water telemetry system and telemetry information of other parameters, either at the point of entry or at the licensee's works, may be required subject to an assessment of the licensee's

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source of supply. This assessment will take into account the capacity, reliability, quality and sustainability of the licensee's supply and a risk-based approach will be followed by Southern Water to ensure all due diligence in maintaining water quality and continuity of supply to customers.

A detailed specification of telemetry system requirements and the interface with the licensee's systems will be agreed on a case-specific basis to minimise costs to the licensee consistent with protecting the Southern Water supply.

Alarms on key parameters will be required to enable Southern Water to respond to any emergency that develops on the supply from the licensee. These alarms, together with supplementary notification systems by telephone, fax and e-mail, will be agreed according to the specific circumstances of the licensee's supply and the robustness of the Southern Water system at and downstream of the point of entry.

#### **3.2.2.4 Secondary connections**

The agreement for access to the Southern Water system is specific to the premises set out in the access agreement. No additional connection to the Southern Water system is permitted without express agreement. The licensee shall not permit the customer to make further supplies from the premises supplied.

#### **3.2.2.5 Supply system maps and plans**

The examination of the licensee's proposal will require the use of distribution models for the hydraulic and water quality analysis to determine the viability of the proposal and to establish operating parameters. Southern Water will make available the maps and plans as necessary to enable the licensee to fully understand how his supply will affect Southern Water operations and is relevant to the application. The licensee should make available maps and plans of his system and co-operate in the provision of maps and plans from any secondary supplier, to enable Southern Water to assess the viability of the proposal, carry out risk assessments and to prepare contingency plans in respect of any emergency or curtailment of supply for planned maintenance purposes.

All maps and plans will be subject to the confidentiality requirements and shall be securely stored, as information within these documents may have security implications. Where information is provided in electronic format, the compatibility between the licensee and Southern Water systems will be discussed on an individual basis.

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### **3.2.2.6 Point of entry controls and failure modes**

The licensee shall give full access to sampling points at the point of entry, or other agreed point, to enable Southern Water to fulfil its statutory duty and to demonstrate due diligence by audit samples. Southern Water will agree with the licensee the arrangements for the operational control of the incoming supply in respect of daily volume and diurnal variation of flow. In addition, the process and procedures for the isolation of the incoming supply in emergency conditions will be agreed. Arrangements for the management of the incoming supply during periods of planned maintenance to either the licensee's supply or the Southern Water infrastructure will also be agreed.

### **3.2.3 Metering services**

The arrangement for metering at the point of entry will be specific to each point of entry and determined by reference to the volume, unit flow rate and variation of flow. Specific terms for seasonal or diurnal variation requested by the licensee will also be considered when establishing arrangements. Consideration of the robustness of the licensee's supply and the infrastructure at, and downstream of, the point of entry will also be taken into account when determining arrangements.

Unless there is a specific request from the licensee for change in meter at the customer premises to enable measurement for special tariff arrangements, it is assumed the existing customer meter will be retained.

#### **3.2.3.1 Meter asset management**

Southern Water will retain ownership of the meter(s) at the customer premises. Generally, existing meters on eligible premises are logged for leakage management purposes. Southern Water will replace meters where errors in measurement are suspected or in accordance with a routine meter replacement programme. The cost of this activity is not part of the Southern Water avoidable costs.

The licensee will be required to install a meter at the point of entry to the Southern Water supply system in accordance with the Southern Water specification for meters. The ownership of this meter will be discussed and agreed with the licensee, together with options for the integration of the meter within control and monitoring systems.

#### **3.2.3.2 Metering solutions**

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Southern Water utilises a number of metering solutions. The solution is demand and site-specific and generally will consist of either a mechanical meter or an electromagnetic meter.

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### 3.2.3.3 Meter installation

The meter installation will include the meter, meter chamber, kiosk, pulse unit (mechanical meter only) and data logger. It is generally assumed that a by-pass is not required; however, up and down stream online valves will be required for maintenance. Typically, Southern Water can install and configure the above basic mechanical meter.

The meter should be correctly sized, and would be based upon the anticipated daily volume and supply rate or agreed control mechanism.

A control mechanism has not been included within the cost estimate, and consideration should be given with regards to timed boosters or auto-valves.

If an electromagnetic meter is deemed to be the correct design solution, then additional installation costs should be considered, including the provision of power to the meter kiosk.

The preferred data-logging solution utilises SMS technology. In locations with strong network signals, the need for a kiosk on mechanical meter installations maybe mitigated. Similarly, in poor reception areas there will be a need to provide a landline solution.

Costs for provision of power and phone line vary greatly depending on meter location with regards to local utilities. Line rental charges for fixed lines typically run at £60 per annum.

### 3.2.3.4 Meter maintenance

Southern Water has a proactive approach to maintaining mechanical meters, which consists of a mechanism replacement at five year intervals.

Electromagnetic meters will be replaced only when they have failed.

### 3.2.3.5 Meter calibration and verification

Southern Water's policy for Meter calibration does not include in-situ verification for mechanical meters, as this is deemed to be cost prohibitive. The five-year mechanism

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replacement is seen to be suitable. For electromagnetic meters, a bi-annual diagnostic verification will be undertaken to ensure that the meter is operating within the parameters measured at the time of meter manufacture and calibration.

### **3.2.4 Supply system balancing**

#### **3.2.4.1 General**

Southern Water is responsible for the overall control of the water supply system, to balance supply and demand and to maintain a wholesome supply of water to customers with constancy of flow and pressure. Abnormal demands, outages and emergency circumstances must be managed to ensure the supply system is maintained with the minimum of disturbance to the level of service normally received by customers.

#### **3.2.4.2 Strategic balancing**

Water supply works, service reservoirs and water booster stations are operated to meet customer demand with optimisation of pressure, preservation of storage in service reservoirs and efficiency of operation. Southern Water assets are designed and operated to meet these objectives without prejudicing water quality, breach of abstraction licences or engendering risk of failure from exceptional demands and reasonably foreseeable emergency circumstances. The sensitivity of zones to change in operations will vary from zone to zone throughout the overall supply system. The introduction of a supply by a licensee may affect the stability of the existing supply system and the extent of any such disturbance will be examined during the detailed application phase. Any constraints on the supply by the licensee, specific operational performance or reserve capacity will be identified and considered during the application and, where necessary, be included in the agreement.

#### **3.2.4.3 Annual supply planning**

Information provided by the licensee for resource planning purposes will be used to assess the reliability of the supply, and it is expected that the water quality information provided with the application will have identified any seasonal changes in quality that Southern Water will be required to accommodate. Further specific monitoring may be required if the licensee is unable to provide a sufficient history of water quality to assess seasonal variation in response to the variability of weather or other factors. This information, together with the details of the customer's demand profile provided at the detailed application stage, will be used by Southern Water for annual planning purposes. The licensee shall inform Southern Water of any change in previously

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provided information or of forecast information or of new information that might affect the supply arrangements.

#### 3.2.4.4 Use of strategic supplies

A supply can be designated as 'strategic' if, without the introduction of the supply, there is a substantial risk that Southern Water would be unable to maintain supplies to its own customers as well as supplying the licensee's customers with water for domestic purposes. Sections 66G and 66H of WIA91 enable Ofwat to determine whether a supply is strategic, either on the application of Southern Water or by Ofwat without any application from Southern Water.

The significance of the supply being designated as strategic is that the licensee becomes subject to special administration procedures as set out in sections 23-26 of WIA91. This means that if the licensee were to fail, either procedurally or financially, special administration would apply and the introduction that had been deemed strategic would continue to be introduced into the Southern Water's supply system.

An application to the High Court, by Ofwat or the Secretary of State, for the special administrative order can be issued in situations set out in Section 24 of WIA91 and include where the licensee:

- has been, or is likely to be, in a sufficiently serious contravention of a licence condition or a statutory requirement imposed on it because it holds a licence;
- has been, or is likely to be, in a sufficiently serious contravention of an enforcement order;
- has taken a sufficiently serious action that has caused a water undertaker to contravene section 37 or section 94 (where applicable) WIA91; or
- is, or is likely to be, unable to pay its debts.
- If a licensee's introduction is significant, but the licensee fails and so becomes unable to continue its introduction, Southern Water may face a substantial risk of being unable to meet its statutory duties to maintain supply to its own customers and meet the domestic purpose needs of the licensee's customers. Designation of the introduction as strategic will offer a safeguard to the public supply system and reassurance to all customers that the licensee's failure is not likely to cause significant immediate supply difficulties.

Strategic supply designation also minimises the need for Southern Water to duplicate resources. Without the strategic supply provisions, Southern Water would need to ensure that they have enough 'spare' sources to match the volume of the licensee's

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introductions in the event of licensee failure. This is likely to be costly and represents an inefficient use of resources.

The key factor that will determine the need for strategic supplies is Southern Water's ability to supply its own customers' and the licensee's customers' domestic needs, in the event that the licensee fails. It is believed that licensees' introductions should be classed as strategic in all circumstances where, in the event of licensee failure, Southern Water would not be able to immediately and on a continuing basis supply its own current customers' and the licensee's customers' domestic needs. The information that will be required to test this is likely to be varied and the Ofwat Strategic Supplies Guidance sets out the information requirements required for a designation request, together with further explanation of Strategic Supplies.

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

- Southern Water will assess if a licensee's supply is likely to require a strategic supply designation, either at the time of application or at any future time. Ofwat might also determine, independent of any application by Southern Water, that an introduction is strategic.
- During the normal water resource planning process there will be a review of whether a supply should be designated as strategic, should retain its designated status or if changes in circumstance dictate that a supply should be de-designated. A request to Ofwat to de-designate a supply may be made by Southern Water, licensee or customer.
- The licensee should make itself aware of the implications of whether or not a supply is designated as strategic and inform its customer(s) of the protection the customer will be offered should there be a failure of either the licensee or of another licensee making supplies into the resource area.

#### **3.2.4.5 Back-up supplies**

Southern Water has an interim duty of supply as per the section below where the licensee ceases to supply a service to a customer. The licensee's customer may require a volume of supply greater than that provided under the interim duty of supply to be maintained in all circumstances. Southern Water will discuss on a case by case basis a customer's additional requirement for a back-up supply and may enter into an agreement with the customer for such a supply.

##### **3.2.4.5.1 Interim duty to supply**

The licensee's customer(s) are afforded some protection if the supply by the licensee is terminated. Section 63AC of WIA91 provides that if a licensee ceases to supply any

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premises with water, and the owner or occupier of the premises has not notified Southern Water that he has made arrangements for the continuation of the supply of water to the premises or that he intends any supply of water to the premises to cease, Southern Water is under an interim duty to continue the supply of water to those premises. The duty applies until a supply is made under Section 52 or 55 of WIA91 or Southern Water serves a notice on the customer that the supply is to be discontinued. This notice will not be served until at least three months after the day on which the supply by the licensee ceased. The interim supply duty applies to domestic use purposes only.

The interim supply duty does not apply if it would put at risk Southern Water'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. In such circumstances, it is expected that the licensee's supply would be designated as strategic.

#### 3.2.4.5.2 Interruptible customers and interruptions

Southern Water does not have any interruptible tariff options available.

#### 3.2.4.6 Flow Balancing and Reconciliation processes

It is expected that, over a period of time, the supply by the licensee and the demand from his customer will balance. There will be a periodic reconciliation to assess any financial adjustments that will be required where the balance is outside the permitted tolerance.

##### 3.2.4.6.1 Supply system usage forecasts for wholesale supplies

The licensee must provide a forecast of the consumption by his customer(s) to enable Southern Water to prepare the water resources plan and to establish operational plans. Specific seasonal and/or diurnal variation in flow should be identified. It is anticipated that the information in the form provided at the application stage will be provided annually and at any change of circumstance.

##### 3.2.4.6.2 Supply system usage forecasts for combined supplies

The licensee must provide a forecast of the consumption by his customer to enable Southern Water to prepare the water resources plan and to establish operational plans.

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Specific seasonal and/or diurnal variation in flow should be identified. It is anticipated that the information in the form provided at the application stage will be provided annually and at any change of circumstance.

#### 3.2.4.6.3 Imbalance accounting

An imbalance occurs where the measures of water input and output are outside those volumes agreed in the access agreement as the basis for the calculation of the access price. Financial adjustment to the access price may be required, in order to ensure that the cost principle is applied. In addition, an adjustment for volumetric imbalance between supply and demand based on unit rates may be required.

Within each reconciliation period the supply and demand are to balance to within plus/minus 5%, based on the agreed actual inflow at the point of entry and the outflow from the supply system at the customer meter. A financial adjustment for over/under supply will be made on the basis of volumetric charge at the rate agreed for use during the reconciliation period.

In some circumstances, the actual supply in the reconciliation period may vary from the previous forecast of supply to such an extent as to be material to the calculation of the access price. The access price will be reviewed on the basis of the licensee's revised forecast of the future consumption of his customer. The sensitivity of access price to change in volume from that used to calculate the access price will depend on the resource zone into which the supply is introduced. For considering any need to recalculate the access price, the magnitude of the variation between forecast volume and actual volume that will trigger a recalculation of the access price will be set-out in the access agreement. Further, the licensee will be expected to explain and to provide evidence of disparity between forecast and actual consumption in any year and the future forecast of consumption.

Where the volumetric imbalance between the licensee's supply and the customer's consumption exceeds the tolerance of 5%, the arrangements for financial reconciliation that will apply are:

- Where the licensee's supply exceeds the customer's consumption by greater than 5% in any reconciliation period, the full access charge is payable on the excess volume.
- Where the customer's consumption exceeds the licensee's supply by greater than 5% in any reconciliation period, the licensee shall pay the access charge calculated on the measured input to the Southern Water system plus the full excess of consumption over supply at the current Southern Water standard customer tariff appropriate for that customer.

#### 3.2.4.6.4 Reconciliation processes

The reconciliation process will be carried out on an annual basis at the date set out in the access agreement, although a more frequent reconciliation may be prescribed for seasonal tariffs. The reconciliation will apply to both the simple volumetric imbalance between supply and demand and for any adjustment to access price where the volumes fall outside the parameters agreed as the basis for the access price.

It is recommended that the licensee conducts regular audits of supply and demand, to assist in maintaining a volumetric balance and advises Southern Water if changes to operational parameters are required to help maintain the balance. Southern Water may require the licensee to increase supply if the demand is exceeding the licensee's supply over a period of time, although short-term fluctuations are likely to occur and will be accommodated.

#### 3.2.4.6.5 Peak season and off-peak reconciliation.

If the licensee wishes to agree seasonal tariffs, against supply and demand volumes clearly set out and defined during the application process, a seasonal reconciliation process appropriate to the tariff regime will be applied in accordance with the principles set out above. Dates for the reconciliations will be defined in the access agreement.

### **3.3 Supply System Maintenance and Emergency Procedures**

#### **3.3.1 General**

Southern Water is responsible for the operation, maintenance and control of the supply system in its Area of Appointment. There is a duty to maintain an efficient system for the supply and distribution of wholesome water and will meet customer expectations for constancy of flow and pressure and/or communicate with customers to inform them of any deviation from the service that is normally provided. There are also specific and general obligations under the Security and Emergency Measures (Water and Sewerage) Direction 2005. The licensee has obligations as set out in the licence and under the Security and Emergency Measures (Licensed Water Suppliers) Direction 2006. Southern Water and the licensee must co-operate and put in place robust systems and procedures to ensure the obligations are satisfied and that there is no impediment to the functions of each party. Procedures will cover not only physical activities for operation and maintenance of the Southern Water and licensee's system but also communications between the parties.

#### **3.3.2 Diagnosis of system issues**

Southern Water and the licensee have an obligation to supply water that is wholesome and is fit for human consumption. There must also be continuity of supply except for the execution of necessary works.

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

Early diagnosis of any deviation from normal for indicator parameters is essential to recognise the potential for an abnormal situation to develop. Clear understanding of the normal operational regime and the acceptable bounds for indicative parameters is required.

It is the responsibility of Southern Water to:-

- Inform the licensee of the normal performance of the supply system;
  - Inform the licensee of trigger levels for indicator parameters that will initiate investigation to determine if the system might be operating in an abnormal manner;
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- Inform the licensee of planned maintenance or unplanned events that may affect the supply of water;
- Inform the licensee of changes in operation of the system that might affect the licensee supply;
- Inform the licensee and customers of planned and unplanned events in accordance with normal Southern Water notification procedures or as set out in the Access agreement where special notification is agreed;
- Inform the licensee of any communication received from the licensee's customer(s).

It is the responsibility of the licensee to:-

- Inform Southern Water of the normal performance of the incoming supply;
- Inform Southern Water of any deviation from normal operation for any parameter.
- Inform Southern Water of planned maintenance or unplanned event that may affect the supply of water;
- Inform Southern Water of changes in the operation of the licensee's system that might affect the Southern Water supply;
- Inform Southern Water of communication from the customer(s) that arises due to the quality, constancy or sufficiency of the customer's supply.

### **3.3.2.2 Quality issues**

Southern Water is responsible for the quality of water supplied in its area of appointment. The licensee must have adequate control and monitoring arrangements to indicate if there is any deterioration in water quality for treated water, raw water to be abstracted for treatment and at appropriate stages of treatment. It is expected the DWI will have evaluated the licensee's systems to be assured these are adequate to ensure the maintenance of water quality. Southern Water will review control and monitoring arrangements to be assured these are adequate and of a frequency to inform of deviations in quality that might affect the Southern Water supply. The use of telemetry to provide real time information is encouraged, with information made available to Southern Water where systems are compatible. Routine and emergency contact details will be exchanged and kept up to date and a schedule of reporting on routine quality performance and issues will be agreed as appropriate to the characteristics of the licensee's supply. It is expected that the routine reporting regime will be amended over time in response to analysis of performance and evaluation of risk of deviation from the agreed operating parameters.

For emergency events and for changes in operating parameters or practices that might have an effect on the quality of supplies there must be immediate notification to the designated contact. The information to be provided will be agreed in the light of the availability of telemetry data, nature of the emergency or deviation from normal operation.

Southern Water will inform the licensee of emergency circumstances in accordance with existing procedures set out in the Emergency Planning Manual. (This is a Southern Water 'controlled' document and will be made available subject to the confidentiality agreement)

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All emergency notifications will be subject to a post event de-brief, and there will be a schedule of meetings to review performance data for both the Southern Water and licensee's supply.

### **3.3.2.3 Hydraulic issues**

Change in the hydraulic operation of the system may cause both water quality problems and changes in flow and pressure of supplies. There is particularly concern where a hydraulic event induces a change of direction of flow in the network. The licensee will be required to establish monitoring arrangements for flow and pressure to inform himself of system performance.

For emergency events and for changes in operating parameters or practices that might have an effect on the quantity and pressure of supplies there must be immediate notification to the designated contact. The information to be provided will be agreed in the light of the availability of telemetry data, nature of the emergency or deviation from normal operation.

Southern Water will inform the licensee of emergency circumstances in accordance with existing procedures set out in the Emergency Planning Manual.

Southern Water is required to complete level of service returns for minimum pressure, interruption of supply and customer contact data. Routine and emergency contact details will be exchanged and kept up to date and a schedule of reporting on routine performance and issues will be agreed as appropriate to the characteristics of the licensee's supply. It is expected that the routine reporting regime will be amended over time in response to analysis of performance and evaluation of risk of deviation from the agreed operating parameters.

All emergency notifications will be subject to a post event de-brief, and there will be a schedule of meetings to review performance data for both the Southern Water and licensee's supply.

### **3.3.2.4 'Real' time information capture systems**

Where practicable the joint use of telemetry data is preferred and system compatibility issues will be explored during the detailed application. Other information should be made available in electronic format. Generally data should be provided in excel spreadsheet format but, in addition, Southern Water operates a number of systems for data logging which may be compatible with systems used by the licensee.

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For notification of emergencies and unplanned changes of operation a specific procedure will be agreed with nominated contacts and prescribed forms of communication including acknowledgements.

For notification of planned changes a specific procedure will be agreed with nominated contacts and will include initial notifications at minimum notice periods and subsequent confirmation notices.

Routine reports will be preferred in electronic format to an agreed template and will include:

- Monitoring information - daily report and periodic report
- Water Quality analysis reports
- Emergency and incident management reports
- Planned maintenance reports
- Customer contact reports
- Meter readings
- Flow balancing reconciliation

The frequency and periodicity of reports will be agreed according to the circumstances of each supply.

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### **3.3.2.5 Reporting procedures**

Lists of nominated contacts and a hierarchy of contacts will be agreed for emergencies, planned events, routine communication and monitoring reports for each supply. Each party is responsible for keeping the contact lists up to date and for notifying the other parties of any change in details. Changes in contact details should be notified as either temporary or permanent and each notification will be subject to written confirmation and acknowledgements of receipt. Liaison meetings between Southern Water and the licensee will include an agenda item to discuss the operation of notification procedures and the timely delivery of emergency, monitoring and other reports and the interpretation and analysis of the information contained within reports.

### **3.3.3 Planned system maintenance**

Planned system maintenance that will affect the licensee supply or supply to the customer must be notified to the other parties to enable adjustments to normal operations to be made so that there is no deterioration in water quality and that any adverse effect to the constancy and sufficiency of supply can be minimised. In most circumstances it is anticipated that a minimum of seven day's notice will be adequate, but in some circumstances a longer period of notice may be necessary to allow Southern Water, the licensee or the customer(s) to make arrangements to mitigate the effect of the works.

#### **3.3.3.1 Obligations with respect to planned maintenance**

Southern Water and the licensee each have a duty to maintain its assets to ensure continuing serviceability. Maintenance should be planned to minimise the disruption that will be caused to customers and between those supplying water. Planning and advance notification will allow parties to organise activities to mitigate the effects of the maintenance and avoid circumstances where the security of the supply might be compromised by poor planning.

##### **3.3.3.1.1 Responsibility of Southern Water**

Southern Water is responsible for the maintenance of the supply network within its area of appointment. The implications of each maintenance task will be considered by Southern Water to assess if the work might impact on the licensee or the licensee's customer(s). Where there is a possible affect the licensee will be notified not less than one week in advance of the work or such longer period if Southern Water is in a position to give a longer period of notice.

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### 3.3.3.1.2 Responsibility of the licensee

The licensee is responsible for the maintenance of its own assets and for informing Southern Water that work will be carried out. Southern Water should be notified if the maintenance will increase the risk of failure of supply, by for example removing standby units from service, or will cause a change in operational parameters including flow, pressure and water quality. A minimum period of notice of one week will be required but Southern Water may require a longer period of notice if the maintenance works require significant investigation of the impact of changes or other accommodation works.

### 3.3.3.2 Specification of assets

Assets covered by planned maintenance include plant at water supply works, service reservoirs, trunk mains, distribution mains and fittings and service connections. The number and extent of assets that may impact on the licensee and his customer(s) will be case specific.

### 3.3.3.3 Maintenance standards

No GSS or other compensation payments will be made to the licensee or the licensee(s) customer for interruptions, additional work or impact on business unless provided for in the access agreement. Southern Water will not discriminate between its own customers and the licensee's customer(s) when carrying out works and the same standards of care will apply.

### 3.3.3.4 Risk assessment procedures

Southern Water has procedures to carry out risk assessments for maintenance work that might result in deterioration of water quality or incur a risk of significant interruptions of supply that would be DG3 reportable. If planned maintenance by the licensee is assessed as being likely to incur such risks to Southern Water, then Southern Water will initiate its risk assessment procedure and will require the licensee to co-operate in the provision of information to enable a thorough assessment to be carried out. Subsequently, an action plan for execution of the maintenance works and

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a contingency plan may be required to mitigate any adverse service to customers if the planned maintenance does not proceed as planned.

If Southern Water assesses that its own maintenance works will require the licensee to be party to an action plan and/or a contingency plan the licensee will co-operate with Southern Water to enable these plans.

In circumstances where action plans and contingency plans are required it is unlikely that the seven-day notification period for maintenance works will be adequate and the maintenance will need to be re-scheduled for when all arrangements are in place.

The licensee is expected to be an active participant in the development and implementation of action and contingency plans and the risk assessment process. In the event of failure to co-operate then Southern Water will refer the matter to Ofwat and/or the DWI for consideration as to whether the acts or omissions of the licensee are in breach of its licence to operate.

### **3.3.4 Unplanned system maintenance**

It is acknowledged that there will be disruption to the system caused by unplanned events. Procedures will be established to ensure there is effective communication of such events and a co-ordinated response to their resolution.

#### **3.3.4.1 Obligations with respect to planned maintenance**

Southern Water and the licensee each have a responsibility to maintain water quality and continuity and constancy of supply. When an unplanned event reduces the service available it is the responsibility of the parties to put in place remedial works to minimise any risk to public health and to restore full supply at the earliest practicable time.

#### **3.3.4.2 Responsibility of Southern Water**

Southern Water will inform the licensee of unplanned maintenance that will affect the licensee's incoming supply or the supply to the customer. If there is an emergency incident that will affect the licensee's customer(s) then Southern Water will notify both the customer(s) and the licensee. For unplanned maintenance that does not constitute

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an emergency it will remain the responsibility of the licensee to inform the customer(s) of the impact of the event.

### **3.3.4.3 Responsibility of the licensee**

The licensee is responsible for informing Southern Water of any maintenance that is required to its assets and of the probable and possible impact on the incoming supply. This will enable Southern Water to plan for any outage or shortfall in supply. The licensee will also inform his customers of the event as provided for in his contract with the customer.

### **3.3.4.4 Risk assessment processes**

Southern Water has procedures to carry out risk assessments for maintenance work that might result in deterioration of water quality or incur a risk of significant interruptions of supply that would be DG3 reportable. If an unplanned event and the remedial actions are assessed as being likely to incur such risks to Southern Water, then Southern Water will initiate procedures to minimise such risks. The licensee is required to co-operate in the provision of information and to take reasonable action to assist to manage the event.

If Southern Water assesses that its own maintenance works will require the licensee to be party to its action to restore supplies or minimise risks to customers the licensee will co-operate with Southern Water to enable these actions.

Actions that might be required will include, amongst others, variation of the time for execution of the remedial works, temporary repairs, and variation in flow rates, including curtailing or increasing supply above normal rates.

The licensee is expected to be an active participant in the development and implementation of actions to minimise the risk of deterioration of water quality and to restore supplies. In the event of failure to co-operate then Southern Water will refer the matter to Ofwat and/or the DWI for consideration as to whether the acts or omissions of the licensee are in breach of its licence to operate.

### **3.3.4.5 Emergency notices**

Southern Water 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

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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 Southern Water. The licensee is responsible for notifying the DWI and other parties as required by his licence to operate and the Water Undertakers (Information) Direction.

### **3.3.5 Safety aspects of unplanned and emergency work**

#### **3.3.5.1 Status classification**

Southern Water 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. The Southern Water Emergency Planning Manual has a clear process for categorisation of incidents and escalation procedures.

#### **3.3.5.2 Standard emergency reporting procedures**

The Southern Water Emergency Planning Manual and Water Quality Manual contain details of reporting of incidents. These requirements will be made known to the licensee subject to the confidentiality agreement. The licensee will be expected to make full contribution to the relevant sections of any report.

#### **3.3.5.3 Major emergency reporting procedures**

The Southern Water Emergency Planning Manual and Water Quality Manual contains details of reporting of incidents. These requirements will be made known to the licensee subject to the confidentiality agreement. The licensee will be expected to make full contribution to the relevant sections of any report.

It should also be noted that in a major emergency the licensee may be expected to be part of the incident management team and that significant reporting requirements to all regulators, customers and customer representative bodies may be required.

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### **3.3.6 Emergency procedures for dealing with specific events, issues and incidents**

Southern Water includes an evaluation of the potential for a major emergency as it affects the licensee or as the licensee may give rise to a major emergency, in the detailed application. Potential scenarios will be notified to the licensee together with any requirement to develop or assist in the development of an incident management plan for that potential incident. Southern Water will bring to the attention of the licensee any change in circumstances that will affect that plan or circumstance that requires a new incident management plan to be developed. The licensee shall also carry out risk assessments of its assets and be aware of circumstances that might result in a major emergency. The licensee shall notify Southern Water of risks and cooperate with Southern Water to develop incident management plans for the licensee's assets and/or for management of the Southern Water supply system in response to the event.

### **3.3.7 Customer protection**

Customer protection and protection of public health are the highest priority for Southern Water and in no circumstances will any action be taken that might knowingly endanger public health. There will be exercise of all due diligence to ensure there is no water is supplied that is unfit for human consumption.

#### **3.3.7.1 Special Consumers**

Special consumers are defined in Licence Condition R 8(6) and includes those

- Who require special communication arrangements whether under normal operating circumstances or in the event of an incident, whether an emergency or not;
- Who need continuity of supply or urgent/alternative sources of supply in the event of incidents;
- Who require a water supply to be maintained within specific operational parameters, for example, pressure or quality;
- Who need additional services from Southern Water.

Southern Water will notify the licensee of any special consumers who might be affected by the operations of the licensee. This will be identified during the detailed application, but the licensee may be required to respond to a change in need from the customer.

The licensee shall inform Southern Water of any special consumers at the time of the application and these will be taken into account during the examination of the proposal.

### **3.3.7.2 Large scale customer warnings**

Southern Water will be responsible for all large scale customer warnings. Where the licensee's customer(s) is within the designated area the licensee will be informed of the intention to issue the warning and may then communicate with the customer(s). Due to the process of issuing large scale warnings it is assumed the licensee's customer(s) will also be included within the distribution of notices. Southern Water will inform the licensee if the licensee is to specifically alert the customer(s).

### **3.3.7.3 Emergency compensation payments**

Any payment to customers for compensation as a result of Southern Water's inability to supply or for performance not meeting agreed standards will be negotiated at the time the agreement is made and allowed within the access price. Any compensation may be payable to the licensee and/or the customer(s) as set out in the agreement.

### **3.3.7.4 Emergency operational planning exercises**

From time to time there will be practice and testing of emergency procedures, generally by simulation of emergency situations. The licensee will be given adequate notice of the intention to carry out such an exercise and a briefing on the conduct of the exercise. The licensee will be required to co-operate in the conduct of the exercise, which might include field-testing of systems and procedures.

## **3.3.8 Support Processes**

### **3.3.8.1 Arrangements for press liaisons**

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Southern Water will be responsible for the issuing of all press statements affecting customers in the area of appointment. Where the licensee is directly involved in the circumstances giving rise to the press statement there may be a joint communication. The licensee shall not issue any public statement concerning the water supply to Southern Water's customers without prior approval from Southern Water.

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

Where Southern Water receives a severe weather warning it will be communicated to the licensee to the designated nominee as set out in the list of contacts. It is expected that the licensee will have in place arrangements to receive information on events that will affect his supply.

### **3.3.8.3 Emergency contacts**

The arrangements for contacts are as set out in section 5.3.2.5

### **3.3.9 Reportable situations**

The licensee has a duty under legislation and in accordance with the licence and the Water Undertakers (Information) Direction to make reports of certain events and incidents. Where a reportable incident is associated with the licensee's operation and affects or potentially affects Southern Water the licensee shall inform Southern Water of the making of the report at the time of submission of the report to the relevant authority, together with a summary of the report.

Southern Water will inform the licensee of any reportable incident that affects the licensee and/or the licensee's customer(s).

Incident reports are generally required for incidents that have a potential to:

- be harmful to health
  - cause public alarm
  - be notified to local and national media
  - cause damage to the environment
-

Such incidents may be reported to bodies including:

- DWI
- Environment Agency
- Local Government
- Medical Advisers and CCDC's
- Emergency Services
- Health and Safety Executive
- Central Government
- Ofwat
- Consumer Council for Water



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## **3.4 Customer Contact Arrangements**

### **3.4.1 General**

Southern Water has well established arrangements for contact with customers. Any customer contact is assessed to determine if the information provided is indicative of an emergency, potential emergency or event that affects the network or supply of water for pressure, flow or quality. Where a customer contact is indicative of any incident or potential deterioration of water quality, an investigative procedure is followed which may involve field investigations and may include direct contact with the customer.

As part of the normal operation of the business there are frequent contacts with customers. These include billing information, meter reading, the water quality programme of random customer tap samples, environmental and water supply news and advice letters and communications for specific purposes including notification of interruption of supply, hosepipe bans and emergency notifications including 'boil water' notices.

Performance in responding to customer contacts is monitored internally and is reported to Ofwat and to the DWI.

### **3.4.2 Customer contact arrangements for operational queries and complaints**

#### **3.4.2.1 Customer meter reading**

The licensee is responsible for reading the customer meter and for informing Southern Water and the Sewerage Undertaker of consumption. The frequency of report of meter readings to Southern Water will be set out in the agreement. Southern Water will make its own arrangements for meter reading for audit purposes and for verification of consumption for network balancing and reconciliation. The licensee and the customer shall not restrict or impede Southern Water access to read meters and to download and maintain data loggers at meters.

#### **3.4.2.2 Billing and debt collection**

The licensee is responsible for billing his customer(s) for water charges. Southern Water will bill the customer for sewerage and trade effluent charges based on the readings provided by the licensee. The licensee is responsible for arrangements to recover bad debt from his customer(s). Southern Water has existing procedures for the recovery of bad debt from its customers.

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Arrangements for Southern Water's billing of the licensee and procedures for debt recovery are set out in the access agreement.

### **3.4.2.3 Operational issues**

#### **3.4.2.3.1 Water supply queries**

The licensee is to inform the customer of communication arrangements between the licensee and the customer. Except in an emergency the licensee will be responsible for communication with the licensee's customer(s). Southern Water will provide a response to the licensee on receipt of any enquiry and will provide routine information, as set out in Part 5 of this code, to the licensee. Arrangements for emergency contact are set out in paragraph 5.3.1.1 of this code.

#### **3.4.2.3.2 Sewerage issues**

There will be direct contact between Southern Water and the licensee on matters concerning sewerage and trade effluent services where Southern Water is the sewerage undertaker. The licensee shall make communication arrangements with other sewerage undertakers where Southern Water is not the undertaker.

### **3.4.2.4 Complaint handling processes**

A complaint from a customer should, in the first instance, be made to the licensee. It is expected the licensee will refer to Southern Water any complaint that arises from the services provided by Southern Water. A response to the complaint or any request for further information to enable the investigation of the complaint will normally be made direct to the licensee only.

The licensee should make the customer aware that if there is a complaint that might be indicative of a major incident affecting the supply system, particularly if water quality is affected, then Southern Water should be informed directly at the same time as the complaint is notified to the licensee. Southern Water will advise both the customer and the licensee of the process they propose to follow to identify the cause of the complaint.

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There will be a review of complaints made and the handling of complaints at the periodic liaison meetings between Southern Water and the licensee.

The licensee may register a dispute if he is not satisfied that Southern Water has dealt with a complaint in a satisfactory manner. In the first instance the details of the dispute should be made in writing in accordance with Southern Water's publicised complaint procedure. If the licensee is not satisfied, he can refer the matter to the Consumer Council for Water and/or Ofwat, or in the case of a complaint concerning water quality, to the DWI.

#### **3.4.2.5 Obligations on Southern Water**

Southern Water is responsible for the operation of the supply system and will investigate any complaint referred by the licensee and, in the case of an emergency, by the customer. Investigation will follow the normal business process for investigation and response to complaints and the results of the investigation will be communicated to the licensee. Southern Water may deliver a copy of the response that is made to the licensee, direct to the customer where the customer has previously been involved in directly notifying or assisting Southern Water in the investigation of the complaint.

Investigation of issues arising from the customer's private pipes and fittings will be the responsibility of the licensee, but Southern Water may require surveys to ensure there is no infringement of the Water Supply (Water Fittings) Regulations 1999.

#### **3.4.2.6 Obligations on licensees**

The licensee is responsible for informing the customer of the progress of complaints and of their resolution or registration of a dispute. The licensee should also inform the customer of arrangements for directly contacting Southern Water in the event of emergencies and water quality issues.

#### **3.4.2.7 Disconnection**

Southern Water can disconnect premises when it is necessary for the purposes of carrying out works in accordance with Section 60 WIA91, at the request of a customer as Section 62 WIA91 and to prevent contamination waste, etc, as Section 75 WIA91.

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### **3.4.3 Customer contact arrangements for emergencies and events**

#### **3.4.3.1 Special Consumers**

Special Consumers are defined in paragraph 5.6.1. The licensee shall inform Southern Water of particular needs at the time of detailed application and shall keep Southern Water informed of any change in requirements. Southern Water will communicate with the customer as provided for in the agreement, according to the customer's particular need.

#### **3.4.3.2 Large scale customer warning procedures**

Southern Water will be responsible for large-scale customer warning procedures as set out in paragraph 5.6.2.

#### **3.4.3.3 Obligations on Southern Water**

Southern water has a register of customers with particular needs and will identify to the licensee any customers who might be affected by the licensee's supply. Customers with particular needs will be taken into consideration during the detailed application for access to the supply system. Southern Water will inform the licensee of any changes to information.

Southern Water will communicate with a licensee's customer with particular needs according to the information provided by the licensee, and generally this will be limited to emergency communications only.

Southern Water will periodically re-validate information on customers with particular needs and will seek confirmation from the licensee of any change in information relating to the licensee's customer(s).

#### **3.4.3.4 Obligations on licensee**

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The licensee shall keep Southern Water informed on changes in information concerning customer(s), including particular needs and contact details for contact in emergency situations or if special arrangements are required for Southern water to have access to the meter or water quality sampling point.

The licensee must assist in providing information on both its own supply and of the customer's installation and water use to enable emergency planning and development of action plans and contingency plans as set out in Part 5 of this code.

During any exercise to test emergency planning arrangements the licensee should cooperate by communicating with the customer as appropriate during the preparation and execution of the exercise.

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## 3.5 Supply System Connections

### 3.5.1 General

Southern Water has a duty to make the following connections in accordance with the provisions of the WIA and the terms and conditions of the access agreement

- Connect the licensee's supply to the Southern Water supply system.
- To connect a licensee's customer to the supply system.
- Connect a secondary undertaker's supply to the Southern Water supply system.
- To enable the connection of a secondary supply from Southern Water's supply system to the supply system of another water undertaker

Fees payable will be notified to the licensee during the various application stages.

### 3.5.2 Connection of licensee's source to supply system

The point of connection of the licensee's supply to the Southern Water supply system will have been discussed during the various stages of the application process. Proposals would be fully evaluated during the detailed application phase to enable the terms of supply and associated costs to be fully considered and agreed during the contract negotiation phase.

A schedule of payment of fees and costs will be determined at the application stage and all agreed payments made before the connection of the licensee's supply is permitted.

New mains between the licensee's supply and the Southern Water system will be at the cost of the licensee who may elect to adopt self-lay procedures. For self-lay the Southern Water self-lay specification shall apply, which permits the licensee to design the new mains subject to checking of design by Southern Water. If reinforcement of the existing supply system is required then this will be designed and constructed by Southern Water. The extent of new mains, responsibility for design and construction and the extent and costs of reinforcement works will be identified during the detailed application stage. A programme of works will be agreed to enable a date for customer transfer to be arranged.

Southern water will make the final connection between the licensee's supply and the Southern water supply system in accordance with Southern Water's code of practice for water hygiene.

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### **3.5.3 Connection of qualifying premises to the supply system**

It is expected that qualifying premises will already be connected to the Southern Water supply system and changes to the arrangements would not normally be expected. Where the licensee requires a change to the connection size or to metering arrangements for special tariff, or other, purposes then this should be identified during the detailed application stage. If the licensee requires special metering facilities this will be subject to Southern Water's technical specification. The meter on the customer premises will remain the property of Southern Water and in general will already be provided with data logging facilities. If a qualifying customer is to be newly connected to the supply system the Southern Water standard arrangements will apply.

Continuing compliance with the Water Supply (Water Fittings) Regulations 1999 is a condition of the access agreement. The licensee should encourage the customer to install a whole site backflow prevention device to minimise risks to the Southern Water supply system from non-compliance.

### **3.5.4 Connection of secondary undertaker's network to Southern Water's supply system**

Where a licensee requires a supply from a secondary water undertaker it is expected this will have been identified in the early stages of the application process. Consideration of the suitability of the secondary undertaker's supply and operating parameters will be examined during the detailed application stage. The licensee will be required to co-operate to obtain necessary information for the full technical evaluation of the secondary supply. It is the responsibility of the licensee to arrange with the secondary undertaker for the laying of such mains and provision of necessary works to make the secondary undertaker's supply available at the boundary of the Southern Water area of appointment in accordance with the agreed operating standards.

The arrangements for the final connection between the Southern Water supply system and the licensee's supply from the secondary undertaker, the provision of new mains and any system reinforcement are as set out in paragraph 7.1.

### **3.5.5 Connection of secondary supply from Southern Water to another water undertaker's supply**

Southern Water will, when requested by a licensee, consider the provision of a secondary supply to a licensee and may enter into terms and conditions for making such a supply.

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Section 66C of WIA 91 defines circumstances under which Southern Water is not required to make a secondary supply.

Southern Water will co-operate to meet reasonable information requests in a timely manner to enable the other water undertaker to assess the compatibility of supplies for water quality purposes and to specify other operating parameters. All information will be provided under the terms of a confidentiality agreement.

New mains between the Southern Water system and the boundary of the area of appointment with the other water undertaker will be at the cost of the licensee who may elect to adopt self-lay procedures. Where the licensee elects to adopt self-lay procedures, the Southern Water self-lay specification shall apply, which permits the licensee to design the new mains subject to checking of design by Southern Water. If reinforcement of the existing supply system is required then this will be designed and constructed by Southern Water. The extent of new mains, responsibility for design and construction and the extent and costs of reinforcement works will be identified by negotiation between Southern Water and the licensee.

Final connection between Southern Water's supply and the supply system of the receiving water undertaker will be the responsibility of the other water undertaker, subject to Southern Water agreeing the connection procedures to ensure there is no risk of contamination of the Southern Water supply. The supply shall not be connected without the express agreement of Southern Water.



## **3.6 Legal Contract, Arbitration and Disputes Resolution**

### **3.6.1 General**

Southern Water and the licensee are jointly responsible for the negotiation of the contract terms and for compliance with the procedure for the resolution of disputes. The resolution of disputes may be assisted by the mediation of Ofwat, the DWI and the Environment Agency in accordance with the scope of their statutory and regulatory duties.

The legal agreement between Southern Water and the licensee must be consistent with the statutory guidance issued by Ofwat and primary and secondary legislation. The agreement will also take full note of and there will be positive endeavour to be consistent with the non-statutory guidance that is issued by Ofwat and the quality and environmental regulators. It is expected that the guidance from Ofwat will be periodically revised and the agreement may be subject to modification consistent with Ofwat guidance.

### **3.6.2 Contract terms**

The agreement for access to the Southern Water supply system is expected to include the following heads of terms. Additional terms may be included according to the specific nature of a particular access requirement.

#### **i) Recitals**

Recitals are the "whereas" clauses that precede the body of a contract. They will 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.

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iv) Permission to access the supply system in relation to the Access Agreement in question

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 Southern Water's assets.
- Physical details of access will be in accordance with this Access Code, Ofwat's Guidance on Access Codes, and DWI requirements.
- Duration.
- Links with the Access Code. The Contract will incorporate the appropriate parts of the Access Code, by reference.

v) Acceptance of Network Access Code

This clause will provide that both parties must accept and be bound by the provisions of the Southern Water'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 can be made after completion

vii) Ownership of supply system and Vesting

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 each 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.
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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) Back-up Supplies

This clause will specify the action to be taken should Southern Water be required to provide a back-up supply and the financial arrangements in such circumstances.

xvii) Payment

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

xviii) Dispute Resolution

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

xix) 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 or facsimile or first class registered or recorded delivery post to the other party.

xx) Assignment and Alienation

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.

xxi) Variations

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

xxii) 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.

xxiii) 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 this Agreement shall not be affected.

xxiv) 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.

xxv) 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.

xxvi) Confidentiality

This clause will make provision for a confidentiality agreement to be signed by both Southern Water and the Licensee during the Initial Application stage to the Agreement. It will also provide that the confidentiality agreement shall remain in force in respect of all existing and new Licensee's Customers that become subject to the Agreement. Where under the provisions of the Agreement either Party is required to disclose information to the other the requirement shall be to only disclose information as is reasonably necessary to enable each Party to undertake their respective obligations under the Agreement.

xxvii) Insurance

This clause will require that the Applicant shall at all times from the date of the Agreement effect and maintain with insurers acceptable to Southern Water sufficient

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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.

xxviii) 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.

xxix) 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.

xxx) Provision of bonds and guarantees.

Sets out the circumstances under which a bond or guarantee may be required.

### **3.6.3 Arbitration and disputes resolution processes**

- Southern Water has taken full note of the Ofwat guidance in preparing the Access Code and during the assessment of a licensee's application for access and in the preparation of the formal access agreement will continue to act in full compliance with published guidance. However, it is recognised that there may be situations where the licensee and Southern Water do not agree on the interpretation of the guidance or a particular detail of the application is outside the scope of the guidance.
- Southern Water will seek to work with the licensee to reach a common understanding and early resolution of potential areas for disagreement. Ofwat and DWI may determine certain disputes. The DWI will be the arbiter in respect of water quality disputes as set out in their information letters. Ofwat has published guidance on its 'Proposed procedure for handling water supply licensing determinations' which defines their powers to determine queries and disputes.

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Ultimately the courts can finally determine other disputes but this access code sets out procedures to assist to resolve disputes without such recourse.

Ofwat's powers to determine disputes, as set out in their guidance, cover:

- **Eligibility** - after all published guidance has been tested. A referral to Ofwat is expected to be limited to circumstances outside the bounds of published guidance or where Southern Water and the licensee are unable to agree how to apply specific eligibility guidance.
- **Terms and conditions of proposed access agreements** – after Southern Water and the licensee have exhausted efforts to reach agreement by other means.
- **Conditions for refusing supplies** - after Southern Water and the licensee have exhausted efforts to reach agreement by other means.

Ofwat can also investigate complaints under the Competition Act 1998.

The proposed procedures to resolve disputes are summarised below.

### 3.6.3.1 Negotiation

- Once a potential dispute has been identified the specific nature of the dispute should be recorded in writing. The statement of the dispute should be submitted to the other party in writing and used as the basis for negotiation. As a first stage the parties should agree a clear understanding of the grounds of the dispute and of its scope. Where appropriate the statement should include reference to the legislation and/or Ofwat's or other Regulator's guidance that is potentially giving force to the dispute.
- Southern Water will acknowledge receipt of notification of a dispute within 3 working days of its receipt and will provide a substantive reply within 10 working days. Alternatively the licensee may request a meeting to discuss the complaint, which Southern Water will make itself available to attend within 10 working days. It is expected that the details of the dispute including both areas of agreement and points remaining in dispute will first be agreed as the basis of negotiation of an agreement.

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- In the event that negotiation does not lead to a full resolution of the dispute there should be a written statement agreed between the parties to detail the remaining dispute for future conciliation.

### 3.6.3.2 Conciliation

- The licensee and Southern Water can agree that an expert is appointed to assist with resolving the dispute. The expert to be appointed should be agreed between the parties, if necessary deciding the expert from a panel of experts nominated by each party. It is anticipated the selected expert might be a Reporter (as for purposes of Water Company submissions to Ofwat) or CCW representative or other person with knowledge of the operation of Water Supply Licensing. The statement arising from previous stages of negotiation should be taken as the starting point for the exercise of conciliation. The expert's costs during the conciliation stage should be shared equally between the parties in dispute. Each party is responsible for his own costs.
- A copy of the proposed full procedure for conciliation will be given to the licensee on registration of a dispute in accordance with paragraph 8.2.1.

### 3.6.3.3 Mediation

Formal mediation between the parties may be agreed. This will be a three-stage process:

- i. An **exploratory phase** during which the Mediator will speak confidentially with representatives of each side to ascertain what basis for resolution of the dispute might exist.
- ii. A **preparation phase** which will include submission of written information to the Mediator and separate meetings by the Mediator with representatives of each side.
- iii. An **evaluation and negotiation** period which will consist of a joint meeting between the parties' representatives facilitated by the Mediator and, where appropriate private meetings between each party and the Mediator.

The purpose of the mediation process is to seek a mutually acceptable resolution of the dispute. To facilitate a resolution, the Mediator and the parties' representatives will explore the facts and strengths and weaknesses of each side's positions, both together and privately with the Mediator. Accordingly, both in the exchange of information and opinions, and in the examination of that information, the parties will have the



opportunity and responsibility to disclose candidly all the facts, theories, and opinions on which they intend to rely with regard to the matters in dispute.

The fees and expenses of the mediator and other administrative costs of the mediation will be shared equally between the parties. Each party will be responsible for his own costs.

A copy of the proposed full procedure for mediation will be given to the licensee on registration of a dispute in accordance with paragraph 8.2.1.

#### **3.6.3.4 Arbitration**

Subject to agreement by Ofwat, the parties may agree to seek Ofwat's help to resolve the dispute on an informal basis. If an informal basis of resolution of the dispute is not acceptable then the matter shall be referred to Ofwat for determination. The procedure for determination is set-out by Ofwat.

**PART 6:**

**ACCESS PRICING**

See Separate Document

## PART 7:

### GLOSSARY OF DEFINED TERMS

**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/or 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 Avoided or Reduced, or any amount that is Recoverable in some Other Way (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.

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**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.

**Common Contract:** The standard contract included within Ofwat's access code guidance which licensees are entitled to use.

**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 micro-organism, 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 license, 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 in order to kill harmful organisms.

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**Diurnal variations:** Variations occurring within a daily (24 hrs) cycle.

**Drought:** A prolonged period of dry weather that reduces rivers flows, reservoir inflows or groundwater levels to unusually low levels.

**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, insufficient financial resources available.

**Fluoridation:** Application of fluoride to drinking water at the request of Strategic 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.

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**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.

**Leakage:** the loss of water from the supply network which escapes other than through a controlled action.

**Licensee:** A company holding either a retail licence or a combined licence.

**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, enterococci, 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.

**Operational Code:** The operational code within Ofwat's access code guidance which establishes rules for the wholesale supply of water under section 66A of the Act and the entry into an agreement for such supply.

**Outage:** A temporary loss of unusable water output due to planned or unplanned events.

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**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 primary undertaker.

**Point of exit:** The point at which treated water leaves the supply system 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 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

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(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 system:** Any water mains and other pipes used for the purposes of conveying water from a water undertaker's treatment works to 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) of the 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.

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**Treated water:** Water of a suitable quality for input to the treated water distribution system and that 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.

**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.

**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

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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.