

1 Definitions

The following defined terms will apply to this Agreement between you (the Customer) and Clear Business Water Limited trading as Kinex (referred to as "we" or "us" in this Agreement):

1.1 "Agreement" means this agreement entered into between the Customer and Clear Business Water Limited (company number SC444366) trading as kinex, with its registered office at Waverley House, Hamilton Business Park, Caird Park, Hamilton, Lanarkshire, Scotland ML3 0QA.

1.2 "Assigned Site" means either a Gap Site or any other site allocated to us via the Allocation Process as set out by the Water Commission for Scotland, or a site that we have retained responsibility for after the premises occupant vacated or sold the site.

1.3 "Business Days" means a day other than a Saturday, Sunday or public holiday in England or Scotland.

1.4 "Customer" means the sole trader, partnership, legal entity, company, or association, who has agreed to enter into this Agreement and who will be referred to as "you" in this Agreement.

1.5 "Customer Equipment" means any equipment which is not Equipment and is connected to the Water Network and used by you in connection with the Service.

1.6 "Deemed Customer" means an occupier of an Assigned Site who has not actively chosen to receive the Services from us.

1.7 "Disconnections Document" means the Disconnections Document named under the Water Services (Codes and Services) Directions 2007 as amended from time to time.

1.8 "Default Tariff" means the default tariff for primary services published by the Water Industry Commission for Scotland and such tariff will be used in the event that your Tariff is not applicable in accordance with this Agreement.

1.9 "Eligible property" is a property connected to the public water supply system which is not a dwelling as defined by Part 1 of the Local Government Finance Act 1992.

1.10 "Equipment" means any meter, equipment, apparatus, appliance, instrument and which is connected to the network and used to provide or access the Service.

1.11 "Gap Site" means a site that has not previously received services through a licensed provider.

1.12 "Insolvency" means where a business ceases or threatens to cease to carry on trading, becomes insolvent within the meaning of section 123 of the Insolvency Act 1986, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for the reorganisation or reconstruction) or undergoes any similar or equivalent process in any jurisdiction.

1.13 "Initial Fixed Supply Period" means the initial period stated on the front of this Agreement during which the Service is provided to you, which shall commence on the date that the Service is first provided to you.

1.14 "Network Operator" means the operator responsible for the Water Network and its components in this case Scottish Water of Castle House, 6 Castle Drive, Carnegie Campus, Dumfries, Fife KY11 9BG.

1.15 "Network Operator Byelaws" means the byelaws in force from time to time, made by the Network Operator under section 70 of the Water (Scotland) Act 1980.

1.16 "Point of Demarcation" means the boundary of the Site at which liability for the pipework and apparatus passes from the Network Operator to you, such boundary being determined by the Network Operator.

1.17 "Property Drainage" means removal of water that is unable to drain naturally within the Property boundaries.

1.18 "Rateable Value" means the value that The Scottish Assessors give all non-domestic properties in Scotland, which is a legally-defined valuation of a property, broadly based on an analysis of annual rental values. The current market rateable values are based on the 2000 values unless updated since by reassessment or material restructuring to the property.

1.19 "Service" means the supply of water and sewerage removal (waste water, property drainage, roads drainage and surface water effluent) and other services, to the Site.

1.20 "Site" means the location at which you receive the Service.

1.21 "Subsequent Supply Period" means, unless otherwise agreed between us, a minimum period of 1 year subsequent to the Initial Fixed Supply Period or previous Subsequent Supply Period, commencing on the anniversary of the Initial Fixed Supply Period.

1.22 "Supply Period" means the Initial Fixed Supply Period together with any Subsequent Supply Period, or any other usage period during which the Service is provided. Where we provide the Service to you because you occupy an Assigned Site, the Supply Periods will be a rolling 20 day period commencing on the date we commence supply of the Service to the Site.

1.23 "Supply Point" means the point registered to us where the Service shall be made available to you under this Agreement.

1.24 "Tariff" means any charges notified to you at the time of this Agreement, and which are contingent on payment by direct debit.

1.25 "Usage Charges" means our charges to you for the provision and use of the Service calculated in accordance with clause 5 of this Agreement and your Tariff.

1.26 "VAT" means Value Added Tax. The current market rateable values are based on the 2000 values unless updated since by reassessment or material restructuring to the property.

1.27 "Water Network" means the distribution network through which the Service is provided pursuant to this Agreement.

1.28 "Water Reseller" is defined as per the Water Resale Act 2001.

2.1 We will provide the Service to you subject to the terms of this Agreement. We may, at our discretion, vary the Service at any time without notice for technical, operational or other reasons.

2.2 We will use reasonable endeavours expected of a competent licensed provider of water and waste retail services to provide a continuous high quality service in accordance with this Agreement.

2.3 We reserve the right not to provide the Service where it cannot be reasonably provided due to any geographic, practical, regulatory or technical issues, or any other issue outside of our control. Where we are unable to provide the Service, and where there is a delay in providing the Service, we shall not be liable for any delay or failure which results from events, circumstances or causes beyond our reasonable control. This does not affect your rights under our minimum requirements as per our license conditions.

3. Charges & payment

3.1 We will invoice you Usage Charges for the use of the Service. Your Tariff may be varied by us upon giving ten days' notice, but subject always to your right to terminate referred to at clause 9.1(e).

3.2 If you have accepted a fixed term contract, you agree to pay invoices issued to you by Direct Debit in accordance with the date for payment stated on your invoice. Failure or cancellation of the Direct Debit payment agreed with us will result in the Default Tariff being used to calculate Usage Charges. The availability of the Tariff is conditional upon payment by Direct Debit.

3.3 If invoices are not paid by the latest outstanding debit first.

3.4 Invoices are not to be paid by Direct Debit in accordance with the advance notice given on your invoice, then any collection costs incurred by us, including administration charges, will be charged to you. You agree to reimburse and indemnify us for all expenses, including all legal and professional fees, incurred by us as a result of your failure to pay our fees when due.

3.5 Interest will be charged on unpaid invoices from the due date until payment at a rate of 1.5 per cent per month or part month.

3.6 VAT and any other levy or tax, will be added to all applicable sums due to us, at the prevailing rate. VAT will be charged at the standard rate unless we receive a declaration from you that the Service should be "zero rated" as defined by HMRC. Information on how we calculate VAT is available on www.kinex.co.uk/VAT declaration.

3.7 You shall not be entitled to delay or withhold payment on any undisputed sum. If you dispute an invoice or statement, you shall be unable to provide the Service, and where there is a delay in providing the Service, we shall not be liable for any delay or failure which results from events, circumstances or causes beyond our reasonable control. This does not affect your rights under our minimum requirements as per our license conditions.

3.8 We will invoice Usage Charges where possible, in arrears. For this reason, Usage Charges may cover usage in the months prior to the month our invoice is raised.

3.9 Where payment is made to us and there are debts owed to us under this Agreement and any other agreement between you and us or one of our group companies, we will allocate the payment to the Service, and property eligibility charges.

3.10 In the event that you fail to provide (in breach of clause 4.1.7) us with at least 30 days' notice of any change which may alter the Usage Charges payable by you, including but not limited to change of address, consent for trade effluent changes, adjustment in Rateable Value due to changes at the Site, and property eligibility changes, then you agree that you are liable for, and will pay, all Usage Charges properly calculated in accordance with the up to date information provided by you from the date the change occurred. If you are moving from the Site, this Agreement will remain in force for the Site and you will be liable for any Usage Charges until the date falling 14 days after either you notify us in writing that you have left the property, or we become aware that somebody else has taken a supply at the property, whichever is earlier.

4. Customer obligations

4.1 You agree and undertake:

4.1.1 to pay us for the Service provided (together with any other costs due under this Agreement) within the time limit set out on our invoice or, if no time limit is provided, within 14 days of our invoice and in the manner set out at clause 3.2;

4.1.2 to be responsible for the usage of the Service, whether authorised by you or not (and you agree that we are not obligated to monitor the level of water or sewerage usage comprising the Service and/or report unusual usage patterns);

4.1.3 to comply with any obligations placed on you by this Agreement, any regulatory conditions and other laws, licences, conditions, codes, regulations and Trade Effluent Consents (as issued by the Environmental Agency) relevant to the provision or use of the Service, including the Network Operator Byelaws, as amended from time to time;

4.1.4 to remain responsible for all pipes and apparatus required for the provision of the Service that are situated beyond the Point of Demarcation and, where necessary or required by us, to employ a qualified plumber or engineer at your own cost to rectify or repair any pipes and apparatus required for provision of the Service including any interior or exterior building work necessary to ensure that the meter is accessible;

4.1.5 to use only Customer Equipment that is in good working order, is maintained competently, is compatible with the Service and complies with all relevant technical standards, legislation and regulation relating to its use;

4.1.6 to permit the Network Operator (at the Network Operator's expense) to install, operate, renew and maintain any pipes, meters or any other apparatus to transport measure and control water (Equipment), all of which shall remain in the ownership of the Network Operator. You give us permission to organise that work, and you are responsible for ensuring that the Equipment is not damaged or misreated;

4.1.7 to give us 30 days' notice of any changes in your circumstances or personal details including change of address, consent for trade effluent changes, adjustment in Rateable Value due to changes at the Site, and property eligibility changes;

4.1.8 at your expense, to terminate any existing contracts (with alternative suppliers) which provide you with services similar to the Service to the Supply Point;

4.1.9 in the event that Equipment becomes damaged, whether by you or by any person on your premises (save for our employees or agents), or becomes damaged or develops a fault due to the use of unapproved Customer Equipment or your negligence, to indemnify us for the costs of any remedial work undertaken to repair the damage caused or replace the Equipment;

4.1.10 to report to us, with sufficient detail, any fault which affects the Service as soon as reasonably practical after detecting the same, or in an emergency to immediately report any fault to the Network Operator;

4.1.11 to allow us or our duly appointed agents access to the Site for the purposes of installation, maintenance, disconnection or inspection of Equipment, meter reading or meter testing;

4.1.12 in the event that this Agreement is terminated under clause 9.1(d) and you remain at the Site and continue to use the Service, you agree that you will remain liable and will pay to us all Usage Charges during that period as a Deemed Customer until you:

a) enter into a new contract as either a new Customer or a sole trader,

b) transfer to another licensed provider, moving all aspects of the Service away, or c) the property ceases to exist or ceases to be used.

4.1.13 in the event that this Agreement is terminated, to provide us with final meter readings (where a meter is fitted) within 10 Business Days of the Agreement terminating.

4.2 If you act as a Water Reseller you must comply with the Water Resale Act 2001.

5.1 The Site contains a meter measuring the water supplied under the Service, the reading shown on the meter will be used to calculate Usage Charges under this Agreement, unless that meter is found to be registering falsely to a degree which exceeds that permitted by regulations.

5.2 Where a meter is installed but a reading is not available, estimates based on historic consumption market data will be used to calculate your Usage Charges.

5.3 Waste water shall be assumed to be 95% of the water metered into the property unless proven otherwise to the satisfaction of the Network Operator and amended by the Network Operator in the central systems operated by the Central Market Agency.

5.4 You may at any time, by giving reasonable notice in writing, request that we verify the meter readings for accuracy. However, if verification shows that the meter is accurate, the costs of the verification shall be borne by you. Where the meter has been found to register inaccurately, then we will make a suitable adjustment to your charges from the penultimate date on which the meter was last read (otherwise than in connection with the examination) and the amount of money due from or to us shall be paid on demand, save where the meter is proved to have begun to register inaccurately as described on some later date.

5.5 Property Drainage and Roads Drainage will be measured according to the Rateable Value of the Site. Further information on this can be found at www.saa.gov.uk.

5.6 If the meter is not used to measure usage, usage will be measured using the Rateable Value or assessed usage as per standards set by Scottish Water.

5.7 If a data logger is installed privately, you must tell us immediately and accept all charges and liability for the meter that may result from damage incurred during the installation.

5.8 The meter remains the property and responsibility of the Network Operator throughout the time the meter is installed.

5.9 Any private water meter installed will be your responsibility to maintain and consumption recorded must be verified, at your expense, if required by us.

6. Emergencies

6.1 Where you believe there is, has been, or is likely to be a leak causing loss of water or pressure, burst pipe, flood or other emergency that affects your Service you must immediately notify the Network Operator.

6.2 If you believe that the Equipment may be damaged or that there is a fault which affects the Service, then you must report that to us, with sufficient detail, as soon as reasonably practical after detecting the same.

6.3 You undertake not to use the Service in any way that could, or is likely to, create any risk to the health and safety of any person, or risk of damage to any property, or in any way that could interfere with the efficient supply of the Service to other customers.

6.4 In an emergency, we or the Network Operator may require you to stop using water or disposing of associated water or privately supplied water and you agree to act as directed.

6.5 If the fault, including but not limited to leaks, occurs past the Point of Demarcation and is caused by the customer, the Network Operator to be your responsibility, you must employ a qualified plumber as soon as possible to rectify the issue before damage to third party property occurs. We will not accept liability for any flooding or other damage that occurs due to your negligence or failure to comply with this clause 6.5.

7. Suspension of Service

7.1 Scottish Water is entitled to suspend the Service in order to maintain, repair or improve the Water Network or if it is obliged to do so by virtue of any direction or request from any Government department, emergency service, regulatory or administrative authority, or if it reasonably believes that the Service is being misused in any way, or for any other reason as set out in the Operational Code in place from time to time. We will not be liable to you for any losses that are incurred by you as a result of such suspension nor will we interfere with Scottish Water's right to execute such a solution.

7.2 Any suspension of the Service for any reason whatsoever, including temporary disconnection for the purpose of maintenance of your Usage Charges, will not affect your obligation to pay for the Service during the period of suspension or thereafter. We reserve the right to charge an administration fee to cover our costs incurred for any suspension which arises because of a breach of this Agreement by you.

7.3 We will use reasonable endeavours to give you notice of any suspension as required by the regulator, set out in the Disconnections Document and to pass on any notification received from Scottish Water within the timeframes set by the Operational Code.

7.4 We may suspend the Service in circumstances where we would be entitled to terminate this Agreement or where you have provided your failure to pay Usage Charges, will not affect your obligation to pay for the Service during the period of suspension or thereafter. We reserve the right to charge an administration fee to cover our costs incurred for any suspension which arises because of a breach of this Agreement by you.

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