

**The Installation, Maintenance and Removal of Data Logging Equipment
on Scottish Water's Water Revenue Meters**

Terms and Conditions

Terms and Conditions – Data Logging Activities

This document sets out the Terms and Conditions to which all parties (including Non-Household Customers and Licensed Providers) who wish to install, maintain or remove data logging equipment (**Data Logging Activities**) must adhere in connection with Scottish Water's water revenue meters. In this document, parties who wish to install and/or remove data logging equipment and who are approved under Scottish Water's accreditation scheme are referred to as **the Accredited Datalogger Installer (ADI)**.

Where the ADI opts to sub-contract the undertaking of Data Logging Activities, their sub-contractor must also be approved under Scottish Water's accreditation scheme and will also be required to sign and adhere to these Terms and Conditions, meaning that the sub-contractor will be an ADI in their own right.

1. Interpretation

Any references to "meter" or "meters" in this document refer to Scottish Water owned water revenue meters, and any references to "datalogger" "logger" or "loggers", unless otherwise stated refer to data logging equipment installed by the ADI.

2. Authorisation and Scope

- 2.1. Scottish Water will make its meters available to the ADI to facilitate the provision of Data Logging Activities, provided the ADI confirms its agreement to these Terms and Conditions by signing the Declaration in Clause 13 below.
- 2.2. No-one other than an ADI approved by Scottish Water under its associated accreditation scheme will be permitted to carry out Data Logging Activities on any meter installed at a Supply Point.
- 2.3. An ADI will only be able to carry out Data Logging Activities on a meter where it has the consent of the Non-Household Customer associated with the Supply Point(s) concerned. Confirmation of such consent is to be made available to Scottish Water on demand.
- 2.4. Any data logging equipment installed by Scottish Water will remain the property and responsibility of Scottish Water at all times. Any loggers installed by the ADI will remain the responsibility of the ADI at all times.

- 2.5. All Data Logging Activities undertaken by the ADI will be conducted in accordance with these Terms and Conditions.
- 2.6. If the ADI wishes to install a logger on a meter where Scottish Water's data logging equipment already exists, the ADI will be able to add its own data logging equipment to the meter where feasible.
- 2.7. Where the installation of the ADI's data logging equipment is infeasible due to a Scottish Water logger being installed on the meter, at the ADI's request, and subject to the confirmed consent of the Non-Household Customer associated with the Supply Point(s) concerned, Scottish Water will provide to the ADI a data file containing the relevant data, at a minimum of once a month.

3. Notification

- 3.1. Before installing a logger, the ADI will:
 - (a) confirm its agreement to these Terms and Conditions by signing and returning a copy (where necessary¹) to Scottish Water at the address indicated at the end of this document.
 - (b) conduct a pre-install survey to establish whether there are any practical factors existing at the meter location which may prohibit logger installation.
- 3.2. The ADI is required to complete and send a Datalogger Notification Form to Scottish Water accurately confirming the details of the installation or removal of a logger. Scottish Water must be in receipt of the Form within 2 business days of the completion of installation or removal works.
- 3.3 Upon receipt of the completed Datalogger Notification Form, Scottish Water will update the central systems at the CMA to reflect the installation or removal of a logger by an ADI.

4 Technical standards

- 4.1. Any loggers installed on a meter must be non-intrusive and must not interfere with the operation or integrity of that meter. Where the meter is located on Scottish Water's infrastructure, the ADI will not be permitted to interfere with the integrity of the meter chamber or housing. Where a logger is found to interfere with the operation or integrity of the meter or Scottish Water's associated assets, the ADI will be required to remove the logger without delay.
- 4.2. When carrying out Data Logging Activities, no existing ancillary equipment attached to the meter and belonging to Scottish Water will be removed by the ADI, either temporarily or permanently, without the prior written permission of Scottish Water.
- 4.3. Where the meter is damaged as a result of Data Logging Activities being conducted by the ADI, the ADI must inform Scottish Water without delay. Scottish Water may repair or replace the meter in

accordance with the relevant processes set out in the Operational Code.

- 4.4. ADIs will be required to conduct Data Logging Activities in accordance with their method statement, previously submitted to Scottish Water as part of the application under the accreditation scheme.
- 4.5. All loggers fitted to a meter must be intrinsically safe where necessary. It is the responsibility of the ADI to ensure that an intrinsically safe logger is used where required. Where a logger is found to be unsafe, the ADI will be required to remove the logger without delay.
- 4.6. The ADI will be required to tag all loggers fitted to a meter. The tag must clearly identify the name of the ADI.

5 Operational Code Considerations

- 5.1. The ADI recognises that Scottish Water may change, inspect or temporarily remove a meter in accordance with the relevant processes set out in the Operational Code. Where data logging equipment installed by the ADI is attached to the meter, the ADI will be required to remove the equipment within 5 business days of being notified to do so.
- 5.2. The ADI recognises that Scottish Water may on occasion, acting reasonably, be required to remove a meter and logger at a Supply Point urgently as a consequence of operational incidents or emergencies. On such occasions, Scottish Water will return the logger to the Non-Household Customer or ADI as appropriate. Where it has removed a logger, Scottish Water will not be liable for any costs borne by the ADI in re-installing the data logging equipment and will not be responsible for any damage to the logger other than caused as a result of negligence or breach of statutory duty by Scottish Water.

6 Costs

- 6.1. All costs relating to Data Logging Activities conducted by the ADI, including the costs of installation and/or removal of the logger, are to be borne by the ADI.
- 6.2. To recover any costs relating to Data Logging Activities conducted by the ADI, Scottish Water will charge the ADI directly.
- 6.3. Where the ADI is required (under Clauses 4.1, 4.5, 5.1 or 9.4.1) to remove their logger from the meter, but it is not removed, the ADI will be responsible for the reasonable cost incurred by Scottish Water in undertaking the removal and return of the logger. In such circumstances, Scottish Water will not be liable for any costs associated with replacing or re-installing the data logging equipment whatsoever and will not be responsible for any damage to the logger other than caused as a result of negligence or breach of statutory duty by Scottish Water.

- 6.4. Where Scottish Water has repaired or replaced a meter because of interference or damage caused by the ADI's Data Logging Activities, the ADI will be liable for the reasonable cost of repairing or replacing the meter.
- 6.5. Where Scottish Water either removes a logger under Clause 6.3 or repairs or replaces a meter under Clause 6.4, the hourly charges payable by the ADI will be the same as those that a Licensed Provider would be liable to pay for the meter repair or meter replacement on the standard basis under the published Wholesale Charges Scheme, in force from time to time.
- 6.6. Scottish Water shall submit an invoice to the ADI for all amounts payable under this Agreement, providing such documentation necessary to verify the amount payable. Payment of any amount due shall be made by the ADI to Scottish Water by a Clearing House Automatic Payments System transfer of funds to such bank in the United Kingdom as may from time to time be notified by Scottish Water to the ADI. Payment shall be made by the ADI no later than 10 business days from receipt of Scottish Water's invoice.
- 6.7. All amounts due under this Agreement shall be paid by the ADI to Scottish Water in full without any deduction or withholding, and the ADI shall not be entitled to claim set-off or to counterclaim against Scottish Water in relation to the payment of the whole or part of any such amount. Where the ADI wishes to dispute or question an item or part of an item in an invoice raised by Scottish Water, it may do so in good faith and on grounds which are not vexatious or frivolous.

7 Responsibilities of the ADI

- 7.1. The ADI will indemnify Scottish Water against any liability to the ADI or any third party arising from the Data Logging Activities, or the use of the data, except to the extent such liability arises directly from a negligence or breach of statutory duty by Scottish Water.
- 7.2. Where the ADI undertakes Data Logging Activities, the ADI is responsible for obtaining all associated consents, approvals, permits, authorisations or agreements, and giving all notices (including any consents, approvals, permits, authorisations, agreements or notices required under the New Roads and Street Works Act 1991 or the Transport (Scotland) Act 2005), as required.
- 7.3. Where the ADI undertakes Data Logging Activities, the ADI is responsible for complying with all associated health and safety obligations, including the health and safety of its employees, its customers (where applicable), its customer's employees (where applicable), Scottish Water's employees and all other people who may be affected by its activities.
- 7.4. The ADI must effect and maintain with a reputable insurance company a policy of insurance covering all matters which are the subject of indemnities under this Agreement including Public Liability insurance to a minimum sum of £5,000,000 in respect of any one

incident and unlimited to the number of incidents. The ADI's total liability in connection with this agreement, other than in respect of personal injury or death, is limited to £5,000,000 per annum.

7.5. At the request of Scottish Water, the ADI shall produce the policies required under Clause 7.4 above, receipts or other evidence of payment of the latest premium due thereunder.

8. Status and Amendment

8.1. These Terms and Conditions constitute the whole agreement between the parties and supersede all previous versions applied by Scottish Water.

8.2. An ADI seeking to continue carrying out Data Logging Activities from the date of issue of these Terms and Conditions will be required to reaffirm its agreement to this version by signing the Declaration in Clause 13 below and returning this document to Scottish Water at the address indicated.

8.3. Either Scottish Water or the ADI may seek to amend these Terms and Conditions at any time on giving 30 days' notice to the other party. However, any amendment to these Terms and Conditions shall only take effect with the written agreement of both parties.

8.4. These Terms and Conditions are personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under these Terms and Conditions without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

9. Termination

9.1. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, the ADI may at any time terminate this Agreement with immediate effect by giving written notice to Scottish Water.

9.2. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, Scottish Water may terminate this Agreement, acting reasonably at all times, with immediate effect by giving written notice to the other party if:

9.2.1. the ADI fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or

9.2.2. the ADI commits a material breach of any material term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 10 business days after being notified in writing to do so; or

- 9.2.3. the ADI suspends or ceases to carry on its business; or
 - 9.2.4. the accreditation of the ADI has been suspended, has lapsed or has been revoked by Scottish Water, acting reasonably at all times.
- 9.3. The parties acknowledge and agree that any breach of clauses 2, 3, 4.1, 4.2, 4.4, 4.5 and 7 shall constitute a material breach of a material term for the purposes of clause 9.2.2.
- 9.4. On termination of this Agreement for any reason, the ADI shall as soon as reasonably practicable:
- 9.4.1. remove all loggers from Scottish Water's meters; and
 - 9.4.2. notify Scottish Water that the loggers have been removed by submitting Datalogger Notification Form to Scottish Water. Scottish Water must be in receipt of the Form within 2 business days of the completion of the removal works. Scottish Water, will in turn, update the central systems at the CMA to reflect the removal.

10. Dispute Resolution

10.1. Introduction

- 10.1.1 Subject to any contrary provision, if any disagreement between the ADI and Scottish Water concerning this Agreement (a "Dispute") shall arise between the parties, such Dispute shall be resolved only in accordance with this Clause
- 10.1.2 A party involved in a Dispute is referred to as a "Disputing Party".

10.2. Negotiation and Escalation

- 10.2.1 The Disputing Parties shall, within 10 business days of a written request by one of the Disputing Parties to the other, meet and negotiate in good faith and shall use their respective reasonable endeavours to resolve such Dispute.
- 10.2.2 If the Dispute or any part of the Dispute cannot be resolved within 10 business days of the Dispute being referred in accordance with Clause 10.2.1 above, then either Disputing Party may require that the Dispute be referred to an Expert for determination in accordance with Clause 10.3.

10.3 Appointment of the Expert for Determination

- 10.3.1 A Disputing Party wishing to refer a Dispute to an Expert for determination under Clause 10.2.2 shall provide the other Disputing Party with: (i) notice of its intention to refer the Dispute to an Expert and (ii) notice of a proposed Expert. The

Disputing Parties shall endeavour within 5 business days of such notice to agree upon the selection of an Expert and may meet for this purpose.

10.3.2 On selection of a suitable Expert under Clause 10.3.1, the Disputing Party which instigated the referral shall forthwith provide the Expert with an "Expert Notification".

10.3.3 An Expert Notification shall include the following:

- (a) the names of the Disputing Parties and a summary of the Dispute (the terms of such summary to be agreed by the Disputing Parties); and
- (b) a request that the Expert confirm within 5 business days whether or not he is willing and able to accept the appointment;
- (c) a request for certification of the Expert's scale of fees and expenses; and
- (d) a statement that the Expert's fees and expenses will be paid as provided in Clause 10.6.1; and
- (e) a statement that the information disclosed in the Expert Notification (and any information subsequently disclosed to the Expert relating to the Dispute) is confidential and that it should not be disclosed, copied or revealed whether the appointment is accepted or not; and
- (f) a copy of this Clause 10.3 and a request for confirmation that the Expert is able and willing to act in accordance with the procedure set out herein; and
- (g) a request for confirmation that the Expert does not hold any interest or duty which would or potentially would conflict with the performance of his duties under his contract with the Disputing Parties, and that he will inform the Disputing Parties immediately in the event of any such conflict arising.

10.4 Determination by the Expert

10.4.1 Where a Dispute has been referred to an Expert by a Disputing Party, the Disputing Parties shall promptly provide to the Expert all information reasonably requested by such Expert relating to the Dispute.

10.4.2 The Expert shall be required by the Disputing Parties to use all reasonable endeavours to render his determination, with full reasons, within 25 business days following his receipt of the information requested, or if this is not possible as soon thereafter as may be reasonably practicable, and the Disputing

Parties shall co-operate fully with the Expert to achieve this objective.

10.4.3 The Expert shall determine any Dispute referred to him as an Expert and not as an arbiter or mediator.

10.5 Effect of Expert Determination

10.5.1 The determination of the Expert shall be final and binding upon the Disputing Parties.

10.5.2 No Disputing Party shall commence proceedings in respect of or refer to any court any finding by the Expert, whether made at any time after his appointment or in his determination, as to the Dispute or the construction of or otherwise in respect of this Agreement.

10.6 Costs

10.6.1 The Expert shall provide the Disputing Parties with a breakdown of:

(a) his/her fees; and

(b) his/her reasonable expenses, including without limitation to the generality of the foregoing, the fees of and reasonable expenses incurred by any technical or professional advisers.

10.6.2 The Disputing Parties shall share equally the fees and expenses of the Expert unless the Expert directs that they should be borne by the Disputing Parties in some other proportion. In the event that the Expert determines that one of the Disputing Parties ("Party A") is liable to pay a sum to another of the parties of the Disputing Parties ("Party B"), including, but not limited to, fees and expenses, Party A will, subject to whatever the Expert's determination may state, pay to Party B an amount equal to such sum together with interest thereon from such date as the Expert's determination may specify. Such interest will accrue from day to day at the rate of 4% over the published base-lending rate from time to time of the Bank of Scotland.

11 Freedom of Information

11.1 The ADI acknowledges that Scottish Water is subject to the requirements of the Freedom of Information (Scotland) Act 2002 ('the Act') and that Scottish Water may, acting in accordance with guidance or codes of practice issued by Scottish Ministers or the Scottish Information Commissioner, be obliged under the Act to disclose information relating to this Agreement. In the event that Scottish Water is required to provide information as a result of a request made to it under the Act, it shall adhere to the requirements of such legislation in disclosing information.

11.2 On receipt of a request for the release of information Scottish Water shall advise the ADI of this request and consult with the ADI and take their representations into account before making such information available. However, only such representations that are made in sufficient time to allow Scottish Water to respond to such a request for the release of information within the time limits specified in the legislation will be considered. The decision of Scottish Water as to whether to release that information shall be final.

12 Notices

12.1 The ADI will provide Scottish Water with the contact details required under Clause 14 below, to allow the delivery of any formal notices raised under this Agreement from time to time.

All formal notices raised by the ADI under this Agreement should be sent to: Corp. Secretary and Head of Legal, Scottish Water, Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, KY11 8GG and copied to: Head of Metering, Scottish Water, The Bridge, 6 Buchanan Gate Business Park, Cumbernauld Road, Stepps, Glasgow G33 6FB or such other addresses specified by Scottish Water from time to time.

12.2 All notices shall be given by letter delivered by hand, and any notice given by post shall be sent by first class recorded delivery.

13 Declaration

We, the ADI, agree to the foregoing Terms and Conditions:

Full Name (please print)

On behalf of (enter Company's name)

Position in Company

Signature

Date

14 ADI's Contact details:

Full Name (please print)

Position in Company

Address

.....

.....

Contact telephone number

Contact email

Accreditation No (if known).....

When complete, please return a hardcopy of these Terms and Conditions with the duly signed Declaration to Head of Metering Services, Scottish Water, The Bridge, 6 Buchanan Gate, Business Park, Cumbernauld Road, Stepps Glasgow G33 6FB