

# Water Services Operating Licence

## Water Services Licensing Act 1995 (WA)

### Operating Licence

The Economic Regulation Authority (Authority), established under the *Economic Regulation Authority Act 2003* hereby grants an operating licence (licence) to the Shire of Kent subject to, and in accordance with, the terms set out in this licence in place of the licence granted on 21 May 1997 and amended on 6 August 2008.

Dated this 15<sup>th</sup> day May 2009.

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Signed by a delegate;  
member; or  
the Chairman of the Economic Regulation Authority

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# **Operating Licence**

***Water Services Licensing Act 1995 (WA)***

**LICENCE No 20**

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***SHIRE OF KENT  
(LICENSEE)***

***RICHMOND STREET  
NYABING WA 6341***

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# Operating Licence

## 1 Definitions

**Act** means the *Water Services Licensing Act 1995*.

**assets** means water services works as defined in the Act.

**asset management system** means the measures that are to be taken by the licensee for the proper maintenance, expansion or reduction of the water service system.

**asset management system review** means a review of the effectiveness of the *asset management system*.

**applicable legislation** includes:

- (a) the *Act*,
- (b) the *Regulations*; and
- (c) the *Codes*.

**Audit Report** means a signed, written document that presents the purpose, scope and results of the audit by the *Department of Health* on compliance by the licensee of its obligations under the *MoU*.

**Authority** means the Economic Regulation Authority.

**business day** means a day which is not a Saturday, Sunday or a public holiday in Western Australia.

**Code** means any *code* in force from time to time made pursuant to the *Act*.

**complaint** means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected<sup>1</sup>.

**commencement date** means the date specified in Schedule 1.

**customer** means a person or organisation to which water services are sold or supplied for consumption by the *Licensee*.

**customer service charter** means the charter prepared by a licensee pursuant to clause 2 in schedule 3 of this licence.

**Department of Health** means the Department of Health or its successors in Western Australia.

**Department of Water** means the Department of Water or its successors in Western Australia.

**expiry date** means the date specified in Schedule 1.

**individual performance standards** mean any *individual performance standards* approved by the *Authority* pursuant to clause 19 and specified in Schedule 4 of the *licence*.

<sup>1</sup> Standard AS ISO 10002 – 2006 Customer satisfaction – Guidelines for complaints handling in organisations, section 3.2

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**licence** means this licence and any Schedules attached to it.

**licensee** means the Shire of Kent.

**Local Government Authority** means a Local Government established under the *Local Government Act 1995*.

**Non-potable water supply services** means the collection, treatment, transfer or delivery of water supplied from water services systems not designed and operated to provide *potable water*.

**notice** means a written notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to, or in connection with, this *licence*.

**Operating Area(s)** means the controlled area or areas, or part or parts thereof, in respect of which this *licence* has been issued as described in Schedule 2.

**operational audit** means an audit of the effectiveness of measures taken by the *licensee* to meet the *performance criteria* in this *licence*.

**performance criteria** means:

- (a) the *terms and conditions* of the *licence*; and
- (b) any other relevant matter in connection with the *applicable legislation* that the *Authority* determines should form part of the *performance audit*.

**publish** in relation to a report or information means either:

- (a) posting the report or information on the *licensee's* web site; or
- (b) sending the report or information to the *Authority* to be published on the *Authority's* web site.

**Regulations** means:

- (a) *Water Services Coordination Regulations 1996*;
- (b) *Water Services Licensing (Extension of Enactments) Regulations 1997*; and
- (c) any regulations in force from time to time made pursuant to the *Act*.

**related body corporate** has the meaning in section 50 of the *Corporations Act 2001 (Cwlth)*.

**review guidelines** means the guidelines for the review of *customer service charters* published on the *Authority's* website.

**reviewable decision** means a decision by the *Authority* pursuant to:

- (a) clause 16.3;
- (b) clause 17.5; and
- (c) clause 22.3

of this *licence*.

**Schedule** means the schedule or schedules which are appended to, and which form part of, this *licence*.

**sewerage services** mean the collection, transfer, treatment or disposal of sewage.

**terms and conditions** means the terms and conditions in this *licence* including and terms and conditions contained in the *Schedules*.

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**Water Acts** means Acts of Parliament and subsidiary legislation relevant to the provision of water services.

**water licensing email address** means:

- (a) in relation to the *Authority*, the addressee's authorised *Authority* email address or other such email address as notified in writing to the *licensee*; and
- (b) in relation to the *licensee*, the email address specified in the licence application or other such email address as notified in writing to the *Authority*.

**water service works means** *water service works* as defined in the *Act*.

## 2 Grant of Licence

- 2.1 The *licensee* is granted a *licence* for the *Operating Area(s)* to provide the water services described in Schedule 1 in accordance with the *terms and conditions* of this *licence*.

## 3 Term

- 3.1 This *licence* commences on the *commencement date* and continues until the earlier of:
- (a) the cancellation of the *licence* pursuant to clause 11 of this *licence*;
  - (b) the surrender of the *licence* pursuant to clause 12 of this *licence*; or
  - (c) the *expiry date*.

## 4 Fees

- 4.1 The *licensee* must pay the applicable fees in accordance with the *Regulations*.

## 5 Compliance

- 5.1 Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.
- 5.2 Subject to the provisions of any *applicable legislation*, the *Authority* may direct the *licensee* in writing to do any measure necessary to:
- (a) correct the breach of any *applicable legislation*; or
  - (b) prevent the breach of any *applicable legislation* occurring again,
- and specify a time limit by which such action must be taken.

## 6 Customer Complaints

- 6.1 The *licensee* must establish *customer* complaints processes as set out in Schedule 3.

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**7 Customer Service Charter**

7.1 The *licensee* must establish a *customer service charter* as set out in Schedule 3.

**8 Customer Consultation**

8.1 The *licensee* must establish *customer* consultation processes as set out in Schedule 3.

**9 Memorandum of Understanding**

Clause 9 is not applicable.

**10 Transfer of Licence**

10.1 This *licence* may be transferred only in accordance with the *Act*.

**11 Cancellation of Licence**

11.1 This *licence* may be cancelled only in accordance with the *Act*.

**12 Surrender of Licence**

12.1 The *licensee* may surrender the *licence* at any time by written *notice* to the *Authority*.

12.2 The surrender of the *licence* will take effect on the day that the *Authority* publishes a *notice* of the surrender in the *Gazette*.

12.3 The *licensee* will not be entitled to a refund of any fees by the *Authority*.

**13 Renewal of Licence**

13.1 This *licence* may be renewed only in accordance with the *Act*.

**14 Amendment of Licence**

14.1 The *Authority* may, at any time, amend the *licence*:

- (a) on its own initiative; or
- (b) on application by the *licensee*,

in accordance with the *Act* and the procedure specified in clause 14.2.

14.2 Before amending the *licence* under clause 14.1(a), the *Authority* must:

- (a) provide the *licensee* with written notice of the proposed amendments under consideration by the *Authority*;
- (b) allow 15 *business days* for the *licensee* to make submissions on the proposed amendments; and
- (c) take into consideration those submissions.

14.3 This clause also applies to the substitution of the existing *licence*.

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- 14.4 For avoidance of doubt, the *licensee* will not have to pay an associated application fee or licence fee for the purpose of clause 14.1.

## 15 Accounting Records

- 15.1 The *licensee* and any *related body corporate* must maintain accounting records that comply with the Australian Accounting Standards Board Standards or equivalent International Accounting Standards.

## 16 Operational Audit

- 16.1 The *licensee* must, unless otherwise notified in writing by the *Authority*, provide the *Authority* with an *operational audit* within 24 months after the *commencement date*, and every 24 months thereafter.
- 16.2 The *licensee* must comply, and must require the *licensee's* auditor to comply, with the *Authority's* standard audit guidelines dealing with the *operational audit*, including any minimum requirements relating to the appointment of the auditor, the scope of the audit, the conduct of the audit and the reporting of the results of the audit.
- 16.3 The *licensee* may seek a review of any of the requirements of the *Authority's* standard audit guidelines in accordance with clause 24.1.
- 16.4 The independent auditor may be nominated by the *licensee* but must be approved by the *Authority* prior to the audit pursuant to clause 16.1. Should the *Authority* reject the *licensee's* nomination of an independent auditor twice or, in the event that no nomination has been made by the *licensee* within 1 month of the date the audit was due, the *Authority* may choose an independent auditor who will conduct the audit.

## 17 Asset Management System

- 17.1 The *licensee* must provide for, and notify the *Authority* of, an *asset management system* in respect of the *licensee's* assets within 2 *business days* from the *commencement date* unless otherwise notified in writing by the *Authority*.
- 17.2 The *licensee* must notify the *Authority* of any material change to the asset management system within 10 *business days* of such change.
- 17.3 The *licensee* must, unless otherwise notified in writing by the *Authority*:
- (a) conduct an *asset management system review*; and
  - (b) provide the *Authority* with a report on the *asset management system review*,
- within 24 months after the *commencement date* and every 24 months thereafter.
- 17.4 The *licensee* must comply, and must require the *licensee's* expert to comply, with the *Authority's* standard guidelines dealing with the *asset management system* review, including any minimum requirements relating to the appointment of the expert, the scope of the review, the conduct of the review and the reporting of the results of the review.
- 17.5 The *licensee* may seek a review of any of the requirements of the *Authority's* standard guidelines dealing with the *asset management system* review in accordance with clause 24.1.

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- 17.6 The independent expert may be nominated by the *licensee* but must be approved by the *Authority* prior to the review pursuant to clause 17.3. Should the *Authority* reject the *licensee's* nomination of an independent expert twice or, in the event that no independent expert has been nominated by the *licensee* within 1 month of the date the review was due, the *Authority* may choose an independent expert who will conduct the review.

## 18 Reporting

- 18.1 The *licensee* must report to the *Authority*:
- (a) if the *licensee* is under external administration as defined by the *Corporations Act 2001 (Cwlth)* within 2 *business days*; or
  - (b) if the *licensee* experiences a significant change in the *licensee's* corporate, financial or technical circumstances upon which this *licence* was granted which may affect the *licensee's* ability to meet its obligations under this *licence* within 10 *business days* of the change occurring.

## 19 Individual Performance Standards

- 19.1 Performance standards are contained in *applicable legislation*.
- 19.2 The *Authority* may prescribe *individual performance standards* in relation to the *licensee* of its obligations under this *licence* or the *applicable legislation*.
- 19.3 Before approving any *individual performance standards* under this clause, the *Authority* will:
- (a) provide the *licensee* with a copy of the proposed *individual performance standards*;
  - (b) allow 15 *business days* for the *licensee* to make submissions on the proposed *individual performance standards*; and
  - (c) take into consideration those submissions.
- 19.4 Once approved by the *Authority*, the *performance standards* are included as additional *terms and conditions* to this *licence* as set out in Schedule 4.

## 20 Service and Performance Standards

- 20.1 The *licensee* must comply with the service and performance standards as set out in Schedule 4.

## 21 Provision of Information

- 21.1 The *licensee* must provide to the *Authority* any information that the *Authority* may require in connection with its functions under the *Act* in the time, manner and form specified by the *Authority*.
- 21.2 The *licensee* must comply with the information reporting requirements as set out in Schedule 5.

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## 22 Publishing Information

- 22.1 The *Authority* may direct the *licensee* to *publish* any information within a specified timeframe it considers relevant in connection with the *licensee* or the performance by the *licensee* of its obligations under this *licence*.
- 22.2 Subject to clause 22.3 the *licensee* must *publish* the information referred to in clause 22.1.
- 22.3 If the *licensee* considers that the information is confidential it must:
- (a) immediately notify the *Authority*; and
  - (b) seek a review of the *Authority's* decision in accordance with clause 24.1.
- 22.4 Once it has reviewed the decision, the *Authority* will direct the *licensee* in accordance with the review to:
- (a) *publish* the information;
  - (b) *publish* the information with the confidential information removed or modified; or
  - (c) not *publish* the information.

## 23 Notices

- 23.1 Unless otherwise specified, all *notices* must be in writing.
- 23.2 A *notice* will be regarded as having been sent and received:
- (a) when delivered in person to the addressee; or
  - (b) 3 *business days* after the date of posting if the *notice* is posted in Western Australia; or
  - (c) 5 *business days* after the date of posting if the *notice* is posted outside Western Australia; or
  - (d) if sent by facsimile when, according to the sender's transmission report, the *notice* has been successfully received by the addressee; or
  - (e) if sent by email when, according to the sender's electronic record, the *notice* has been successfully sent to the addressee's *water licensing email address*.

## 24 Review of the Authority's Decisions

- 24.1 The *licensee* may seek a review of a *reviewable decision* by the *Authority* pursuant to this *licence* in accordance with the following procedure:
- (a) the *licensee* must make a submission on the subject of the *reviewable decision* within 10 *business days* (or other period as approved by the *Authority*) of the decision; and
  - (b) the *Authority* will consider the submission and provide the *licensee* with a written response within 20 *business days*.
- 24.2 For the avoidance of doubt, this clause does not apply to a decision of the *Authority* pursuant to the *Act*, nor does it restrict the *licensee's* right to have a decision of the *Authority* reviewed in accordance with the *Act*.

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## Schedule 1 – Licensee Details

### Water Service (1) Non-Potable Water Supply Services

**1 Name and Address of Licensee**

Shire of Kent  
 Richmond Street  
 Nyabing WA 6341

**2 Commencement Date**

21 May 1997

**3 Expiry Date**

29 April 2021

### Water Service (2) Sewerage Services

**1 Commencement Date**

21 May 1997

**2 Expiry Date**

29 April 2021

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## Schedule 2 – Operating Areas

The *licensee* may provide the water services respectively indicated in this Schedule to, and within, those areas designated by reference to a plan number, where the number refers to the plan of the relevant *Operating Area*, or location described below, approved by the *Authority* for the purposes of the provision of the indicated water service. The plans are available for inspection at the *Authority*.

### Operating Areas (Non Potable Water and Sewerage Services)

Plan No.	Town/Region
OWR-OA-038	Nyabing
OWR-OA-039	Pingrup

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## Schedule 3 – Customer Provisions

### 1. Definitions

**Customer Council** means a forum set up by a *licensee* to involve *customers* in direct “round table” feedback about services.

**resolve(d)** means the decision or determination made by the *licensee* with respect to the complaint, where the *licensee*, having regard to the nature and particular circumstances of the complaint, has used all reasonable steps to ensure the best possible approach to addressing the complaint.

### 2 Customer Service Charter

- 2.1 The *licensee* must have in place a *customer service charter* that accords with the Authority’s *review guidelines*.
- 2.2 The *customer service charter*:
- (a) should be drafted in 'plain English'; and
  - (b) should address all of the service issues that are reasonably likely to be of concern to its *customers*.
- 2.3 Different parts of the *customer service charter* may be expressed to apply to different classes of *customers*.
- 2.4 Any proposed amendment to the *customer service charter* must be forwarded to the *Authority* for approval.
- 2.5 The *licensee* must make the *customer service charter* available to its *customers* in the following ways:
- (a) by prominently displaying it in those parts of the *licensee's* offices to which *customers* regularly have access;
  - (b) by providing a copy, upon request, and at no charge, to the *customer*, and
  - (c) by sending a current copy, or a summary document approved by the *Authority*, to all *customers* at least once in every three year period or as agreed with the *Authority*.
- 2.6 The *customer service charter* is to be reviewed by the *licensee* at least once in every three year period or as agreed with the *Authority*.
- 2.7 It is a condition of the *licence* that the *licensee* provides services in a way which is consistent with its *customer service charter*. This condition is not intended to create a statutory duty nor provide any third party with a legally enforceable right or cause of action.

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### 3 Customer Complaints

#### **General Clauses**

- 3.1 Subject to sub-clause 3.8, the *licensee* must have in place, a properly resourced process for effectively receiving, recording and, (where possible), resolving *customer complaints* within a timeframe of 15 *business days*.
- 3.2 Not applicable.
- 3.3 Where a dispute arises between a *customer* and the *licensee* regarding a provided or requested water service, the *customer* may refer the dispute to the *Department of Water*.
- 3.4 Subject to sub-clause 3.10, where a dispute has not been resolved within 15 *business days* the *licensee* must inform the *customer* of the option of referring their *complaint* to the *Department of Water*.
- 3.5 The *Department of Water* may:
- (a) conciliate the dispute; or
  - (b) direct the *licensee* or *customer* to binding arbitration.
- 3.6 During the process of investigation and conciliation, the *licensee* must make every endeavour to promptly cooperate with the *Department of Water's* (or its representative's) requests, which must include the expeditious release of any relevant information or documents requested by the *Department of Water* and the availability of the relevant staff of the *licensee*.
- 3.7 The *licensee* must, on request, provide the *Department of Water* with details of *complaints* made, names and addresses of *customers* who have made *complaints* and the manner in which the *complaint* was resolved.

#### **Licence Specific Clauses**

##### **Sewerage Services (Local Government Authority only)**

- 3.8 The *licensee* must establish a system for recording and resolving *complaints* by *customers* within 15 *business days* regarding a provided or requested water service, or for matters which must be considered by a *Local Government Authority Council*, within 5 *business days* after the first ordinary Council meeting following the expiry of the 15 *business day* period.
- 3.9 To ensure the effectiveness of such a process the *licensee* must, as a minimum:
- (a) record details of each *customer complaint* and its outcome;
  - (b) provide an officer trained to deal with *customer complaints* who is authorised to, or has access to another officer who has the authority to, make the necessary decisions to settle *customer complaints* or disputes, and where applicable, make recommendations to Council as to the payment of monetary compensation; and
  - (c) make all necessary arrangements to ensure that if possible *complaints* can be resolved in the timeframes set out in sub-clause 3.8.

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- 3.10 Unless the *complaint* or dispute is a matter in relation to which section 3.22 of the *Local Government Act 1995* applies, where a dispute has not been resolved within 15 *business days* the *licensee* must inform the *customer* of the option of referring their *complaint* to the *Department of Water*.

## 4 Customer Consultation

### **General Clauses**

- 4.1 The *licensee* must establish ongoing *customer* consultation processes which both inform *customers* and proactively solicit *customer* opinion on the *licensee's* operations and delivery of services. Acceptable approaches to the satisfaction of this requirement are set out below.

The *licensee* may either:

- (a) establish a *Customer Council*, and consult with the *Customer Council* to facilitate community involvement in issues relevant to the exercise of the *licensee's* levels of service under the *licence*; or
  - (b) institute at least two of the following processes:
    - i. Meeting on a regular basis with *customers* to seek comment on issues relevant to the exercise of the *licensee's* levels of service under the *licence*;
    - ii. Publishing a simple newsletter providing basic information about the *licensee's* operations; and/or
    - iii. Establishing other forums for consultation to enable community involvement in issues relevant to the exercise of the *licensee's* obligations under this *licence*.
- 4.2 The *Authority* must be consulted with respect to the type and extent of *customer* consultation to be adopted by the *licensee*.
- 4.3 In addition, the *licensee* may, or at the request of the *Authority*, must, establish other forums for consultation, to enable community involvement in issues relevant to the exercise of the *licensee's* obligations under this *licence*.

### **Licence Specific Clauses**

#### **Irrigation Services**

- 4.4 Not applicable.

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### Sewerage Services

- 4.5 Prior to making major changes to the operation of a water service(s), such as the construction of new wastewater treatment works or significant expansion of the sewerage network, the *licensee* will:
- (a) hold a public meeting to obtain *customer* views on the performance and operation of the scheme; or
  - (b) advertise for written submissions on the proposal.
- 4.6 The *licensee* must allow *customers* to raise matters of concern regarding the sewerage system at public question time in accordance with the *Local Government Act 1995*.

## 5 Customer Contracts

- 5.1 Subject to compliance with this clause 5, the *licensee* may enter into an agreement with a *customer* to provide water services that exclude, modify or restrict the *terms and conditions* of this *licence*.
- 5.2 Subject to clause 5.3, an agreement referred to in clause 5.1:
- (a) must be approved by the *Authority* prior to its commencement; and
  - (b) must not be amended without the prior approval of the *Authority*.
- 5.3 The *licensee* does not need the approval of the *Authority* if the terms that exclude, modify or restrict the *terms and conditions* of this *licence*:
- (a) were in force before the commencement of this *licence*; or
  - (b) have previously been approved by the *Authority* in another agreement that applies to the same class of *customer*.
- 5.4 If a *licensee* enters into an agreement with a *customer* that excludes, modifies or restricts the *terms and conditions* of this *licence*, the *licensee* must *publish* a report annually that includes the following information:
- (a) the total number of agreements entered into by the *licensee*, categorised by location and the type of exclusion, modification or restriction;
  - (b) the number of agreements entered into by the *licensee* during the reporting period, categorised by location and the type of exclusion, modification or restriction;
  - (c) the total number of agreements entered into by the *licensee*, categorised by location and by land use; and
  - (d) the number of agreements entered into by the *licensee* during the reporting period, categorised by location and by land use.

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## 6 Customer Surveys

- 6.1 Not more frequently than every 12 months the *Authority* may require the *licensee* to commission an independent customer survey which must address and conform to the conditions and parameters set out in writing by the *Authority*.

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## Schedule 4 – Service & Performance Standards

### Customer Service Standards

#### Emergency Response

- 1.1 The *licensee* shall provide an emergency telephone advice system such that customers need make only one telephone call to report an emergency and that the customer shall be advised of the nature and timing of the action to be undertaken by the *licensee* in accordance with the following standard.

Service Activity	How Is It Measured	Performance Indicator / Targets
Telephone Answering – emergency response.	Number of calls requiring a response within one hour divided by the total number of calls requiring a response, expressed as a percentage.	90 % of customers within one hour of reporting an emergency shall be advised of the nature and timing of the action to be undertaken by the <i>licensee</i> .

#### Customer Complaints

- 2.1 The *licensee* shall respond to customer complaints in accordance with the following standard.

Service Activity	How Is It Measured	Performance Indicator / Targets
Complaints to be resolved within 15 business days.	The number of written complaints due for resolution in the previous 12 month period successfully resolved within 15 business days divided by the total number of written complaints due for resolution and expressed as a percentage.	90% of customer complaints resolved within 15 business days.

### Sewerage Services

#### Continuity and Overflows

- 3.1 The *licensee* must comply with the following.

Service Activity	How Is It Measured	Performance Indicator / Targets
The number of sewer blockages per 100km of sewer mains.	The number of sewer blockages per 100km of sewer mains.	In the preceding 12 months there were fewer than 40 blockages per 100 km of sewer main.
Percentage of connected properties experiencing a sewage overflow.	Percentage of connected properties experiencing a sewage overflow.	In the preceding 12 month period 90% of connected properties experience no sewage overflows.

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## Schedule 5 – Information Requirements (Reporting)

### 1 Definitions

***Water Compliance Reporting Manual*** means the Water Compliance Reporting Manual approved by the Authority.

***Department for Environment and Conservation*** means the Department for Environment and Conservation or its successors in Western Australia.

### 2 Benchmarking and Performance Monitoring Information

- 2.1 The *licensee* will provide the *Authority* with data required for performance monitoring purposes as set out in the *Water Compliance Reporting Manual* as amended from time to time.

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## Schedule 6 – Other Provisions

### Examples

#### 1 Definitions

**connection** means a point on a [water, wastewater, sewerage, drainage or irrigation] scheme where a *customer* can connect to utilise the service.

#### 2 Obligations to Customers: Availability and Connection of Services

- 2.1 The *licensee* must set out in writing its 'conditions for connection' and make that information available to all applicants for connection and to people inquiring about connection.
- 2.2 The *licensee* must ensure that its services are available for connection on request to any land situated in the *Operating Areas*, subject to the applicant meeting any conditions the *licensee* may determine to ensure safe, reliable and financially viable supply of services to land in the *Operating Areas* in accordance with this *licence* and any *Water Acts*. Satisfactory compliance with the conditions of connection is to be taken as forming an essential requirement of gaining approval for connection to the *licensee's* schemes.
- 2.3 The *licensee* may, with the written agreement of the property owner, discontinue a service to a property where the servicing of the property is not commercially viable.

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**Amendment Record Sheet:**

<b>Amendment Date</b>	<b>Description of Amendment</b>
15 May 2009	Remove requirement to report incidents

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