

## Supporting Guidance Note: SGN 1 Rights of access guidance for abstraction licences

This Guidance Note has been created by Natural Resources Wales (NRW) to provide applicants for abstraction licences with information on the provision of documentary evidence to confirm a legal right of access to support an abstraction licence application. Its contents may be updated periodically and applicants should ensure they read the most recent version, which is available on the NRW website.

This guidance note is not a statement of the relevant law and applicants may wish to seek their own independent legal advice.

### 1. Introduction

This note should be read in conjunction with ‘Form guidance WR331: Guidance notes for a water resources abstraction licence application – part B’. The note outlines the evidence NRW requires to ensure an applicant (when an applicant is not the landowner or occupier at the point of abstraction), has a legal right of access to the point of abstraction. We need to ensure legal protection of landowners and applicants and avoid any disputes or challenges regarding the legality of an abstraction licence and the documentation that we have relied upon to inform our decision.

### 2. Legal position

As outlined in the Water Resources Act 1991 (as amended by the Water Act 2003), section 35 requires the applicant to, “satisfy [NRW] that they have, or at the time when the proposed licence is to take effect, will have a right of access to land contiguous to the inland waters at that place for the purposes of water abstraction and that they will continue to have such a right for a period of at least one year beginning with the date on which the proposed licence is to take effect”.

For validation of your abstraction licence application, our current requirements are:

If the applicant is not the landowner:

- a draft or final copy of the ‘Heads of Terms’ agreement, and/or;
- copies of letters between legal advisors confirming arrangements about right of access and your exclusivity to the agreement & the abstraction point for the purpose of water abstraction; or

If the applicant is the landowner or occupier:

- a map showing which land you own/occupy and the proposed abstraction location(s) within said land boundary.

NRW must be satisfied that a right of access for the purposes of water abstraction is held by an applicant before an abstraction licence can be issued. When the applicant is not the landowner or occupier evidence of that right must be provided. The requirements are outlined below;

**You must have a right of access to the locations where water is to be abstracted (for the purpose of water abstraction). The applicant must therefore provide evidence of the following:**

- i) a right of access; or
- ii) ownership or occupation of the land including the right to take water.

**Evidence of your right of access may include:**

- iii) a deed of grant or lease of rights;
- iv) a conveyance, lease, tenancy agreement or personal rights; or
- v) a compulsory purchase order.

Note: NRW will consider others forms of documentary evidence that satisfy the requirements detailed in the section. Please discuss these with your point of contact at the earliest opportunity.

### **3. What we will not accept as evidence of rights of access**

We will not accept a copy of a letter from the landholder as proof of a right of access. You must provide something that creates or leads to a legal right or an interest and is legally binding. You must be able to prove that your right of access continues for 12 months after any abstraction licence is issued, unless you only need the licence for a period of less than 12 months.

In practice, this means that whilst a prospective right of access may be adequate to satisfy us that we can validate the application, for the licence to be issued we must be satisfied that the right of access has been legally granted and is binding for the appropriate time period. That right of access must state that it is for the purpose of water abstraction.

We will not accept a statutory declaration as satisfactory evidence of the existence of the appropriate right of access. A statutory declaration, whilst stated to be the honestly

held belief of the declarant, does not of itself create a right of access and cannot be used as evidence to gain or enforce such a right.

#### **4. Commercially sensitive information**

If one of the parties to an agreement granting the rights of access considers that it contains commercially sensitive information, for example the fees/rent payable, then it may be possible to redact those parts from the document supplied to us. However it remains the case that we must be satisfied that the relevant rights of access have been granted and so redacting names, addresses or points of access, for example, would not be acceptable.

#### **5. Extension of licence determination if correct information is not provided**

Our Permitting Service will agree to reasonable extensions to the determination period with applicants to enable them to finalise the agreement and secure the issue of the permit. We would however refuse the application if the agreement is not completed within the agreed extension.

#### **6. Guidance template for applicants to evidence their right of access**

In order to assist applicants and their legal advisors, a template agreement is shown in Appendix 1 below. NRW will accept a completed template agreement as sufficient evidence to meet the requirements of Section 35 of the Water Resources Act 1991 (as amended).

Applicants are not obligated to use this agreement and can provide an alternative format that meets the requirements of section 2 above. Applicants are advised to seek their own independent legal advice regarding the content of any legal agreements.

## Appendix 1 – a guideline template for applicants to confirm rights of access (N.B. this is only a suggested format and applicants can choose to submit any format of legal agreement providing that it complies with the principles of this guidance note)

### Dated

[PARTY]

and

[ ]

### LICENCE TO ENTER LAND FOR THE PURPOSE OF ABSTRACTING WATER

relating to

[Address]

**THIS LICENCE** is dated

#### PARTIES

- (1) [NAME] of [Address] (**Licensor**).
- (2) [ ] incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (**Licensee**).

#### AGREED TERMS

##### 1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

**Abstraction Licence:** a licence to abstract water anticipated to be granted and issued by Natural Resources Wales ('NRW') pursuant to application number [ ] made by the Licensee to NRW.

**Abstraction Point:** the point at which the Licensee shall have the right to abstract water from the watercourse on the Licensor's Property marked "X" on the Plan, or such other point as shall be agreed between the parties from time to time.

**Licence Period:** the period from and including the date hereof to and until the date on which this licence is determined in accordance with clause 4

**Licence Fee:** a sum of [£ ] paid by the Licensee to the Licensor.

**Licensor's Property:** the property at [Address] shown shaded pink on the Plan and registered at HM Land Registry with title number [Title Number] and each and every part of it.

**Long Stop Date:** [ ] 20[ ]

**Permitted Use:** to pass and repass with or without vehicles over and along the Licensor's Property by such route as shall be agreed between the parties from time to time for the purpose of obtaining access to and from the Abstraction Point at all times and to abstract water from the Abstraction Point in accordance with the terms of the Abstraction Licence.

**Plan:** the plan attached to this licence.

- 1.2. Clause headings shall not affect the interpretation of this agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9. A reference to writing or written includes faxes but not e-mail.
- 1.10. Any obligation in this licence on a person not to do something includes an obligation not to agree or allow that thing to be done and to prevent such an act or thing being done by a third party.
- 1.11. References to clauses are to the clauses of this licence.
- 1.12. Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13. Unless otherwise expressly provided, the obligations and liabilities of the Licensee under this licence are joint and several.

## **2. Licence to Use**

- 2.1. In consideration of the Licence Fee, payment of which is hereby acknowledged by the Licensor, and subject to clause 3 and clause 4, the Licensor permits the Licensee by way of licence only to use the Licensor's Property for the Permitted Use for the Licence Period under the terms of this written licence in common with the Licensor and all others authorised by the Licensor (so far as is not inconsistent with the Licensee's use of the Permitted Route for the Permitted Use).
- 2.2. The Licensor warrants that it is the owner of the Licensor's Property
- 2.3. The Licensee acknowledges that:
  - 2.3.1. the Licensee shall use the Licensor's Property as a licensee and not as of right; and
  - 2.3.2. the Licensor retains control, possession and management of the Licensor's Property and the Licensee has no right to exclude the Licensor from the Licensor's Property.
- 2.4. This licence is personal to the Licensor and the Licensee and neither of them may assign or otherwise transfer the benefit of it.

### **3. Licensee's Obligations**

The Licensee agrees and undertakes:

- 3.1.1. not to use the Licensor's Property other than for the Permitted Use;
- 3.1.2. not to do or permit to be done on the Licensor's Property anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Licensor or any owner or occupier of neighbouring property;
- 3.1.3. not to cause or permit to be caused any damage to:
  - 3.1.3.1. the Licensor's Property or any neighbouring property; or
  - 3.1.3.2. any property of the owners or occupiers of the Licensor's Property or any neighbouring property.
- 3.1.4. not to obstruct the Licensor's Property or deposit any waste, rubbish, soil or other material on any part of the Licensor's Property or in any other way interfere with, or disturb, the Licensor or any others authorised by the Licensor to use the Licensor's Property;
- 3.1.5. not to authorise any other person to use the Licensor's Property except the Licensee's employees or the Licensee's invitees to the Licensor's Property;
- 3.1.6. to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
  - 3.1.6.1. this licence;

- 3.1.6.2. any breach of the Licensee's undertakings contained in clause 3; and/or
- 3.1.6.3. the exercise of any rights given in clause 2.

#### **4. Termination**

- 4.1. This licence shall end on the earliest of:
  - 4.1.1. the day before the [number not less than 5] anniversary of the date hereof;
  - 4.1.2. the expiry of not less than twelve months' notice to terminate given by either party to the other provided that in no circumstances shall such notice expire earlier than the date falling twelve months after the date of grant of the Abstraction Licence; and
  - 4.1.3. The Long Stop Date if the Abstraction Licence has not been granted by such date
- 4.2. Termination is without prejudice to the rights of either party in connection with any antecedent breach of any obligation subsisting under this licence.

#### **5. Notices**

- 5.1. Any notice required to be given under this licence, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery, to each party required to receive the notice at the addresses set out above or as otherwise specified by the relevant party by notice in writing to each other party.
- 5.2. Any notice shall be deemed to have been duly received:
  - 5.2.1. if delivered personally, when left at the address and for the contact referred to in this clause; or
  - 5.2.2. if sent by pre-paid first-class post or recorded delivery, at 11.00 am on the second working day after posting.
- 5.3. A notice required to be given under this licence shall not be validly given if sent by e-mail.
- 5.4. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **6. Rights of Third Parties**

A person who is not a party to this licence may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

#### **7. Governing Law and Jurisdiction**

- 7.1. This licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 7.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this licence or its subject matter or formation (including non-contractual disputes or claims).

This licence has been entered into on the date stated at the beginning of it.

Signed by **[NAME]** .....

Signed by [ ] .....

For and on behalf of

[ ]