

APPLICATION FOR THE HIRE OF A METERED STANDPIPE FOR USE WITHIN THE ANGLIAN WATER REGION



Please complete all sections below IN FULL and send to Aquam Water Services Ltd (trading as Water Services) ("Aquam", "we" or "us"), Unit 16, Stapledon Road, Peterborough, PE2 6TD or E-mail to: anglianwater@aquamcorp.co.uk
If you have any queries please contact Aquam Water Services Limited on 01733 794641 or E-Mail us on anglianwater@aquamcorp.co.uk

1. APPLICANT ("you")

Organisation / Applicant Name: _____ Contact Name: _____

Address: _____

Email Address for Clam Network Training: _____

Landline: _____ Email: _____

Mobile: _____ Purchase Order Number: _____

Are you an: Existing Account Holder New Account Applicant Credit/Debit Card Customer

2. INFORMATION

Purpose for which water is required: _____

Requested Start Date: ____/____/____ Expected Return Date: ____/____/____

Vehicle Registration (if kept on a vehicle) _____

Site / Area of Use: _____

Water Company: Anglian Water Services Limited

3. EQUIPMENT

Please indicate which size and quantity of standpipe(s) you require – NOTE: a £ 200 deposit per standpipe may be required (this will be confirmed upon receipt of your application and prior to our acceptance of your application). All prices below exclude VAT.

<input type="checkbox"/> 22mm Metered Standpipe (tap outlet) £33.50 per week	<input type="checkbox"/> 40mm Metered Standpipe (Fire Hose) £56.00 per week
<input type="checkbox"/> 22mm Metered Standpipe Six Month Pre-Paid Rate £570.00	<input type="checkbox"/> 40mm Metered Standpipe Six Month Pre-Paid Rate £720.00
<input type="checkbox"/> 22mm Metered Standpipe Annual Pre-Paid Rate £950.00	<input type="checkbox"/> 40mm Metered Standpipe Annual Pre-Paid Rate £1300.00

NOTE: 40mm standpipes can only be used with pre approved designated hydrants (a list of which will be made available upon approval of your application). If you require a further copy, then please request one

Length of hose required (POA) per metre _____ Water usage Charge - £1.3735 per cubic metre (1,000 litres).

4. COLLECTION / DELIVERY

Please indicate whether:

you wish the Equipment to be delivered by Aquam (at a cost of £25 within a 50 mile radius or £35 within a 70 mile radius. Over 70 mile radius POA); OR

you wish to collect from the Peterborough Depot

Delivery Address (if applicable) _____

It is your responsibility to return the Equipment at the end of the Rental Period. Please note you will need to contact Aquam at least 2 Working Days prior to any off hire date in the event that you wish Aquam to collect the Equipment (at an additional charge of £25 within a 50 mile radius or £35 within a 70 mile radius. Over 70 miles POA) rather than you delivering this back to the Peterborough Depot.

5. METER READING

You will be required to take meter readings on a monthly basis and telephone the reading to us on 0844 836 0045. Please provide your contact details in the event that you fail to provide these monthly readings:

Name: _____ Tel: _____

Email Address: _____

6. OPERATING INSTRUCTION

In addition to the Terms & Conditions for the Use of Standpipes (attached hereto), in making this application, and if accepted, you agree and acknowledge that:

- a) No equipment shall be operated unless the individual operating the Equipment has undergone calm network training.
- b) All Equipment must be kept in a clean, well-maintained condition at all times, in order to minimise the risk of contamination, backflow and water leakage. Damaged and worn Equipment must not be used.
- c) When attaching Equipment to Water Company assets you must:
 - i. Clean out the hydrants and / or wash out to enable clean and safe operation of the Equipment
 - ii. Ensure the line strainer (filter) is maintained and kept clean at all times.
 - iii. Spray the hydrant and Equipment with approved chlorine based spray solution
 - iv. Do not apply any bending or sideways load to the Equipment
 - v. Operate the spindle at arms-length
 - vi. Always open and close the hydrant in a slow and controlled manner
 - vii. Flush the hydrant to clear the connection point
 - viii. Do not cross thread the outlet
 - ix. Visually inspect the Equipment to confirm it is fitted correctly
 - x. Do not stand directly over the hydrant
 - xi. If any hydrant fails in operation, please report to Aquam immediately
- d) You may be required to demonstrate to the Water Company your processes of ensuring all Equipment is disinfected prior to use

7. AGREEMENT

- a) I hereby make an application to use a metered standpipe in the Water Company's region (as shown above) for the purpose indicated above and I acknowledge that I have received, read and accepted the Terms & Conditions for the Use of Standpipes.
- b) I can only use the Equipment for the purpose indicated above and attach it to a Wash Out (WO). Only equipment which complies to the Water Company's specification (which shall include without limitation a backflow prevention device in the form of a BS6282 double check valve) may be used to take water from wash out hydrants. Such Equipment can only be provided by Aquam. Any equipment in use in the Water Company's region that has not been obtained from Aquam is therefore not approved equipment, and will be deemed to be illegal equipment being used without consent of the Water Company, and further action will be taken as referred to paragraph 7.4 of the Terms and Conditions of Use of Standpipes
- c) Where a Standpipe(s) is being used on the same site for more than one month, I acknowledge and agree that I am required and will apply for a temporary or permanent metered supply for that site.
- d) I acknowledge that the Water Company, Aquam and or any Fire Authority retain the right to remove any Equipment or other asset from the water network at any time and for any purpose, and I agree that the Water Company, Aquam and or the Fire Authority will not be liable for any loss, damage or compensation as a result of such removal.
- e) I undertake to report any Equipment damage or loss immediately to Aquam and return the Equipment on the above return date (unless otherwise agreed in writing by Aquam). If I fail to return the Equipment, I will be charged a weekly Rental Charge and Water Usage Charges until the Equipment is returned.
- f) Aquam will carry out a credit check in respect of the Applicant. You agree to us using the information obtained to assess the credit risk of your application and understand that we reserve the right to cancel this contract in the event that the result is unsatisfactory or your credit rating becomes unsatisfactory during the Rental

Period.

- g) No contract for the hire of Equipment shall be formed unless and until Aquam confirm acceptance in writing (which may be by email).

Signed for and on behalf of the Applicant (being an authorized representative where the applicant is operating as a business)

Signature _____ Print Name: _____

Date: _____

TERMS AND CONDITIONS FOR THE USE OF STANDPIPES

1. Definitions

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

Application Form: means the application form completed by the Lessee and to which these terms and conditions are attached

Applicable Law: means all applicable laws, regulations, regulatory requirements, directives, orders and codes of practice of any relevant jurisdiction, as amended and in force from time to time

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Delivery: the transfer of physical possession of the Equipment to the Lessee.

Deposit: the deposit amount set out in the Application Form.

Equipment: the items of equipment marked in the Application Form all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

"Force Majeure Event" means, in relation to any party, any act, event or circumstance or combination of acts, events or circumstances, the cause of which is neither of such party's making nor within that party's reasonable control which could not reasonably be planned for or avoided including without limitation an act of God, war, terrorism, fire, flood, explosion or civil commotion PROVIDED THAT for the avoidance of doubt, the following shall not be Force Majeure Events:

a) lack of funds; and

b) strikes or any other industrial action solely by the employees of the relevant party or any of their respective agents, contractors or sub contractors;

c) any interruption in supply of gas, electricity, water or telecommunications services unless that interruption itself arises as a result of a Force Majeure;

Lessee: means the applicant identified in the Application Form to which these terms and conditions are attached

Lessor: means Aquam Water Services Limited (company number 9527628) trading as Water Services

Rental Charges: the charge for hire of the Equipment as set out in the Application Form (and as amended on the 1st April each year and as set out in the Water Company's published wholesales charges schedule)

Region: means the area operated by Water Company within which the Water Company is the appointed water and/or sewerage undertaker under the Water Industry Act 1991

Rental Period: the period of hire as set out in clause 3 (Rental Period).

Start Date: the date that the Lessee takes Delivery of the Equipment.

Total Loss: the Equipment is, in the Lessor's reasonable opinion damaged beyond repair, lost, stolen, seized or confiscated.

VAT: value added tax or any equivalent tax chargeable in the UK.

Water Company: means the water and or sewerage undertaker identified in the Application Form

Water Unit Rate: means the unit rate per cubic meter of water as set out in the Application Form (and as amended on the 1st April each year and as set out in the Water Company's published charges scheme)

Water Usage Charge: means the charge for the water used through the Equipment being the Water Unit Rate multiplied by volume and calculated in accordance with Clause 3

1.2 Clause and paragraph 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) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.7 Any words following the terms including, include, in particular, for example 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.

2. Equipment hire

2.1 The Lessor shall hire the Equipment to the Lessee for use in the Region subject to the terms and conditions of this agreement.

2.2 The Lessor shall not, other than in the exercise of its rights under this agreement or Applicable Law, interfere with the Lessee's quiet possession of the Equipment.

3. Rental Period

The Rental Period starts on the Start Date and shall continue until the Equipment is returned to the Lessor unless this agreement is terminated earlier in accordance with its terms. Where the Lessee has elected a six month or twelve month rental period, in the event that the Equipment is not returned to the Lessor by the Lessee at the end of that period, the Lessee shall become liable for the weekly Rental Charge until such time as the Equipment is returned to the Lessor

4. Charges and Deposit

4.1 The Lessee shall pay any 6 monthly or annual Rental Charge to the Lessor in advance prior to delivery or collection of the Equipment. Other Rental Charges (such as weekly rental) and Water Usage Charges will be invoiced at the end of each calendar month. All charges under this Agreement shall be paid within 30 days of the date of the invoice.

4.2 The Lessee is required to provide a meter reading from the Equipment within 5 Business Days of the end of each calendar month. The meter reading from the Equipment will be used to calculate and invoice the Water Usage Charges. In the event that either (i) the Lessee does not provide the meter reading or no automated meter reading is available or (ii) the meter is faulty or damaged, then the Lessor shall be entitled to invoice the Lessee for Water Usage Charges of 5m³ per day.

4.3 The Rental Charges and Water Usage Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee at the rate and in the manner from time to time prescribed by law.

- 4.4 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.5 If the Lessee fails to make a payment due to the Lessor under this agreement by the due date, then, without limiting the Lessor's remedies under clause 9 (Termination), the Lessee shall pay interest at a rate of 4% per annum above the Bank of England base rate from time to time on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
- 4.6 The Deposit is a deposit against default by the Lessee of payment of any Rental Charges, Water Usage Charge or any loss of or damage caused to the Equipment. The Lessee shall, on the date of this agreement, pay the Deposit to the Lessor. If the Lessee fails to pay any Rental Charge and or Water Usage Charge in accordance with terms set out herein, or causes any loss or damage to the Equipment (in whole or in part), the Lessor shall be entitled to apply the Deposit against such default, loss or damage. The Lessee shall pay to the Lessor any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof if any) shall be refundable within 20 Business Days of the end of the Rental Period.
- 5. Delivery**
- 5.1 Upon confirmation of acceptance of your application for Equipment hire by the Lessor, the Lessee shall collect the Equipment from the Lessor's site, unless the Lessee has requested delivery of the Equipment in the Application Form. Where the Lessee has elected for the Equipment to be delivered, the Lessor shall use reasonable endeavours to effect delivery by the Start Date provided always that the Start Date is no sooner than 5 Working Days from when the Lessee submits its Application Form. If the Start Date is sooner than 5 Working Days, then subject to acceptance of your application for Equipment Hire by the Lessor, the period of hire will commence from when the Lessor delivers the Equipment to the site set out in the Application Form. Title and risk shall transfer in accordance with clause 6 (Title, risk and insurance) of this agreement.
- 5.2 The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Lessee has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Lessor, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.
- 6. Title, risk and insurance**
- 6.1 The Equipment shall at all times remain the property of the Lessor, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this agreement)
- 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Delivery. The Equipment shall remain at the sole risk of the Lessee during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Lessee (**Risk Period**) until such time as the Equipment is redelivered to the Lessor. During the Rental Period and the Risk Period, the Lessee shall, at its own expense, obtain and maintain the following insurances:
- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Lessor may from time to time nominate in writing;
 - (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Lessor may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - (c) insurance against such other or further risks relating to the Equipment as may be required by law.
- The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Lessee's possession or use of the Equipment (including without limitation any damaged or faulty meter).
- 7. Lessee's responsibilities**
- 7.1 The Lessee shall during the term of this agreement:
- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff (who have undergone compulsory calm network training prior to operating any Equipment) in accordance with any operating instructions
 - (b) take such steps (including compliance with all safety and usage instructions provided by the Lessor) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - (c) carry out its activities (including use of the Equipment) in compliance with all Applicable Laws including without limitation the New Roads and Street Works Act 1991;
 - (d) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Start Date (fair wear and tear only excepted) to minimise the risk of contamination, backflow or leakage, including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
 - (e) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Lessor unless the components are removed (and replaced) in the ordinary course of maintenance in accordance with the operating instructions. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Lessor immediately upon installation;
 - (f) keep the Lessor fully informed of all material matters relating to the Equipment;
 - (g) at all times keep the Equipment in the possession or control of the Lessee and where requested, keep the Lessor informed of its location;
 - (h) permit the Lessor or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
 - (i) not part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - (j) not attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Lessee shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Lessor against all losses, costs or expenses incurred as a result of such affixation or removal;
 - (k) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Lessor in the Equipment and, where the Equipment has become affixed to any land or building, the Lessee must take all necessary steps to ensure that the Lessor may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Lessor of any rights such person may have or acquire in the Equipment and a right for the Lessor to enter onto such land or building to remove the Equipment;
 - (l) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Lessee shall notify the Lessor and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - (m) not use the Equipment for any unlawful purpose or tamper or interfere with the Equipment in any way;

- (n) ensure that at all times the Equipment remains identifiable as being the Lessor's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- (o) deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as the Lessor requires, or if necessary allow the Lessor or its representatives access to any premises where the Equipment is located for the purpose of removing the Equipment; and
- (p) not do or permit to be done anything which could invalidate the insurances referred to in clause 6 (Title, risk and insurance).
- 7.2 The Lessee acknowledges that the Lessor shall not be responsible for (i) any loss of or damage to the Equipment (including without limitation any damage to the metering equipment) and / or (ii) any damage to third party apparatus such as wash out hydrants and or (iii) any loss or damage caused to third party property or persons, arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Lessee or its officers, employees, agents and contractors, and the Lessee undertakes to indemnify the Lessor and the Water Company and its officers, employees, agents on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Lessee to comply with the terms of this agreement.
- 7.3 The Lessee shall:
- (a) Only use Equipment which has a 40mm diameter on approved hydrants, approved hydrants being either (i) those on an approved list issued by the Water Company from time to time, or (ii) with the prior written consent of the Water Company on a case by case basis; and
- (b) Not permit water taken from a wash out hydrant to be used for drinking or food preparation or allowed to run to waste as the quality of the water cannot be guaranteed once it is extracted from the water network.
- 7.4 The Lessee acknowledges and agrees that
- (a) The use and rental of the Equipment is subject to the consent and approval of the Water Company. The Water Company is entitled to withdraw its consent to the use of the Equipment at any time in the event that the Lessee breaches the terms of this Agreement, which shall entitle the Lessor (without prejudice to any other provisions of this Agreement) to terminate this Agreement forthwith on written notice;
- (b) The Water Company shall be entitled to instruct the Lessee to cease using any specific hydrant at any time;
- (c) In the event that the Lessee is using the Equipment in contravention of any of terms set out in this Agreement, then (i) the Lessor can immediately remove the Equipment from the Lessee's possession and (ii) the Water Company shall be entitled to take any legal action against the Lessee that it considers (in its sole discretion) to be appropriate ; and
- (d) In the event that the Lessee is using equipment (other than the Equipment) with any hydrant in the Region ("illegal equipment"), the Lessor, Water Company or Fire Service shall be entitled to remove such illegal equipment. The Water Company or the Fire Service shall send the illegal equipment to the Lessor. The Lessor shall retain such illegal equipment for a minimum of 7 days during which time the Lessee may recover the illegal equipment. In the event that the illegal equipment has not been collected within the 7 day period, the Lessor shall be entitled to dispose of the illegal equipment without any liability to the Lessee.
- 8. Liability**
- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Subject to clause 8.3, the Lessor's total liability to the Lessee (including any liability for the acts or omissions of its employees, agents and subcontractors) shall not exceed the total Rental Charges paid hereunder
- 8.3 Nothing in this agreement limits any liability which cannot legally be limited including but not limited to liability for:
- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter which cannot be excluded or restricted by law.
- 8.4 This agreement sets forth the full extent of the Lessor's obligations and liabilities in respect of the Equipment and its hiring to the Lessee. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Lessor except as specifically stated in this agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.
- 8.5 Subject to clause 8.3, neither party shall be liable under this agreement for any indirect or consequential loss or damage, however caused, even if foreseeable save that nothing in this Agreement shall limit any liability for or prevent the recovery of Rental Charges and Water Usage Charges.
- 9. Termination**
- 9.1 Without affecting any other right or remedy available to it, the Lessor may terminate this agreement with immediate effect by giving written notice to the Lessee if:
- (a) the Lessee fails to pay any amount due under this agreement on the due date for payment and remains in default for more than 7 days after being notified in writing to make such payment;
- (b) the Lessee commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (c) the Lessee repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the Lessee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Lessee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Lessee (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Lessee (being a company);
- (h) the holder of a qualifying floating charge over the assets of the Lessee (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the Lessee or a receiver is appointed over all or any of the assets of the Lessee;
- (j) the Lessee (being an individual) is the subject of a bankruptcy petition, application or order;
- (k) a creditor or encumbrancer of the Lessee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Lessee's assets and such attachment or process is not discharged within 14 days;

- (l) any event occurs, or proceeding is taken, with respect to the Lessee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(d) to clause 9.1(k) (inclusive);
- (m) the Lessee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (n) the Lessee (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their affairs or becomes a patient under any mental health legislation
- 9.2 This agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 10. Consequences of termination**
- 10.1 Upon termination of this agreement, however caused:
- (a) the Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located; and
- (b) without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand:
- (i) all Rental Charges and Water Usage Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.5;
- (ii) any costs and expenses incurred by the Lessor in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- (c) The Lessee shall forfeit any Rental Charges paid in advance.
- 10.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 11. Force majeure**
- 11.1 Subject to the terms of this Clause 11, neither party shall be liable for any breach or delay in the performance of any of its obligations under this Agreement to the extent such breach or delay is caused by the occurrence of a Force Majeure Event. Each party shall take all reasonable steps to prevent or avoid the occurrence of a Force Majeure Event.
- 11.2 If a party (the "Affected Party") is materially prevented, hindered or delayed from performing any of its obligations under this Agreement by reason of a Force Majeure Event, then:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event the Affected Party shall notify the other party in writing of the act, event or circumstance relied on, the date on which such act, event or circumstance commenced and the effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under the Agreement together with reasonable evidence of such Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to overcome and mitigate the effects of the Force Majeure Event as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;
- (c) the Affected Party shall carry out its duties to the best level reasonably achievable in the circumstances of the Force Majeure Event; and
- 11.3 Immediately after the end of the Force Majeure Event the Affected Party shall notify the other party in writing that the Force Majeure Event has ended and shall resume full performance of its obligations under this Agreement.
- 11.4 If the Force Majeure Event prevails for a continuous period in excess of 14 days after the date on which the Force Majeure Event begins, the party not in default is then entitled to give 7 days' written notice to the Affected Party to terminate this Agreement forthwith
- 12. Notices**
- 12.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) with a copy by email to the address specified in the Order Form (if any) and in the case of the Lessor to the email address set out in the Application Form
- 12.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt; and
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.4 A notice given under this agreement is not valid if sent solely by email.
- 13. General Provisions**
- 13.1 This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 13.2 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.3 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 13.4 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.5 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 13.6 Save in respect of the Water Company, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 13.7 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.
- 13.8 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.9 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 13.10 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.11 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 13.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.