

THIS MEMORANDUM OF UNDERSTANDING is made on [date]
between the following parties (the “Parties”):

- (1) **DRINKING WATER INSPECTORATE** of Nobel House, 17 Smith Square, London, SW1P 3JR (“**DWI**”).
- (2) **LLOYDS REGISTER EMEA** of 71, Fenchurch Street, London EC3M 4BS (“**LR**”).

Background

- A. Water Undertakers are required under regulation 9(11)(a) of the Water Supply (Water Quality) Regulations 2016 (as amended) and the Water Supply (Water Quality) Regulations 2018 (Wales) (the “**Regulations**”), to carry out a risk assessment meeting the principles of European Standard EN 15975-2 entitled “Security of drinking water supply – Guidance for risk and crisis management – Part 2: Risk management, or of other equivalent standards accepted at international level”. Regulation 9(11)(b) requires that the risk assessment is subject to a system of quality control which is checked from time to time by a suitably accredited body. The DWI, in partnership with Water UK (representing water and waste water providers), established a Water Industry Specification (WIS 4-01-04) based on EN 15975-2 (the “**WIS**”).
- B. LR has expressed interest in establishing and operating at its own cost a scheme for approving the risk assessment and risk management processes and methodologies of Water Undertakers against the WIS (the “**Scheme**”). DWI wishes to assist LR in the setting up of the Scheme. The relationship is intended to be one of constructive cooperation and collaboration.
- C. DWI and LR have accordingly entered into this Memorandum of Understanding (**MoU**) to record the basis on which they intend to cooperate and the general principles on which their cooperation will be based.
- D. The powers and obligations of the United Kingdom Government to implement Council Directive 98/83/EC on the quality of water intended for human consumption, as amended (the “**Drinking Water Directive**”) and the application of the Regulations are unaffected by this MoU.

NOW THEREFORE this MoU sets out the objectives and principles in accordance with the Parties intend to cooperate in establishing and operating the Scheme:

1 Interpretation

- 1.1 This MoU is subject to English law.

1.2 Unless the context otherwise requires, references to this MoU include amendments made in accordance with its terms. References to persons include any legal entity, words importing a gender include all genders and words importing the singular include the plural and vice versa.

1.3 In this MoU, the terms defined in the recitals in bold letters have the meanings set out there and the following terms have the meanings set out below:

“**DWI**” means the Drinking Water Inspectorate as from time to time constituted under Part III of the Water Industry Act 1991.

“**Risk Management Assessment Scheme**” (RMAS) means the scheme for the approval of risk management by LR.

“**Water UK**” means Water UK whose registered office is at 3rd Floor, 36 Broadway, London SW1H 0BW.

1.4 “**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is transmitted or on whatever media it is stored) including without limitation information the disclosure of which would, or would be likely to, harm the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party or unpublished Government policy papers and other information exempt from publication under the Freedom of Information Act 2000 and all personal data within the meaning of the General Data Protection Regulation and the Data Protection Act 2018. Confidential Information does not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 9 (Confidential Information));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

1.5 “**Intellectual Property Rights**” means patents, utility models, inventions, processes, systems, trade marks, brands and logos, design rights (in each case whether registrable, applied for or otherwise), copyright, database rights, domain names, plant variety rights, know-how, trade or business names, moral rights and other similar rights or obligations (whether or not registrable) in any

country (including but not limited to the United Kingdom) and the right to sue for passing off.

- 1.6 **"Key Objectives"** means the key objectives set out in Annex A.
- 1.7 **"MoU Representatives"** means the lead representatives of each Party (one to be provided by each Party), as described in Clause 5.
- 1.8 **"Principles"** has the meaning set out in Clause 4.
- 1.9 **"Scheme"** means the risk management assessment scheme described in Annex A.
- 1.10 **"Scheme Board"** means a board established by the Parties to provide oversight over the operation of this MoU, as referred to in Clause 5.

2 Legal status of this MoU

- 2.1 Except where otherwise expressly provided, this MoU is not intended to create a binding legal agreement or understanding between the Parties. However, this MoU reflects a common understanding which the Parties have reached regarding the terms on which they will cooperate with each other to achieve the Key Objectives and follow the Principles in accordance with this MoU and the Parties will endeavour not to act inconsistently with them so long as this MoU is in force.
- 2.2 For the avoidance of doubt, this MoU does not confer any enforceable contractual rights or benefits on LR or create any legitimate expectations as to the future conduct or policy of the United Kingdom or DWI in any respect (including, for the avoidance of doubt any decision to delegate any functions to LR or to give any approval or recognition to, or otherwise make use of, the Scheme in connection with the carrying out of its duties under the Drinking Water Directive or the Regulations).
- 2.3 This MoU is intended solely to assist DWI in carrying out its statutory duties as the United Kingdom's relevant competent authority for the approving of risk assessments in accordance with Part C, paragraph 6(a) of Annex II to the Drinking Water Directive. It does not derogate from or limit the United Kingdom's or DWI's powers or obligations under the Drinking Water Directive in any way or impose any other obligations on them in that respect.
- 2.4 Each Party is separately responsible for ensuring that it complies with all applicable laws, including without limitation laws relating to intellectual property rights and confidential information, competition law (including State aid law) and laws relating to bribery and corruption and business ethics, data protection and freedom of information.

- 2.5 Nothing in this MoU creates a partnership or joint venture between the Parties, or has the effect of making one Party or the employees, contractors or consultants of one Party the agent or agents of the other Party. Neither Party has authority to enter into any contract, warranty or representation as to any matter on behalf of another Party. Neither Party is bound by the acts or conduct of the other Party.
- 2.6 Nothing in this MoU prevents DWI making any other arrangements with any other party outside the scope of this MoU.
- 2.7 Nothing in this MoU prevents the Parties from agreeing any other arrangements with each other (including reaching joint decisions), whether or not intended to be legally binding and whether or not involving other parties, at any time.

3 Key Objectives of the Scheme

- 3.1 The Parties hereby acknowledge that the Scheme is intended to achieve the Key Objectives.
- 3.2 Each Party will endeavour to secure any permissions, licences, consents or approvals needed for the Scheme to be established and operated efficiently and effectively.

4 Principles of cooperation and Parties' responsibilities

- 4.1 The Parties will be guided by the following principles in carrying out the Scheme:
- 4.1.1 each Party is separately accountable for the performance of its own roles and responsibilities as set out in this MoU;
- 4.1.2 both Parties recognise the potential benefits for the water industry if they cooperate in establishing the Scheme and are prepared to share information, experience, materials and skills and seek to learn from each other and help each other develop effective working practices, identify solutions, eliminate duplication of effort, mitigate risk and reduce costs;
- 4.1.3 both Parties will adhere to statutory requirements and best practice (including any relevant Governmental protocols such as the Ministerial and Civil Service Codes);
- 4.1.4 both Parties will consider what they can each do to achieve the full potential of the Scheme, having regard to the Key Objectives and Principles, including.
- (i) acting in a timely manner;
 - (ii) carrying out the Scheme in such a manner (where relevant) so as to facilitate the delivering of sustainability objectives for Government;

- (iii) developing a strategy for managing communication with stakeholders;
- (iv) ensuring sufficient and appropriately qualified employees and other necessary resources are available and (in the case of employees) authorised to fulfil the responsibilities set out in this MoU; and
- (v) acting in good faith to support achievement of the Key Objectives and compliance with these Principles.

5 Scheme Governance - General Structure

5.1 The Parties have each appointed, and as long as the MoU is in force will ensure that there is appointed, a single representative to carry out the following functions:

- (a) manage the Scheme at workstream level;
- (b) provide assurance to the Scheme Board that the Key Objectives are being met and that the Scheme is proceeding in accordance with any directions given by the Scheme Board; and
- (c) take responsibility for the creation and execution of the Scheme plan and deliverables as each sees fit from time to time.

The Parties have initially appointed:

DWI: Marcus Rink : Chief Inspector of Drinking Water

LR: Brain Minchin : UK Inspection Services Business Development Manager

5.2 The MoU Representatives will cooperate with each other in carrying out the above functions and endeavour where possible to take decisions jointly.

5.3 The Parties (including the MoU Representatives) will have regard to the Scheme reporting and management arrangements set out at Annex B (as and when completed and approved by both MoU Representatives) and the following provisions of this clause.

5.4 The Parties have expressed willingness to undertake the roles and responsibilities set out in the following table to deliver the Scheme:

Activity	DWI	LR
Establish the Risk Management Assessment Scheme requirements	Lead	Assure

Establish the Risk Management Assessment Scheme for approving Water Undertakers' risk assessment and risk management	Assure	Lead

5.5 For the purpose of the table above:

Lead: indicates the Party that is intended to have the principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task. The Lead is expected to act in compliance with the Key Objectives at all times and to consult with the other Party in advance where the latter is identified as having a role to Assure the relevant activity;

Assure: indicates the Party that will defer to the Lead on a particular task, but will have the opportunity to review and provide input to the Lead before it take a final decision on any activity. All assurance should be provided in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns regarding compliance with the Key Objectives and Principles.

5.6 The Parties expect that within one month of the commencement date of this MoU the Party that is the Lead for any aspect of the Scheme will have developed a delivery plan for that part of the Scheme which identifies the following:

- the key milestones for the delivery of the Key Objectives (including any relevant pilot or testing stages);
- what employees (other than employees already identified in this MoU) will be required to work on which aspects of the Scheme;
- whether any staff will need to be seconded from one Party to the other;
- frequency of meetings between DWI, LR and/or Water Undertakers

Each delivery plan must be approved by the MoU Representatives prior to being implemented.

6 Charges and liabilities

6.1 Except as otherwise provided in this MoU or specifically agreed between the Parties, the Parties must each bear their own costs and expenses incurred pursuant to or in connection with this MoU.

6.2 Both Parties remain separately liable for any losses or liabilities incurred due to their own or their employees' actions and neither Party intends that the other Party will be liable for any loss it suffers as a result of this MoU.

7 Funding Principles

- 7.1 In the absence of any agreement to the contrary, the Parties will at all times be liable for their own costs, losses and expenses of or relating to anything done (or not done) pursuant to this MoU and in particular this MoU does not create any right to funding, reimbursement, compensation or payment of any kind from either Party in favour of the other Party or any third party.
- 7.2 For the avoidance of doubt, LR is free to fund costs incurred in relation to the establishment and operation of the Scheme from its own or third party sources, including application fees and ongoing audit fees from Water Undertakers that use the Scheme.

8 Intellectual Property Rights

- 8.1 Each Party's Intellectual Property Rights whether pre-existing or created or developed while this MoU is in force remains the property of the Party that owns, creates or develops them and this MoU does not affect their ownership, without prejudice to any licences or other rights which either Party may expressly agree to grant, assign or transfer to the other Party from time to time.

9 Freedom of Information and Communications to the Public

- 9.1 The provisions of clauses 9, 10, 11, 13.3 and 13.4 shall have binding legal effect.
- 9.2 Each Party will provide to the other Party any information in its possession that may be reasonably requested by the other, subject to necessary confidentiality constraints, safeguards and statutory rules on disclosure. Each Party will consult the other Party before making to any third party any significant disclosures of information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or Code of Practice on Access to Government Information.
- 9.3 Without prejudice to clause 10, each Party will seek the other Parties' approval before externally publishing any information resulting from the use of exchanged data received from the other Party; such approval will not be unreasonably withheld.
- 9.4 The obligations in clauses 9 and 10 (Freedom of Information and Communications to the Public and Confidential Information) are subject to clause 2.4 as well as to any government requirements as to transparency which may apply to either or both Parties from time to time.

10 Confidential Information

- 10.1 Each of the Parties understands and acknowledges that it may receive or become aware of Confidential Information of the other Party whether in the course of the performance of this MoU or otherwise.

- 10.2 Except to the extent set out in this clause or where disclosure is expressly permitted or requested elsewhere in this MoU, each Party shall treat the other Party's Confidential Information as confidential and safeguard it accordingly; and not disclose the other Party's Confidential Information to any other person (except their employees, agents, and professional advisers to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this MoU and subject to procuring that such persons are made aware of and shall comply with these obligations of confidentiality).
- 10.3 The obligations of confidentiality imposed by this Clause shall not apply to any Confidential Information to the extent that such Confidential Information is required to be disclosed by a requirement of law placed upon the Party making the disclosure (including any requirements for disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or Code of Practice on Access to Government Information).
- 10.4 The obligations of confidentiality in this Clause 9 shall continue in force notwithstanding termination of this MoU.
- 10.5 The Parties shall not use data or information exchanged under this MoU for commercial purposes without the prior written agreement of the supplying Party. When it is agreed that exchanged data or information can be used for commercial purposes, the Parties shall negotiate terms outside the terms of this MoU (without which agreement no such use may take place).
- 10.6 Without prejudice to the obligations above, the Parties must not disclose any information of any sort obtained through or in connection with this MoU without the express prior authority or licence of the owner of the information or any other person whose legal rights or interests might be adversely affected by such disclosure.
- 10.7 All publicity about this MoU and about the setting up of the Scheme will be agreed by the Parties on an ad hoc basis.

11 Dispute Settlement

- 11.1 Any dispute between the Parties arising out of or in connection with this MoU shall in the first instance be settled amicably between the Parties through the MoU Representatives and, if no resolution is reached, referred to the Secretary of State or Chief Executive responsible for each Party. If the dispute relates to provisions expressed to be legally binding and enforceable it may be referred to the Centre for Effective Dispute Resolution (CEDR), without prejudice to any other legal remedies available to either Party.

12 Duration

- 12.1 This MoU comes into force on [] September 2018 and (subject to earlier termination) remains in force for a period of three years, or longer if the Parties decide it needs extending to achieve the Key Objectives.
- 12.2 Either Party can terminate this MoU at any time but will endeavour to give the other Party reasonable advance notice in writing.
- 12.3 The Parties expect that the minimum notice period will normally be at least six months but it can be reduced to three months if the Parties have carried out a review pursuant to Clause 13.1 and a Party reasonably concludes that the MoU no longer represents a valuable use of its resources.
- 12.4 A Party may terminate this MoU by giving notice in writing with immediate effect if either:
- a) it considers that the objectives of the MoU are being thwarted by the other Party or as a result of factors outside either Party's control and it sees no objective purpose would be achieved by continuing with it; or
 - b) the other Party commits a material breach of any provision in the MoU that is expressed to be legally binding and enforceable; or
 - c) there is a relevant change in Government or Government policy.
- 12.5 For the avoidance of doubt, neither Party will be liable to the other for any costs, losses, damages, claim, compensation, indemnity or other payment of whatever nature arising at any time as a direct or indirect result of termination.

13 Implementation and review of the MoU


- 13.1 The Parties are free to adopt and vary their working practices and decision-making processes at any time, including any practices and processes needed to put this MoU into effect.
- 13.2 The Parties will keep this MoU under constant review and will if necessary consider whether at any time the objectives of this MoU would be better served by a formal agreement.
- 13.3 Any amendment of a provision stated to be legally binding must be agreed and recorded in writing by both Parties, by persons with the relevant authority.
- 13.4 Both Parties must keep and maintain full and accurate records of the Scheme until six (6) years after termination of this MoU. If a Party reasonably needs to have access to and take copies of those records (for example, for the purposes of an audit by the National Audit Office), it can request the other Party to allow access and take copies and the other Party will do its best to accommodate the request.

SIGNATORIES

Signed as a true record of their common understanding and agreement


Signed for and on behalf of the **Drinking Water Inspectorate**

Signature:
Name:
Position:
Date:


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Marcus Rink
.....
Chief Inspector
.....
3rd Oct 2018
.....

Signed for and on behalf of **Lloyds Register EMEA**

Signature:
Name:
Position:
Date:


.....
Brian John Minchin
.....
Business Development Manager
.....
24/09/2018
.....

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Annex A. The Scheme

Scheme overview

The Risk Management Assessment Scheme will ensure that companies applying for monitoring variations under regulation 9 of the Water Supply (Water Quality) Regulations 2016 (as amended) and the Water Supply (Water Quality) Regulations 2018 (Wales), have risk assessment and risk management processes and methodologies that adequately meet the WIS and any other related specifications or requirements from time to time adopted, prescribed or recommended by DWI.

The Key Objectives

1. Assess Water Undertakers' risk assessment and risk management processes and methodologies against the WIS and DWI requirements.
2. When Water Undertakers' processes or methodologies do not conform, to work with those Water Undertakings to achieve conformity.
3. Determine if processes and methodologies have been applied appropriately to achieve the expected outcome.

Annex B. Scheme Reporting and Management

Scheme reporting and management protocols will be agreed and documented at a later date