

Wholesale Contract Schedule 1, Part 2: Business Terms

Change History

Version Number	Date of Issue	Reason for Change	Change Control Reference	Sections Affected
V2.0	14 th July 2017	Negotiating Alternative Credit Support	CPW021	Schedule 3: 9.11.5
V3.0	30 th March 2018	GDPR and Data Protection Provisions Updates	CPW029	Part K: Data protection: Section: 27 27.1.1 27.1.2 Section: 28 28.1.1
V4.0	23 rd April 2018	Clarification of Unsecured Credit Allowance	CPW018	Schedule 2E
V5.0	31 st July 2018	Alternative Eligible Credit Support	CPW019	Section 9.12.1, Schedule 2E, Schedule 2G Schedule 6
V6.0	31 st January 2019	Alternative Payment Terms	CPW048	Sections 9.2.1, 9.2.4, 9.11.1, 9.11.2 Schedule 3A
V7.0	28 th February 2019	Wholesale Retail Code inconsistency	CPW055	Section 9.3.9- 9.3.10
V8.0	29 th March 2019	Improving transparency of Alternative Credit Arrangement	CPW052	Schedule 3
V9.0	30 th September 2019	Improving the transparency of Credit Guarantee Arrangements	CPW057	Schedule 2B
		Clarifying Credit Scores and Ratings for the purposes of Unsecured Credit Allowance	CPW060	Section 9.13.1, 9.13.5, Schedule 2E

Version Number	Date of Issue	Reason for Change	Change Control Reference	Sections Affected
<u>V10.0</u>	<u>14th February 2020</u>	<u>Protections for Credit Support Security</u>	<u>CPW079</u>	<u>Section 9.14.2</u>
		<u>Changes to the Corrective Settlement Run for Individual Supply Points</u>	<u>CPW064</u>	<u>Section 9.3.5</u>

CONTENTS

Section	Page No
Part 2: Business Terms.....	6
Part A: Introduction	6
1. Introduction	6
Part B: Supply and Services.....	7
2. Provision of Wholesale Services.....	7
3. Network and access	8
4. Metering	9
5. Supply interruptions.....	13
6. Public health information	14
Part C: Warranties and Compliance with Laws.....	15
7. Warranties	15
Part D: Charges	17
8. Charges and Wholesale Tariff Document	17
9. Billing and terms of payment	17
Part E: Default and Termination	<u>313130</u>
10. Default.....	<u>313130</u>
11. Termination	<u>363635</u>
Part F: Force Majeure	<u>393938</u>
12. Force Majeure Event	<u>393938</u>
Part G: Indemnity and liability.....	<u>404039</u>
13. Retailer Equipment and network damage	<u>404039</u>
14. Limitation of liability	<u>404039</u>
15. Insurance	<u>424241</u>
Part H: Confidentiality	<u>434342</u>
16. Confidentiality	<u>434342</u>
Part I: Disputes	<u>464645</u>
17. Non-Trading Disputes.....	<u>464645</u>
18. Trading Disputes	<u>484847</u>
19. Reference to arbitration	<u>494948</u>
Part J: General.....	<u>535352</u>
20. Notices	<u>535352</u>
21. Announcements	<u>545453</u>
22. Third party rights	<u>545453</u>
23. Rights cumulative	<u>545453</u>

24. Sub-Contracting	545453
25. Use of other Party's name	555554
26. Governing Law	555554
Part K: Data protection.....	555554
27. Data Protection Act 1998.....	555554
28. Data processors	565655
Schedule 1A of the Business Terms: Use of Accredited Entities	575756
Schedule 1B of the Business Terms: Requirements for the provision of Trade Effluent for the provision of Trade Effluent Sampling and Analytical Activity by the Contracting Retailer.....	595958
Schedule 1B of the Business Terms: Appendix 1 - Accreditation requirements, TE Service A and TE Service B	636362
Schedule 1B of the Business Terms: Appendix 2 - Sampling, Service Requirements	646463
Schedule 1B of the Business Terms: Appendix 3 - Analysis - Service requirements	686867
Schedule 1B of the Business Terms: Appendix 4 - Key contacts	717170
Schedule 1B of the Business Terms: Appendix 5 - Service review.....	727271
Schedule 1B of the Business Terms: Appendix 6 - Termination of TE Service A or TE Service B.....	737372
Schedule 1B of the Business Terms: Appendix 7 - Terms of payment	757574
Schedule 1B of the Business Terms: Appendix 8 - Service level specifications.....	767675
Schedule 2A of the Business Terms: Cash Security Account.....	777776
Schedule 2A of the Business Terms: Cash Security Account Agreement Template.	797978
Schedule 2B of the Business Terms: Guarantee.....	838382
Schedule 2C of the Business Terms: Letter of Credit.....	929291
Schedule 2C of the Business Terms: Letter of Credit –Template	939392
Schedule 2D of the Business Terms: Surety Bond.....	959594
Schedule 2D of the Business Terms: Surety Bond – Template	979796
Schedule 2E of the Business Terms: Unsecured Credit Allowance	999998
Schedule 2F of the Business Terms: Equivalence of Credit Assessment Scores	102102101
Schedule 2G of the Business Terms: Trade Credit Insurance	103103102
Schedule 3 of the Business Terms: Alternative Eligible Credit Support	105105104
Schedule 3A of the Business Terms: Alternative Payment Terms.....	106106105
Schedule 4 of the Business Terms: Form of Credit Support Notice	108108107
Schedule 5 of the Business Terms: Guaranteed Service Standards	111111110
Schedule 6 of the Business Terms: Form of Trade Credit Insurance Self-Certification	112112111

Part 2: Business Terms

Part A: Introduction

1. Introduction

- 1.1.1 This Part 2 of Schedule 1 of the Wholesale Contract sets out the Business Terms.
- 1.1.2 The Business Terms (along with the rest of Schedule 1) are referred to in, and form part of, the Wholesale Contract.
- 1.1.3 The Business Terms are designed to establish the rights and obligations of the parties to a Wholesale Contract in respect of the services which are the subject of the Wholesale Contract.
- 1.1.4 The Business Terms also cover a number of other matters of a contractual nature, for example limits of liability for breach of the Wholesale Contract, confidentiality obligations and third party rights.

Part B: Supply and Services

2. Provision of Wholesale Services

2.1 Introduction

2.1.1 The Contracting Wholesaler shall provide the Wholesale Services specified in clause 3.1 of the Wholesale Contract to the Contracting Retailer in accordance with the Operational Terms, the Market Terms and the Business Terms and Schedule 1 Part 1 of the Wholesale Contract (Objectives, Principles and Definitions).

2.1.2 The Operational Terms also make provision for Accredited Entities (including the Contracting Retailer) to undertake certain services.

2.1.3 Where the Contracting Retailer is an Accredited Entity and undertakes Metering Activity, Connection Activity and/or Trade Effluent Sampling and Analytical Activity or where it uses Accredited Entities to undertake Metering Activity, Connection Activity and/or Trade Effluent Sampling and Analytical Activity, then it shall do so in accordance with Parts A and B of Schedule 1 of the Business Terms.

2.1.4 Where the Contracting Retailer undertakes Metering Activity, Connection Activity and/or Trade Effluent Sampling and Analytical Activity itself or through services from an Accredited Entity, those services shall not be Wholesale Services provided by the Contracting Wholesaler pursuant to the Wholesale Contract.

2.2 Quality of water

2.2.1 Subject to Sections 5 and 12, the Contracting Wholesaler shall supply water to the Contracting Retailer that:

- (a) in relation to Potable Water Services, is wholesome in accordance with any regulations made pursuant to section 67 of the Water Industry Act 1991;
- (b) in relation to Non-Potable Water Services (including Building Water), complies with the relevant description and standard (if any) set out or referred to in the Contracting Wholesaler's Wholesale Tariff Document; and
- (c) is at a level of constancy and pressure that complies with regulation 10 of the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 (SI 2008/594).

2.3 Title to water

2.3.1 Subject to Sections 5 and 12, the water to be supplied under this Wholesale Contract shall be made available to the Contracting Retailer's Non-Household Customers at the Connection Point(s). Title to the water to be supplied under

the Wholesale Contract shall pass to the Contracting Retailer at the Connection Point(s).

2.4 Service standards

Guaranteed Service Standards and Drought Order Payments

- 2.4.1 Schedule 5 of these Business Terms sets out which Guaranteed Service Standard under the GSS Regulations create potential liabilities respectively for Contracting Wholesalers operating wholly or mainly in England and Contracting Retailers with Retail Authorisations on the occurrence of certain events. Where payments become due to any Non-Household Customer under the GSS Regulations, Schedule 5 of these Business Terms sets out the allocation of timescales which apply between the Contracting Wholesalers operating wholly or mainly in England and Contracting Retailers with Retail Authorisations, to ensure the timescales for such payments as set out in the GSS Regulations are met.
- 2.4.2 In respect of any failure to comply with a Guaranteed Service Standard which is the responsibility of the Contracting Wholesaler then, the Contracting Wholesaler shall pay the Contracting Retailer the sum specified in the Guaranteed Service Standard as payable in respect of such failure and the Contracting Retailer shall pass such sum(s) as specified in that Guaranteed Service Standard to its Non-Household Customer(s), as relative to such Non-Household Customer in accordance with Schedule 5 of these Business Terms.
- 2.4.3 -The provisions of Sections 9.5.3, 9.7.2 and 9.7.3 shall apply to any payments made by both the Contracting Wholesaler and Contracting Retailer under the GSS Regulations.
- 2.4.4 In respect of any interruption to water supplies as a result of a restriction authorised by a Drought Order, the Contracting Wholesaler shall pay the Contracting Retailer any sums required pursuant to Schedule 5 of these Business Terms as payable in respect of such failure. The Contracting Retailer shall pass on to its Non-Household Customer(s) promptly any such sum paid to it by the Contracting Wholesaler as relative to such Non-Household Customer.

3. Network and access

3.1 Network

- 3.1.1 Nothing in the Wholesale Contract alters the Contracting Wholesaler's ownership of the Network or its responsibility to manage and operate the Network and nothing in the Wholesale Contract confers any responsibilities for ownership, maintenance or other use of the Network on the Contracting Retailer.
- 3.1.2 Subject to Section 5 and to compliance with the Operational Terms, nothing in the Wholesale Contract shall prevent or restrict the Contracting Wholesaler from altering, amending, expanding, replacing, developing and/or redeveloping its Network.

3.2 Access to premises and to meters

- 3.2.1 The Contracting Retailer shall take or, shall procure that reasonable steps are taken, to ensure that the Contracting Wholesaler and its authorised employees, sub-contractors or agents obtain safe and unobstructed access, at all reasonable times, to the meter installed for a Supply Point for the purpose of carrying out metering operations and services. To the extent that the authority, agreement or consent of the owner and/or occupier of any Eligible Premises is required by Law for the carrying out of any physical works in connection with the Contracting Wholesaler's metering operations and services, the Contracting Retailer shall seek to obtain such authority, agreement or consent (at its own cost), and shall, when requested and where it is practicable to do so, produce to the Contracting Wholesaler documentary evidence that it has been obtained.
- 3.2.2 The Contracting Wholesaler hereby gives its permission for meters installed and owned by the Contracting Wholesaler to be read, in accordance with the Market Terms, by the Contracting Retailer or its authorised employees, sub-contractors, Non-Household Customers or agents, or by any other person permitted to do so under the Wholesale Contract.
- 3.2.3 References in this Section 3.2 to a meter installed shall be construed as including any meter installed for a Supply Point inside or outside the boundary of the Eligible Premises in question (including under a public road) which is used in determining the Usage for a Supply Point.

4. Metering

4.1 Metering

- 4.1.1 This Section 4 applies where the supply of Wholesale Services under the Wholesale Contract is, or is to be, Metered.
- 4.1.2 The Contracting Wholesaler shall be responsible for ensuring that its meter shall conform to Meter Standards.
- 4.1.3 Meters shall remain the property of the Contracting Wholesaler, save for Private Trade Effluent Meters, Cross Border Meters and, in certain cases, Private Water Meters.

4.2 Contracting Wholesaler's obligations

- 4.2.1 Subject to Section 4.2.2 below, the Contracting Wholesaler shall:
- (a) at all times publish an up-to-date list of meters that it will supply and the characteristics of each meter, including information as to whether each of the meters listed (i) is capable of capturing and transmitting Usage data and/or (ii) is capable of having an external logger (or similar devices for data capture and transmission) applied to it and any other information required by Part B of the Operational Terms;
 - (b) seek views from time to time but at least once each year from the Contracting Retailer and all other Retailers with whom it

has a Wholesale Contract and act reasonably in considering observations and suggestions from the Contracting Retailer and such other Retailers in making decisions as to what meters it will supply;

- (c) provide, maintain, repair and, either routinely or where faulty, replace the meter(s);
- (d) ensure that each meter (or any out-reading apparatus) is in a place from which it is safe for the Contracting Retailer to access the meter (or any out-reading apparatus) and take readings consistent with the Contracting Wholesaler's general health and safety obligations; and
- (e) where requested by the Contracting Retailer:
 - (i) provide the Contracting Retailer with such information as it reasonably requires to locate and read the meter for a Supply Point if the data provided pursuant to the Market Terms (including Code Subsidiary Documents) is insufficient to enable the Contracting Retailer to locate or read such meter;
 - (ii) provide the Contracting Retailer with information about the technology that may be required to read a meter for a Supply Point and provide the Contracting Retailer with access, subject to payment of sums (if any) set out in the Wholesaler's Wholesale Tariff Document, to such technology owned or licensed to the Contracting Wholesaler as may be required to read the meter for a Supply Point (provided that such access to technology shall not include the provision of physical equipment by the Contracting Wholesaler to the Contracting Retailer);
 - (iii) replace a meter or meters installed for any Supply Point which is no longer appropriately sized; and
 - (iv) undertake a meter accuracy test,

in accordance with the policies in respect of meters set out in its Wholesale Tariff Document or otherwise published by the Contracting Wholesaler, in accordance with the provisions of this Section 4.2 and in accordance with the Operational Terms.

4.2.2 The obligations in Section 4.2.1 shall extend to an obligation to procure the carrying out of the activities set out in Sections 4.2.1(c) and 4.2.1(d) in respect of Private Meters at Eligible Premises where a Trade Effluent Consent applies, but not otherwise.

4.2.3 In the case of a Private Water Meter not owned by the Contracting Wholesaler at Eligible Premises where no Trade Effluent Consent applies, the Contracting Wholesaler and Contracting Retailer shall work together and co-operate with each other in relation to this Private Water Meter.

4.2.4 In the case of a Cross Border Meter, where a Contracting Wholesaler is a Sewerage Wholesaler, it shall seek to procure that it has an arrangement in place with the owner of the meter to maintain, repair, exchange, either routinely

or where faulty, replace the meter; carry out meter accuracy testing or any other verification of the meter or meter supply details as required; and to obtain all relevant Meter Data.

4.2.5 In the case of a Cross Border Meter, where a Contracting Retailer is a Sewerage Retailer it shall seek to procure that it has an arrangement in place with the owner of the meter to ensure that the relevant, required Meter Reads are obtained.

4.2.6 The Wholesale Tariff Document shall contain all charges for metering services and metering operations, as referred to in this Section 4.

4.3 **Inaccuracy and Tampering**

4.3.1 Each Party shall report to the other, as soon as reasonably practicable, any evidence coming to its attention (whether in the course of meter reading or otherwise) of:

- (a) a meter failing to record accurately the Volume of water supplied or sewerage discharged within any tolerance permitted by Law; or
- (b) any person Tampering or damaging any meter installed for a Supply Point (including breaking any seal affixed to the meter).

4.4 **Care of meters within Eligible Premises**

4.4.1 The Contracting Retailer shall be responsible for:

- (a) exercising due care in accessing and reading any meter installed for a Supply Point both inside and outside the boundary of the Eligible Premises; and
- (b) the due care of any Wholesaler's meter installed for a Supply Point within the boundary of the Eligible Premises.

4.5 **Retailer Equipment conditions**

4.5.1 The Contracting Wholesaler shall at all times publish and keep up-to-date:

- (a) the terms and conditions (if any) upon which it will (acting reasonably) allow Retailer Equipment to be installed on meters which are capable of having Retailer Equipment installed; and
- (b) its policy on how it treats Retailer Equipment.

4.5.2 The Contracting Retailer shall comply with the terms and conditions referred to in Section 4.5.1.

4.5.3 The Contracting Wholesaler shall treat Retailer Equipment in accordance with its published treatment policy.

4.6 Installation of Retailer Equipment on meters

- 4.6.1 If the Contracting Retailer proposes to install any Retailer Equipment on a meter for a Supply Point owned or controlled by the Contracting Wholesaler, the Contracting Retailer shall inform the Contracting Wholesaler in writing at least five (5) Business Days in advance of its proposed installation. Such information shall specify the nature of the Retailer Equipment to be installed and the proposed installation date.
- 4.6.2 The Contracting Wholesaler shall not unreasonably withhold or delay its consent to any proposed installation of Retailer Equipment on a meter owned or controlled by the Contracting Wholesaler and, if the Contracting Wholesaler has not objected in writing to such proposed installation within five (5) Business Days of receipt of the information referred to in Section 4.6.1, the Contracting Retailer may install such Retailer Equipment.
- 4.6.3 The Contracting Retailer shall provide confirmation to the Contracting Wholesaler of the respective installation and removal of Retailer Equipment within two (2) Business Days of completion of such installation or removal, as appropriate.
- 4.6.4 Any Retailer Equipment installed on the meter for a Supply Point shall not form part of the Network.

4.7 Access to meter Usage data

- 4.7.1 If a Party does not have its own access to Usage data for a meter for a Supply Point (the "Requesting Party") then the Party that has such Usage data (the "Providing Party") shall give the Requesting Party access to the Providing Party's Usage data for that meter for that Supply Point within five (5) Business Days of receiving a request from the Requesting Party. For the avoidance of doubt, a Party may make more than one request for Usage data and may request Usage data on an on-going basis for as long as reasonably required. The Providing Party shall be entitled to charge the Requesting Party for the provision of such Usage data in accordance with the Wholesale Tariff Document.

4.8 Charging for Meter Reads

- 4.8.1 This Section 4.8 relates to section 205 of the Water Industry Act 1991 which provides for the Contracting Wholesaler or the Contracting Retailer or any relevant Trading Party to disclose meter readings in certain circumstances subject to the relevant Trading Party receiving a reasonable proportion of the expenses of taking and providing such Meter Reads. It sets out a mechanism intended to preserve the ability to charge such reasonable proportion of expenses irrespective of whether or not the Meter Reads are disclosed to and/or by the Market Operator prior to such payment being received.
- 4.8.2 Where:
- (a) different services are provided in relation to the same Eligible Premises by different Service Providers;

- (b) one of those Service Providers obtains a meter reading from a meter used in determining the amount of charges applied in relation to the Eligible Premises;
- (c) the charges of the Contracting Wholesaler and/or the Contracting Retailer (not being the Service Provider) (the "Relevant Party") are fixed by reference to any matter to which the reading is relevant; and
- (d) then the Relevant Party agrees that where:
 - (i) the Service Provider is entitled, pursuant to section 205 of the Water Industry Act 1991, to charge the Relevant Party a reasonable proportion of the expenses of obtaining the reading together with the reasonable expenses of the disclosure of the reading to it in accordance with the Wholesale Tariff Document or as otherwise to be charged between Contracting Retailers as notified from time to time; and
 - (ii) the Service Provider has not waived its right to charge the Relevant Party the expenses, referred to in 4.8.2 (c)(i) above,

the Relevant Party shall pay the Service Provider the expenses referred to in 4.8.2 (c)(i) above, irrespective of whether the meter reading has been issued by the Market Operator to the Relevant Party prior to the Relevant Party being invoiced for the expenses by the Service Provider.

5. Supply interruptions

5.1 Planned events

5.1.1 The Contracting Wholesaler shall notify the Contracting Retailer, in accordance with the Operational Terms, of any anticipated reduction or change in the supply of Wholesale Services as a consequence of the Contracting Wholesaler's maintenance, repair, replacement and inspection programmes for the Network.

5.1.2 The Contracting Wholesaler shall be entitled to interrupt the supply of Wholesale Services as a consequence of the Contracting Wholesaler's maintenance, repair, replacement and inspection programmes for the Network. The Contracting Wholesaler shall use reasonable endeavours to minimise interruptions in the supply of water for a Water Services Supply Point or sewerage for a Sewerage Services Supply Point as a consequence of planned maintenance, repair, replacement and inspection works.

5.2 Unplanned events

5.2.1 Provided that the Contracting Wholesaler complies with Part E of the Operational Terms in respect of the relevant event or circumstance the supply of Wholesale Services may be interrupted or suspended where the Contracting Wholesaler's ability to provide those Wholesale Services is affected by any of the following:

- (a) breakdown, blockage, defect, fault or failure of plant, equipment, apparatus, pipes, structures or facilities forming part of the Network;
- (b) shortage of, or limitation on the use of, water arising from weather or environmental conditions including a Drought Order;
- (c) deficiency in the quantity of water available for supply;
- (d) a water quality incident (as set out in part E of the Operational Terms) or an Emergency or other event in respect of which the Contracting Wholesaler implements an Emergency plan; or
- (e) any pollution from sewerage, any unplanned discharge or any flooding.

5.2.2 In addition to its right to interrupt or suspend supplies of water pursuant to Section 5.2.1, the Contracting Wholesaler may interrupt the supply of water if it is an interruptible supply and the interruption of such supply is performed in accordance with the Wholesale Tariff Document.

5.3 **Retailer awareness**

5.3.1 Without prejudice to its obligations in respect of long term plans under Part D of the Operational Terms, if the Contracting Retailer becomes aware of any significant change (as hereinafter defined) in the anticipated demand for Wholesale Services for any Eligible Premises, it shall provide reasonable details thereof to the Contracting Wholesaler as soon as reasonably practicable.

5.3.2 For the purposes of Section 5.3.1 a change in anticipated demand is significant if the Contracting Retailer knows that the change may put at risk the Contracting Wholesaler's ability to supply sufficient Wholesale Services to meet the demand in the Area in which the Eligible Premises are located.

5.3.3 To the extent that the change in anticipated demand may impact on the applicable Tariff that relates to the Wholesale Services, the Contracting Retailer should apply to the Contracting Wholesaler under Part H of the Operational Terms, as necessary.

6. **Public health information**

If the Contracting Wholesaler supplies the Contracting Retailer with information regarding public health matters for onward transmission to its Non-Household Customers, the Contracting Retailer shall communicate such information to its Non-Household Customers in accordance with Part E of the Operational Terms.

Part C: Warranties and Compliance with Laws

7. Warranties

7.1 The Contracting Retailer warrants that it will only use the water supplied by the Contracting Wholesaler under the terms of the Wholesale Contract for the purpose of supplying Non-Household Customers in relation to the Supply Points for which the Contracting Retailer is Registered.

7.2 The Contracting Wholesaler warrants for the duration of the Wholesale Contract that in the performance of its obligations and exercise of its discretions under the Wholesale Contract it will comply with all applicable Laws and its Appointment.

7.3 The Contracting Retailer warrants for the duration of the Wholesale Contract that in the performance of its obligations and exercise of its discretions under the Wholesale Contract it will comply with all applicable Laws and its Licence.

7.4 Compliance with Laws

7.4.1 Nothing in the Wholesale Contract shall be construed to prevent a Party from discharging any duty or obligation which is required by any other Law or shall prejudice or affect the rights, remedies, powers, liabilities, functions, duties or obligations of either Party under such other Law or shall affect the application of any enactment (for the time being in force relating to the provision of public water or sewerage services in the relevant Area.

7.4.2 For the avoidance of doubt, neither Party shall be entitled to make a claim against the other Party (the "Breaching Party") for breach of an obligation under the Wholesale Contract if that obligation conflicts with an obligation under the Water Industry Act 1991 or the Water Act 2014 (other than the Wholesale-Retail Code) or conflicts with a condition of its Licence or Appointment and the Breaching Party complies with its conflicting obligation under the Water Industry Act 1991 or the Water Act 2014 (other than the Wholesale-Retail Code) or with a conflicting condition of its Licence or Appointment instead of complying with its obligation to the other Party under the Wholesale Contract.

7.4.3 The agreement of the Contracting Wholesaler to provide Sewerage Services under the Wholesale Contract does not authorise the passing or discharge of any matter or substance (including Trade Effluent) into the Sewerage System in contravention of any Law, including (in the case of Trade Effluent) any Trade Effluent Consent or environmental consent from the Environment Agency or Natural Resources Wales.

7.5 Bribery act compliance

7.5.1 Neither Party shall commit (and warrants that in entering into the Wholesale Contract it has not committed) any of the following acts:

- (a) provide or offer to provide to any person in the employment of or in the service of the other Party any gift or consideration in relation to the negotiation or performance of the Wholesale Contract; or

- (b) make payment or agree to make payment of any commission to any person in the employment of or in the service of the other Party in relation to the Wholesale Contract.

Part D: Charges

8. Charges and Wholesale Tariff Document

- 8.1.1 The Contracting Wholesaler shall set out in its Wholesale Tariff Document all information required to identify and calculate all payments to and from each Party, including:
- (a) Primary Charges;
 - (b) Non-Primary Charges;
 - (c) all information in respect of charges, incentives, contribution offers, adjustments and allowances; and
 - (d) the method for applying charges and calculating all payments to and from either Party.
- 8.1.2 All Wholesale Charges shall be calculated in accordance with the Wholesale Tariff Document or as otherwise determined by the Authority and no charges, payments, contributions, allowances or incentives shall be charged if they are not set out and applied in accordance with the Wholesale Tariff Document or Schedule 3 of the Business Terms.
- 8.1.3 Nothing shall prevent the Supply Period commencing on any day during a Month.

9. Billing and terms of payment

9.1 Publication of billing timetable

- 9.1.1 At least three (3) Months in advance of each Year the Contracting Wholesaler shall publish its Wholesale Tariff Document, or otherwise in accordance with the Charging Guidance or Charging Rules.
- 9.1.2 On or before 15 February in each calendar year, the Contracting Wholesaler shall publish its invoicing timetable for Primary Charges and Non-Primary Charges and other payments to and from the Contracting Wholesaler.

9.2 Initial payment of Primary Charges

- 9.2.1 The Contracting Retailer may select, by written notice to the Contracting Wholesaler, to pay its Primary Charges as set out in **either**:
- (a) Section 9.2.2 ("Pre-Payment");
 - (b) Section 9.2.3 ("Post-Payment"); or if a valid agreement is in effect;
 - (c) Section 9.2.4 ("Alternative Payment Terms");

Where the Contracting Retailer selects the option of Post-Payment it must provide and maintain Eligible Credit Support and/or (with the agreement of the

Contracting Wholesaler) Alternative Eligible Credit Support for the Credit Support Amount in accordance with Section 9.11 below.

The Contracting Retailer shall be permitted to amend its selection from Pre-Payment to Post-Payment and from Post-Payment to Pre-Payment in accordance with the terms of this Section 9, provided always that only one selection can be made for any given Invoice Period to which the Primary Charges relate.

If Alternative Payment Terms have been agreed between the Parties, the process for returning to standard Pre-Payment or Post-Payment arrangements shall be as specified in the Alternative Payment Terms agreement.

Pre-Payment of the Primary Charges

9.2.2 Where the Pre-Payment option has been selected by the Contracting Retailer pursuant to Section 9.2.1:

- (a) subject to Section 9.3.5 in respect of Corrective Settlement Runs, for each Month during the Supply Period ("Month X"), an amount (the "Provisional Monthly Charge") shall be established as being the amount payable by the Contracting Retailer as set out in the provisional Settlement Report (P1) issued by the Market Operator to the Contracting Wholesaler and the Contracting Retailer, in respect of the provision of Wholesale Services during Month X;
- (b) no later than fourteen (14) Business Days prior to the start of Month X, the Contracting Wholesaler shall invoice the Contracting Retailer for the amount of the Provisional Monthly Charge using the relevant Aggregated Settlement Report from the Market Operator; and
- (c) the Provisional Monthly Charge in respect of Month X shall be paid by the Contracting Retailer to the Contracting Wholesaler no later than ten (10) Business Days prior to the start of Month X in accordance with Section 9.6.

Post-Payment of the Primary Charges

9.2.3 Where the Post-Payment option has been selected by the Contracting Retailer pursuant to Section 9.2.1:

- (a) subject to Section 9.3.5 in respect of Corrective Settlement Runs, for each Month during the Supply Period ("Month X"), an amount (the "R1 Monthly Charge") shall be established as being the amount payable by the Contracting Retailer as set out in the first Planned Settlement Report (R1) issued by the Market Operator to the Contracting Wholesaler and the Contracting Retailer, in respect of the provision of Wholesale Services during Month X;
- (b) in accordance with its published invoicing calendar, but in any event within ten (10) Business Days of receiving the first

Planned Settlement Report (R1) from the Market Operator, the Contracting Wholesaler shall invoice the Contracting Retailer the R1 Monthly Charge using the relevant Aggregated Settlement Report from the Market Operator;

- (c) the R1 Monthly Charge in respect of Month X shall be paid by the Contracting Retailer to the Contracting Wholesaler in accordance with Section 9.6, by the later of:
 - (i) thirty (30) days after the end of Month X; or
 - (ii) fifteen (15) days after the date that the invoice from the Contracting Wholesaler is received.

Alternative Payment Arrangements for the Primary Charges

9.2.4 The Parties may negotiate and agree Alternative Payment Terms for the amount payable (the "Primary Charges") as an alternative to the standard Pre-Payment or Post-Payment terms described in Sections 9.2.2 and 9.2.3. The Alternative Payment Terms must at all times be in accordance with the process and requirements specified in Schedule 3A of these Business Terms.

9.3 Payment of Reconciliation Balances of Primary Charges

Planned Settlement Report and Reconciliation Balances (Pre-Payment)

9.3.1 When the first Planned Settlement Report (R1) is sent to the Contracting Wholesaler and the Contracting Retailer by the Market Operator after carrying out the first Planned Settlement Run in respect of Month X, the Contracting Wholesaler shall (subject to Section 9.3.5 in respect of Corrective Settlement Runs) re-calculate the Primary Charges based on the first Planned Settlement Report (the "R1 Re-calculated Monthly Charge") and using the relevant Aggregated Settlement Report issued by the Market Operator, render to the Contracting Retailer a statement (in accordance with Sections 9.3.8 and 9.3.9) showing the difference between the Provisional Monthly Charge and the R1 Re-calculated Monthly Charge (a "Reconciliation Balance").

9.3.2 When the further Planned Settlement Reports are sent to the Contracting Wholesaler and the Contracting Retailer by the Market Operator in respect of Month X, the Contracting Wholesaler shall (subject to Section 9.3.5 in respect of Corrective Settlement Runs) re-calculate the Primary Charges based on the relevant further Planned Settlement Reports (the "Re-calculated Monthly Charge") and using the relevant Aggregated Settlement Report issued by the Market Operator, render to the Contracting Retailer a statement (in accordance with Sections 9.3.8 and 9.3.9) showing the difference between the previous Re-calculated Monthly Charge (or the R1 Re-calculated Monthly Charge in the case of the second Planned Settlement Run) and the latest Re-calculated Monthly Charge (a "Reconciliation Balance").

Planned Settlement Report and Reconciliation Balances (Post-Payment)

9.3.3 When the second Planned Settlement Report (R2) is sent to the Contracting Wholesaler and the Contracting Retailer by the Market Operator after carrying

out the second Planned Settlement Run in respect of Month X, the Contracting Wholesaler shall (subject to Section 9.3.5 in respect of Corrective Settlement Runs) re-calculate the Primary Charges based on that Settlement Report (the "Re-calculated Monthly Charge") and, using the relevant Aggregated Settlement Report issued by the Market Operator, render to the Contracting Retailer a statement (in accordance with Sections 9.3.8 and 9.3.9) showing the difference between the R1 Monthly Charge and the Re-calculated Monthly Charge (a "Reconciliation Balance").

- 9.3.4 When the further Planned Settlement Reports are sent to the Contracting Wholesaler and the Contracting Retailer by the Market Operator in respect of Month X, the Contracting Wholesaler shall (subject to Section 9.3.5 in respect of Corrective Settlement Runs) re-calculate the Primary Charges based on the relevant further Planned Settlement Report (also the "Re-calculated Monthly Charge") and, using the relevant Aggregated Settlement Report issued by the Market Operator, render to the Contracting Retailer a statement (in accordance with Sections 9.3.8 and 9.3.9) showing the difference between the previous Re-calculated Monthly Charge and the latest Re-calculated Monthly Charge (also the "Reconciliation Balance").

Unplanned Settlement Report and Unplanned Reconciliation Balances (Pre-Payment and Post-Payment)

- 9.3.5 When any Unplanned Settlement Report is sent to the Contracting Wholesaler and the Contracting Retailer by the Market Operator in respect of Month X, if it is a Post RF Settlement Run or Dispute Settlement Run or a Corrective Settlement Run for a specified set of combination of Supply Points and Service Components, such Unplanned Settlement Report issued by the Market Operator shall comprise a Disaggregated Settlement Report only and the Contracting Wholesaler shall:

- (a) re-calculate the relevant Primary Charges for the identified Supply Point/Service Component combinations which contain Data Items which have been corrected or are in dispute. Based on the Disaggregated Settlement Report relating to those identified set of Supply Point/Service Component combinations which have been recalculated (the "Unplanned Re-calculated Charge"); and
- (b) render to the Contracting Retailer a statement (in accordance with Sections 9.3.8 and 9.3.9) showing the difference between the relevant Primary Charges comprised within previous Re-calculated Monthly Charge (or, if the Unplanned Settlement Run takes place before the second Planned Settlement Run, the R1 Monthly Charge in the case of Post-Payments) for the identified set of Supply Point/Service Component combinations, using the equivalent Disaggregated Settlement Report last issued for Month X, and the Unplanned Re-calculated Charge (the "Unplanned Reconciliation Balance"); or

if it is a Corrective Settlement Run in respect of all the Supply Points for the applicable Wholesaler-Retailer pair, such Unplanned Settlement Report issued by the Market Operator shall comprise a Disaggregated Settlement Report and an Aggregated Settlement Report for all Supply Point/Service

Component combinations and the revised Aggregated Settlement Report will replace the original Aggregated Settlement Report and be the basis for calculating the Primary Charges in Month X.

Unplanned Settlement Report and Restated Reconciliation Balances (Pre-Payment and Post-Payment)

- 9.3.6 When any Post RF Settlement Run or Dispute Settlement Run has been sent to the Contracting Wholesaler and the Contracting Retailer by the Market Operator between Planned Settlement Reports then when the next Planned Settlement Report is sent to the Contracting Wholesaler and the Contracting Retailer by the Market Operator in respect of Month X, the Contracting Wholesaler shall re-calculate the Primary Charges based on that Planned Settlement Report showing the difference between the previous Re-calculated Monthly Charge (taking into account the subsequent Unplanned Re-calculated Charge relating to identified set of Supply Point/Service Components that have been re-calculated) and the re-calculated Primary Charges (the "Re-stated Reconciliation Balance").
- 9.3.7 Under any of the scenarios set out in this Section 9.3, in the event of a Volume Transfer or a Volume Data Update, the Reconciliation Balances will take account of any adjustments required to recognise, as relevant, the effect of the Volume Transfer or Volume Data Update when reconciling against the previous settlement report.

Invoicing and payment of Balances

- 9.3.8 The Reconciliation Balances, the Unplanned Reconciliation Balances and the Re-stated Reconciliation Balances are referred to together as the "Balances".
- 9.3.9 Subject to Section 9.3.10 and Section 9.5.3, the Contracting Wholesaler shall invoice the Contracting Retailer the Balances in conjunction with the statements referred to in Sections 9.3.1 to 9.3.5 (inclusive) and in accordance with its published invoicing calendar, but in any event within ten (10) Business Days of receiving each Settlement Report (whether for a Planned Settlement Run or an Unplanned Settlement Run) from the Market Operator and the Balance shown on such invoice shall be paid within fifteen (15) days after the date that the statement from the Contracting Wholesaler is received by the Contracting Retailer in accordance with Section 9.6.
- 9.3.10 The Contracting Wholesaler shall not bill or invoice the Contracting Retailer for, or recover charges in respect of, water supplied or sewerage services provided to that Contracting Retailer's Non-Household Customer for any Invoice Period for which a Final Settlement Report has been provided by the Market Operator unless the following circumstances apply:
- (a) the bill or invoice is a negative sum; or
 - (b) where:
 - i. the Market Operator has issued a Settlement Report carried out following a Dispute or a Post RF Settlement Report;
 - ii. the bill or invoice is in accordance with the Settlement Report carried out following a Dispute or a Post RF Settlement Report; and
 - iii. the bill or invoice is issued within the eight (8) Month period following the issuing of the Final Settlement Report.

9.4 Payment of Non-Primary Charges

If any Non-Primary Charge is due to the Contracting Wholesaler under the Wholesale Contract, the Contracting Wholesaler shall submit invoices to the Contracting Retailer for the total amount properly payable, and provide a statement in such detail and with such documentation as are necessary to verify the same including the references provided by each Party, notwithstanding any Transfer related to an Interim Duty Supply Point or Erroneous Transfer. The Contracting Wholesaler shall submit its invoice for Non-Primary Charges to the Contracting Retailer monthly, in accordance with the Contracting Wholesaler's published invoicing timetable and Wholesale Tariff Document Subject to Section 9.5.1, the invoice for Non-Primary Charges shall be paid by the Contracting Retailer by the later of:

- (a) thirty (30) days after the end of the Month to which the invoice relates; or
- (b) fifteen (15) days after the date that the invoice from the Contracting Wholesaler is received.

9.5 Payments to Retailer

9.5.1 Not used

9.5.2 The Contracting Wholesaler shall pay for the Metering Activity, Trade Effluent Sampling and Analytical Activity and for the Connection Activity (as applicable) provided by the Contracting Retailer in accordance with the Wholesale Tariff Document.

9.5.3 For each Month during the Supply Period ("Month X"), if any payment is payable to the Contracting Retailer under the Wholesale Contract, the Contracting Wholesaler shall show such sum as a negative sum on the statement and invoice issued by the Contracting Wholesaler in accordance with its published invoicing calendar, for the total amount properly payable, including such documentation and detail as is necessary to verify the same. For the avoidance of doubt, invoices may be for positive or negative sums. A positive sum shall be payable to the Contracting Wholesaler in accordance with the terms of this Section 9 while a negative amount shall be payable by a Contracting Wholesaler. Any negative balance on an invoice shall be paid by the Contracting Wholesaler no later than fifteen (15) days after the date of the invoice.

9.5.4 If a payment is due to the Contracting Retailer by the Contracting Wholesaler under the Wholesale Contract, for example, incentive payments, the Contracting Wholesaler shall make a payment to the Contracting Retailer in accordance with the Contracting Wholesaler's Wholesale Tariff Document.

9.5.5 For the purposes of any Charge Adjustment, a Contracting Retailer must:

- (a) on receipt of any completed application for a Charge Adjustment from any Non-Household Customer, forward this within two (2) Business Days to the Contracting Wholesaler;

- (b) provide the Contracting Wholesaler with relevant and up to date information in respect of any Non-Household Customer who is claiming any Charge Adjustment to the extent that such information is relevant for the purposes of calculating the level or amount of Charge Adjustment due from time to time; and
- (c) on receipt of any monies from the Contracting Wholesaler due for the Charge Adjustment, pass these monies on to the relevant Non-Household Customer within five (5) Business Days.

9.6 Method of payment

Payment of any amount due under the Wholesale Contract and shown as payable in an invoice and any accompanying statement pursuant to this Section 9 shall include interest applicable, calculated in accordance with Section 9.9, and shall be made by electronic transfer of funds to such bank in the United Kingdom as may from time to time be notified by the Contracting Wholesaler to the Contracting Retailer (in the case of an amount payable by the Contracting Retailer) or by the Contracting Retailer to the Contracting Wholesaler (in the case of an amount payable by the Contracting Wholesaler).

9.7 No deduction or withholding

9.7.1 All payments by a Party under the Wholesale Contract shall be made without any deduction, withholding or set-off (except to the extent permitted by Section 2.4.2, Section 9.7.2 or required by Law).

9.7.2 If any item or part of an item in an invoice or statement rendered by a Party under this Section 9 is disputed or subject to question, payment of the remainder of the invoice or statement shall not be withheld on those grounds, and the provisions of Section 9.9.2 shall apply to the disputed or questioned item from the time, and to the extent that, it shall subsequently be agreed or determined to have been properly payable. Where a Party wishes to dispute or question an item or part of an item in an invoice or statement, it may only do so in good faith and on grounds which are not vexatious or frivolous.

9.7.3 Any dispute or question properly raised under Section 9.7.2 shall not be considered a breach of the Wholesale Contract.

9.8 Value Added Tax

9.8.1 All amounts expressed as payable pursuant to the Wholesale Contract are expressed to be exclusive of any applicable VAT and accordingly VAT shall be payable in addition to the amounts expressed at the rates from time to time in effect against a valid VAT invoice.

9.9 Interest

9.9.1 Each statement accompanying an invoice shall contain a breakdown of the interest calculation, in reasonable detail.

Default interest

- 9.9.2 If any sum payable under the Wholesale Contract is not paid at the expiry of the period for payment specified in Section 9 (save as contemplated by Section 9.7.2), then the Party who has failed to make payment shall pay interest on the amount outstanding (both before and after judgment or decree) at the rate of four (4) per cent per annum above the Bank Base Rate, such interest to be calculated from (but excluding) the date of expiry of such period until payment thereof, calculated on a daily basis and compounded annually. The Parties agree that the interest referred to in this Section 9.9.2 provides a substantial remedy under the Late Payment of Commercial Debts (Interest) Act 1998.

9.10 Reporting

- 9.10.1 Within two (2) Business Days of the Contracting Wholesaler becoming aware of payment failure under Section 9.2, 9.3 or 9.4 above, as appropriate, the Contracting Wholesaler shall report to the Authority, The Water Industry Commission for Scotland and the Market Operator any failure by the Contracting Retailer to pay any sum due under the Wholesale Contract (other than a sum disputed in accordance with Section 9.7.2) by the due date.

9.11 Credit support requirements

- 9.11.1 The credit support requirements contained in this Section 9.11 shall apply to a Contracting Retailer who has selected Post-Payment in accordance with this Section 9. The amount of credit support to be provided and maintained by the Contracting Retailer shall be calculated in accordance with the formula set out in the Credit Support Amount. The credit support requirements shall not apply to a Contracting Retailer who has chosen Pre-Payment in accordance with this Section 9.
- 9.11.2 Credit support in the form of Eligible Credit Support and/or Alternative Eligible Credit Support will be provided and maintained at all times by the Contracting Retailer. The amount of credit support provided shall be at least equal to the Credit Support Amount where it has selected Post-Payment in accordance with this Section 9.

Where the Contracting Retailer has agreed Alternative Payment terms with the Contracting Wholesaler which includes Post-Payment for some or all of the Primary Charges, it must provide and maintain (with the agreement of the Contracting Wholesaler) suitable Alternative Eligible Credit Support in accordance with Schedule 3 and Schedule 3A.

- 9.11.3 Following the receipt of each P1 Settlement Report by the Contracting Wholesaler and Contracting Retailer, the Credit Support Amount for the following Invoice Period shall be equal to:
- (a) the Credit Support Requirement for the following Invoice Period **less:**

- (b) the Unsecured Credit Allowance applicable to the Contracting Retailer (if any); and
- (c) accrued interest (if any) from any cash deposited by the Contracting Retailer in the Cash Security Account).

9.11.4 The Contracting Retailer must select, provide and maintain, in favour of the Contracting Wholesaler one or more of the forms of Eligible Credit Support must, when aggregated (including with any Alternative Eligible Credit Support) be at least equal to the Credit Support Amount:

- (a) a Cash Security Account Agreement between the Contracting Retailer and the Contracting Wholesaler in substantially the form set out in Schedule 2A of the Business Terms (with no terms of the Cash Security Account Agreement conflicting with the Schedule 2A Key Terms or the principles underpinning this Section 9; and/or
- (b) a Guarantee granted in favour of the Contracting Wholesaler in substantially the form set out in Schedule 2B of the Business Terms (with no terms of the Guarantee conflicting with the Schedule 2B Key Terms or the principles underpinning this Section 9); and/or
- (c) a Letter of Credit issued in favour of the Contracting Wholesaler in substantially the form set out in Schedule 2C of the Business Terms (with no terms of the Letter of Credit conflicting with the Schedule 2C Key Terms or the principles underpinning this Section 9); and/or
- (d) A Surety Bond issued in favour of the Contracting Wholesaler substantially in the form set out in Schedule 2D of the Business Terms (with no terms of the Surety Bond conflicting with the Schedule 2D Key Terms or the principles underpinning this Section 9)

9.11.5 The Parties may agree Alternative Eligible Credit Support for all or part of the Credit Support Amount subject to the Alternative Eligible Credit Support at all times in accordance with the process and complying with the requirements specified in Schedule 3 of these Business Terms.

9.11.6 The Contracting Wholesaler may, in writing, request the Contracting Retailer to provide written proof of funds from the provider of any Eligible Credit Support or Alternative Eligible Credit Support, in a form reasonably satisfactory to the Contracting Wholesaler evidencing that the provider has sufficient means to honour its obligations under the Eligible Credit Support or Alternative Eligible Credit Support issued by it. Such a request may not be made more than once in any rolling twelve (12) Month period unless there is a material change to the Current Credit Rating or Current Credit Score of the Contracting Retailer or credit support provider as applicable or a material increase in the Credit Support Amount.

9.11.7 The Contracting Wholesaler must not unreasonably refuse to accept, or unreasonably delay the acceptance of, any form of Eligible Credit Support proposed by the Contracting Retailer where such Eligible Credit Support is in accordance with the terms of this Section 9 and Schedules 2A to 2E of these Business Terms as appropriate in each circumstance.

9.12 Credit Support Notice

9.12.1 The Contracting Wholesaler shall issue a Credit Support Notice to be received by the Contracting Retailer within five (5) Business Days of the issue by the Market Operator of the P1 Settlement Report. Where the Contracting Retailer has selected Trade Credit Insurance as the basis on which to access an Unsecured Credit Allowance, the Contracting Retailer shall provide the Contracting Wholesaler with confirmation of this and self-certification as set out in paragraph 8 of Schedule 2E, within two (2) Business Days of the issue by the Market Operator of the P1 Settlement Report. The Credit Support Notice shall be in the format specified in Schedule 4 of these Business Terms, setting out in relation to both the current Invoice Period and previous Invoice Period:

- (a) the date of the P1 Settlement Report issued by the Market Operator;
- (b) the Credit Support Requirement for the following Invoice Period calculated on the basis of the P1 Settlement Report;
- (c) the Unsecured Credit Allowance applicable to the Contracting Retailer (if any);
- (d) the accrued interest on any cash deposited by the Contracting Retailer in the Cash Security Account since the last Credit Support Notice;
- (e) the Credit Support Amount for the following Invoice Period to be provided by the Contracting Retailer (representing the Credit Support Requirement less any applicable Unsecured Credit Allowance and any accrued interest referred to respectively in (c) and (d) above);
- (f) the aggregate total amount of all Eligible Credit Support and Alternative Eligible Credit Support already held by the Contracting Wholesaler;
- (g) the Credit Support Balance for the following Invoice Period; and
- (h) any Excess Eligible Credit Support Amount.

9.12.2 The Credit Support Notice shall, wherever possible, be sent by the Contracting Wholesaler by e-mail. If for any reason it is not possible to use e-mail, a

Contracting Wholesaler may use any other means set out in Section 20.1.2 provided that the timescale for receipt by the Contracting Retailer within Section 9.12.1 is met.

9.12.3 No later than ten (10) Business Days from the issue by the Market Operator of the P1 Settlement Report the Contracting Retailer must:

- (a) provide the Credit Support Balance for the following Invoice Period by means of, or a combination of, Eligible Credit Support and/or Alternative Eligible Credit Support; and
- (b) continue to provide and maintain a sum at least equal to the Credit Support Amount for the previous Invoice Period (if applicable) by means of, or any combination of Eligible Credit Support and/or Alternative Eligible Credit Support.

9.12.4 No later than ten (10) Business Days from the issue by the Market Operator of the P1 Settlement Report

- (a) the Contracting Retailer may provide written notice to the Contracting Wholesaler that it is electing to amend its selection and choose the Pre-Payment option of paying the Primary Charges for the next Invoice Period in accordance with Section 9.2.1; and
- (b) in such case, the Contracting Retailer shall still be required to provide and maintain Eligible Credit Support and/or Alternative Eligible Credit Support for a sum which is, in aggregate, at least equal to the Credit Support Amount for any Invoice Period prior to the one for which it has selected Pre-Payment.

9.12.5 Where a Contracting Wholesaler notifies a Contracting Retailer in a Credit Support Notice that it is holding any Excess Eligible Credit Support Amount then at the option of the Contracting Retailer

- (a) the Contracting Wholesaler shall continue to hold the Excess Eligible Credit Support Amount; or
- (b) in the case of cash, it shall be returned to the Contracting Retailer upon its written request; or
- (c) in the case of a Letter of Credit, Guarantee and/or Surety Bond and in so far as relevant any Alternative Eligible Credit Support, the Contracting Retailer shall be entitled to issue or procure the issue of an amendment to these forms of Eligible Credit Support or Alternative Eligible Credit Support as the case may be, reducing the maximum amount covered

thereunder provided that the aggregate total amount of Eligible Credit Support and Alternative Eligible Credit Support proved by the Contracting Wholesaler shall not fall below the Credit Support Amount as a result of such amendment; and

- (d) upon receipt by the Contracting Wholesaler of the relevant replacement, any original Guarantee, Letter of Credit, Surety Bond, and in so far as is relevant any Alternative Eligible Credit Support, shall be returned to the Contracting Retailer upon its written request.

9.12.6 The Contracting Retailer shall in its absolute discretion determine

- (a) whether, any Excess Eligible Credit Support Amount is to be returned to it; and
- (b) if so, whether any Excess Eligible Credit Support Amount be returned under either or both of Section 9.12.3(b) and (c).

9.12.7 A Contracting Retailer may, at any time and at its discretion, provide any Excess Eligible Credit Support Amount through any Eligible Credit Support or Alternative Eligible Credit Support for the purposes of ensuring it always meets its credit support obligations under this Section 9.

9.13 **Changes in circumstances**

9.13.1 Where the Contracting Retailer:

- (a) believes it is entitled to an Unsecured Credit Allowance it must, before the issuance of a Credit Support Notice for the next Invoice Period confirm at the reasonable request of the Contracting Wholesaler (no more than once every three months) its Current Credit Score or its Current Credit Rating for the calculation of any Unsecured Credit Allowance applicable to the Contracting Retailer; or
- (b) holds a Current Credit Rating that has fallen below the Minimum Credit Rating, any Unsecured Credit Allowance shall no longer apply to the next, and any subsequent, Invoice Periods for so long as the Contracting Retailer fails to meet the Minimum Credit Rating; or
- (c) holds a Current Credit Score that has moved from the band it was in according to Section 5(b) of Schedule 2E of the Business Terms, any Unsecured Credit Allowance applicable to it shall be adjusted or removed for the next and

any subsequent Invoice Periods as appropriate by the Contracting Wholesaler; or

- (d) wishes to change the Credit Scoring Agency or the Credit Rating Agency providing its credit score or its Current Credit Rating respectively, it must provide three (3) months' notice from before the issuance of a Credit Support Notice for the next Invoice Period for the credit score or Current Credit Rating to be valid.

9.13.2 In the event that:

- (a) in respect of Section 9.11.4(a) and where relevant, the Contracting Retailer; or
- (b) in respect of Section 9.11.4(b) and (c) and where relevant, the Guarantor or issuer of a Letter of Credit; or
- (c) in respect of Section 9.11.4(d) and where relevant, the Surety Bond provider

has a credit rating that has been downgraded below the Minimum Credit Rating by at least one of the Credit Rating Agencies, the Contracting Retailer must notify the Contracting Wholesaler as soon as practical and in any case within three (3) Business Days of that downgrading below the Minimum Credit Rating.

9.13.3 The Contracting Retailer must also within ten (10) Business Days of the downgrade below Minimum Credit Rating:

- (a) provide a replacement form of Eligible Credit Support and/or Alternative Eligible Credit Support such that the total aggregate amount of Eligible Credit Support and/or Alternative Eligible Credit Support is a sum at least equal to the Credit Support Amount; or
- (b) by written notice to the Contracting Wholesaler select the Pre-Payment option of paying Primary Charges, in accordance with Section 9.2.1 (provided that nothing in this Section shall alter the obligation of the Contracting Retailer to provide and maintain Eligible Credit Support and/or Alternative Eligible Credit Support for a sum which is, in aggregate, at least equal to the Credit Support Amount for the Invoice Periods prior to the one for which it was selected the Pre-Payment option.

9.13.4 Upon receipt by the Contracting Wholesaler of the relevant replacement under section 9.13.3 above, any original Guarantee, Letter of Credit, Surety Bond, and in so far as is relevant any Alternative Eligible Credit Support, shall be returned to the Contracting Retailer upon its written request.

9.13.5 In addition to the obligations in Section 9.13.2, the Contracting Retailer must notify the Contracting Wholesaler as soon as practical (and in any case within five (5) Business Days of the event), of any downgrading of the Current Credit

Score or Current Credit Rating of the Contracting Retailer or the credit support provider (as applicable). The Contracting Wholesaler may apply such changes to the Contracting Retailer's Current Credit Score or Current Credit Rating or credit support provider (as applicable) where it has not received notification but has evidence to that effect and must provide five (5) Business Days' notice of its changes to the Contracting Retailer.

9.13.6 Where for any Invoice Period the Contracting Wholesaler has failed to issue a Credit Support Notice, then the Contracting Retailer cannot be regarded as a Defaulting Trading Party under Section 10 if it fails to provide for the following Month, any Credit Support Balance to the Contracting Wholesaler for that Invoice Period.

9.13.7 Where for any Invoice Period the Contracting Wholesaler has failed to issue a Credit Support Notice and/or the Contracting Retailer fails to provide any Credit Support Balance, then, the Contracting Wholesaler shall remain obliged to provide Wholesale Services during the Month to which the Primary Charges relate and the Contracting Retailer shall remain liable for payment of such Wholesale Services.

9.14 **Enforcement**

9.14.1 If the Contracting Retailer is a Defaulting Trading Party then the Contracting Wholesaler shall be entitled to enforce its rights under the:

- (a) Cash Security Account Agreement; and/or
- (b) Guarantee; and/or
- (c) Letter of Credit and/or
- (d) Surety Bond; and/or
- (e) Alternative Eligible Credit Support, in each case as relevant.

These rights will be in addition to any other rights given to the Contracting Wholesaler under the Wholesale Contract.

9.14.2 The Contracting Wholesaler shall not be entitled to draw on any Eligible Credit Support or Alternative Eligible Credit Support in excess of sums owed and due to the Contracting Wholesaler at that time (amounts subject to disputes or question pursuant to Section 9.7.2 shall not be considered to be owed or due). Should the Contracting Wholesaler draw on any Eligible Credit Support or Alternative Eligible Credit Support in excess of sums owed and due (contrary to this Section 9.14.2), the amount of Eligible Credit Support or Alternative Eligible Credit Support that the Contracting Retailer is required to provide pursuant to Section 9 shall be reduced by the amount that the Contracting Wholesaler drew upon in excess until such time as that excess amount is reimbursed to the Contracting Retailer by the Contracting Wholesaler.

Part E: Default and Termination

10. Default

10.1 A Contracting Retailer will be classed as a Defaulting Trading Party if any of the following events occurs:

Late payment

10.1.1 the Contracting Retailer has failed to pay an amount of more than five thousand pounds (£5000) (exclusive of VAT) (and this is not disputed under Section 9.7.2) properly due by it under the Wholesale Contract where:

- (a) such payment has not been made ten (10) Business Days after the payment due date; and
- (b) on or after the last Business Day in the period specified in Section 10.1.1(a) the Contracting Wholesaler has issued notice to the Contracting Retailer to pay the outstanding amount within a further period of five (5) Business Days after the Contracting Retailer's receipt or (if earlier) deemed receipt of such notice; and
- (c) the amount invoiced has not been paid by the expiry of that further period of five (5) Business Days of the Contracting Retailer's receipt or (if earlier) deemed receipt of notice pursuant to Section 10.1.1(b); or

Persistent failure to pay

10.1.2 the Contracting Retailer fails to pay an amount properly due by it under the Wholesale Contract (and not disputed under Section 9.7.2) for a third time having failed on two (2) occasions in the previous twelve (12) Month period and the Contracting Wholesaler has issued notice to the Contracting Retailer to remedy such non-payment upon at least two (2) of those occasions and those sums remain outstanding; or

Failure to provide and Maintain Credit Support Amount

10.1.3 the Contracting Retailer has failed to make available, or having made available, fails to maintain a sum at least equal to the Credit Support Amount through, any aggregated combination of either Eligible Credit Support and/or Alternative Eligible Credit Support as specified at Section 9.11.2; or

Failure to provide Credit Support Balance

10.1.4 the Contracting Retailer has failed to provide the Credit Support Balance as specified at Section 9.12.1 (unless, for the avoidance of doubt, the terms of Section 9.13.6 apply) where;

- (a) it is in excess of ten (10) Business Days from the date of issue by the Market Operator of the P1 Settlement Report; and

- (b) on or after the last Business Day in the period specified in Section 10.1.3(a) the Contracting Wholesaler has issued notice to the Contracting Retailer to pay the Credit Support Balance within a further period of ten (10) Business Days after the Contracting Retailer's receipt or (if earlier) deemed receipt of such notice; and
- (c) the Credit Support Balance has not been paid by the expiry of that further period of ten (10) Business Days of the Contracting Retailer's receipt or (if earlier) deemed receipt of notice pursuant to Section 10.1.3 (b); or

Persistent Late Provision of Credit Support Balance

- 10.1.5 the Contracting Retailer fails to provide the Credit Support Balance as specified in Section 9.12.3 for a third time, having failed on two (2) occasions in the previous twelve (12) Month period to so provide (unless, for the avoidance of doubt, on any of those occasions the terms of Section 9.13.6 apply) and on each of these two (2) previous occasions provides the Credit Support Balance within the additional ten (10) Business Day period specified in Section 10.1.4(b) above; or

Cash Security Account Agreement

- 10.1.6 the Contracting Retailer is in material breach of the Cash Security Account Agreement and such breach is non-remediable or, if remediable, such breach has not been remedied in accordance with the terms of the Cash Security Account Agreement in all material respects or, the Cash Security Account Agreement is no longer in accordance with the Schedule 2A Key Terms, and:
 - (a) it has not been replaced with a satisfactory form of Eligible Credit Support or Alternative Eligible Credit Support in accordance with Section 9.11; and
 - (b) the Contracting Retailer has not elected to pay its Primary Charges in accordance with the Pre-Payment provision of Section 9;

in each case within ten (10) Business Days of such material breach occurring or failure to meet the Schedule 2A Key Terms; or

Guarantee

- 10.1.7 the Guarantee is withdrawn, amended, terminated or is otherwise no longer in accordance with the Schedule 2B Key Terms and:
 - (a) it has not been replaced with a satisfactory form of Eligible Credit Support or Alternative Eligible Credit Support in accordance with Section 9.11; and

- (b) the Contracting Retailer has not elected to pay its Primary Charges in accordance with the Pre-Payment provision of Section 9;

in each case within ten (10) Business Days of the relevant withdrawal, amendment, termination or failure to meet the Schedule 2B Key Terms; or

Letter of Credit

10.1.8 the Letter of Credit is withdrawn, amended, terminated or is otherwise no longer in accordance with the Schedule 2C Key Terms and:

- (a) it has not been replaced with a satisfactory form of Eligible Credit Support or Alternative Eligible Credit Support in accordance with Section 9.11; and
- (b) the Contracting Retailer has not elected to pay its Primary Charges in accordance with the Pre-Payment provision of Section 9;

in each case within ten (10) Business Days of the relevant withdrawal, amendment, termination or failure to meet the Schedule 2C Key Terms; or

Surety Bond

10.1.9 the Surety Bond is withdrawn, amended, terminated or is otherwise no longer in accordance with the Schedule 2D Key Terms and:

- (a) it has not been replaced with a satisfactory form of Eligible Credit Support or Alternative Eligible Credit Support in accordance with Section 9.11; and
- (b) the Contracting Retailer has not elected to pay its Primary Charges in accordance with the Pre-Payment provision of Section 9 of the Business Terms,

in each case within ten (10) Business Days of the relevant withdrawal, amendment, termination or failure to meet the Schedule 2D Key Terms, or

Remediable breach

10.1.10 the Contracting Retailer is in breach of a material obligation under the Wholesale Contract (other than a payment obligation referred to in Sections 10.1.1 or 10.1.2 or a credit support obligation referred to in Sections 10.1.4 or 10.1.5), where:

- (a) the breach is capable of remedy by the Contracting Retailer;
- (b) the Contracting Wholesaler has issued notice to the Contracting Retailer to remedy the breach;

- (c) within ten (10) Business Days after the date of the Contracting Retailer's receipt or (if earlier) deemed receipt of the Contracting Wholesaler's notice under Section 10.1.10(b) the Contracting Retailer does not either:
 - (i) remedy the breach in all material respects where the breach is capable of remedy within such period of ten (10) Business Days; or
 - (ii) where the breach is not so capable of remedy within such period of ten (10) Business Days, provide to the Contracting Wholesaler a programme (setting out the steps to be taken by the Contracting Retailer and the timetable for taking such steps) to remedy the breach as soon as practicable;
- (d) in the case of Section 10.1.10(c)(ii) where the Contracting Retailer does not:
 - (i) remedy the breach in all material respects with all reasonable diligence and so far as reasonably practicable in accordance with the programme provided under that Section or a revised programme pursuant to Section 10.1.10(d)(ii) below; and
 - (ii) notwithstanding the reasonable diligence of the Contracting Retailer, it is not reasonably practicable for the Contracting Retailer to remedy the breach in accordance with that programme, provide to the Contracting Wholesaler a revised such programme; and
- (e) the breach remains unremedied in any material respect following the expiry of five (5) Business Days after the Contracting Retailer's receipt or (if earlier) deemed receipt of a further notice by the Contracting Wholesaler to the Contracting Retailer to the effect that the Contracting Retailer has not complied with Sections 10.1.10(c) or (d); or

Persistent breach

- 10.1.11 the Contracting Retailer is in persistent breach of the Wholesale Contract (other than a payment obligation referred to in Section 10.1.2 or a credit support obligation referred to in Sections 10.1.4 or 10.1.5), where:
- (a) the Contracting Wholesaler has issued notice to the Contracting Retailer of the breach;
 - (b) at any time within the period of six (6) months following the date of the Contracting Wholesaler's notice under Section 10.1.11(a) there occurs a further breach by the Contracting Retailer of the same Section or provision of the Wholesale Contract and the Contracting Wholesaler has given notice of such further breach to the Contracting Retailer; and
 - (c) at any time within the period of six (6) months following the date of the Contracting Wholesaler's notice under Section 10.1.11(b) there occurs a further breach by the

Contacting Retailer of the same Section or provision of the Wholesale Contract, and the Contracting Wholesaler has given notice of such further breach to the Contracting Retailer and a period of ten (10) Business Days has expired following the Contracting Retailer's receipt or (if earlier) deemed receipt of such; or

Fundamental breach

10.1.12 the Contracting Retailer is in fundamental breach of the Wholesale Contract where:

- (a) the breach is material and incapable of being remedied; or
- (b) the breach (including an anticipatory breach) is serious in the widest sense of having a serious effect on the benefit which the Contracting Wholesaler would otherwise derive from a substantial portion of the Wholesale Contract and, in deciding whether any breach is fundamental no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding; and
- (c) the Contracting Wholesaler has given notice of such breach to the Contracting Retailer and a period of twenty (20) Business Days has expired following the Contracting Retailer's receipt or (if earlier) deemed receipt of such notice; or

Insolvency

10.1.13 the Contracting Retailer is subject to an Insolvency Event; or

Revocation of Licence in England and Wales

10.1.14 the Contracting Retailer's Licence is revoked by the Authority; or

Defaulting Trading Party under another Wholesale Contract

10.1.15 where the Contracting Retailer is party to a Wholesale Contract with a Wholesaler other than the Contracting Wholesaler and has been classed as a Defaulting Trading Party under such a Wholesale Contract; or

Force majeure

10.1.16 a Force Majeure Event affecting the Contracting Retailer continues for a period of at least six (6) Months;

11. Termination

11.1 Termination of Wholesale Contract on application by Retailer

11.1.1 The Contracting Retailer may, at any time, by giving notice to the Contracting Wholesaler, apply to terminate the Wholesale Contract, and the following provisions shall apply:

11.1.2 the Wholesale Contract shall not terminate under this Section 11.1 until the Contracting Retailer has met all of the Cessation of Trading Conditions; and

11.1.3 after the satisfaction of the last of the requirements of the Cessation of Trading Conditions to be satisfied, the Wholesale Contract shall (unless otherwise agreed between the Parties) terminate with effect from the Business Day immediately following such satisfaction.

11.2 Termination of Wholesale Contract for Retailer default

11.2.1 If the Contracting Retailer becomes a Defaulting Trading Party, and at any time after such occurrence and while the Contracting Retailer remains a Defaulting Trading Party, the Contracting Wholesaler may give notice to the Contracting Retailer terminating the Wholesale Contract with effect from the date which is specified in the notice. Sections 17.1, 18.1 and 19.1 shall not prevent the Contracting Wholesaler exercising its rights under this Section 11.2.1. Any dispute in respect of any default, alleged default or termination shall be dealt with by arbitration in accordance with Section 19.

11.2.2 The Contracting Wholesaler shall provide the Authority with notice of its intention to terminate the Wholesale Contract at least ten (10) Business Days' prior to the date of termination specified in the notice served in accordance with 11.2.1 above.

11.2.3 The Contracting Wholesaler shall provide the Authority, The Water Industry Commission for Scotland and the Market Operator with a copy of all notices referred to in Sections 10 and 11.2.1 as soon as practicable after the notice has been issued to the Contracting Retailer.

11.2.4 If the Contracting Wholesaler takes steps to terminate the Wholesale Contract otherwise that in accordance with this Section 11.2, the Authority may take action, including enforcement action, in accordance with its statutory powers and policies or guidance as issued from time to time.

11.3 Alternative action for insolvency

11.3.1 If the Contracting Wholesaler would be entitled to terminate the Wholesale Contract because the Contracting Retailer becomes subject to an Insolvency Event, the Contracting Wholesaler may, without prejudice to its other rights and remedies, including its termination rights, notify the Contracting Retailer that it may not submit any more Transfer Registration Applications in respect of any Supply Points in the Contracting Wholesaler's Area, or request any more New

Supply Points in the Contracting Wholesaler's Area and, with effect from its receipt (or, if earlier deemed receipt) of such notice the Contracting Retailer shall cease to submit any more Transfer Registration Applications or request any more New Supply Points in the Contracting Wholesaler's area and shall take steps to cancel any pending or future Transfer Registration Applications which it has submitted

11.3.2 At the same time as notifying the Contracting Retailer under Section 11.3.1, the Contracting Wholesaler shall notify the Market Operator of the circumstances.

11.3.3 The Contracting Wholesaler may at any time withdraw the restriction placed on the Contracting Retailer under Section 11.3.1 and shall notify the Market Operator in writing that it has withdrawn the restriction.

11.4 **No other right to terminate the Wholesale Contract**

11.4.1 Neither the Contracting Wholesaler nor the Contracting Retailer shall be entitled to terminate the Wholesale Contract other than with the consent of the other Party or pursuant to the terms of the Wholesale Contract.

11.5 **Disclosure to Authority and Market Operator**

11.5.1 The Contracting Wholesaler, without prejudice to Section 9.11 (Reporting), shall report the Contracting Retailer becoming a Defaulting Trading Party to the Authority and the Market Operator where it considers that the Contracting Retailer may be in breach of a term or condition of any Licence by virtue of the Contracting Retailer either becoming a Defaulting Trading Party or breaching a material obligation under the Wholesale Contract.

11.5.2 The Contracting Retailer shall report the Contracting Wholesaler to the Authority and the Market Operator where it considers that the Contracting Wholesaler may be in breach of a term or condition of any Appointment by virtue of the Contracting Wholesaler breaching a material obligation under the Wholesale Contract.

11.5.3 The Contracting Retailer and the Contracting Wholesaler agree that the Market Operator may disclose to other Trading Parties with whom the Contracting Retailer or Contracting Wholesaler have a Wholesale Contract, any reports made pursuant to 11.5.1 and/or 11.5.2 above.

11.6 **Consequences of termination**

11.6.1 Upon termination of the Wholesale Contract Sections 4.3.5 (Orderly Transfers – Retailer required) and 4.3.6 (Orderly Transfers – Retailer required process) or 4.3.9 (Interim Supplier: allocation and Transfer) of the Market Terms shall apply as appropriate.

11.6.2 In the case of a Volume Transfer, the Transferor has appropriate arrangements in place for the transfer of any liabilities, to either or both of the Contracting Wholesaler or the Market Operator, arising in respect of all Affected Supply Points to the relevant Transferee(s).

11.7 **Termination of Wholesale-Retail Code**

- 11.7.1 If the Authority repeals the Wholesale-Retail Code or otherwise states that it no longer applies to the Wholesale Contract then the Wholesale Contract shall automatically terminate.

Part F: Force Majeure

12. Force Majeure Event

- 12.1 Subject to the remainder of this Section 12 and to the Non-Performing Party complying with Part E of the Operational Terms, neither Party shall be liable to the other where it is unable to perform its obligations under the Wholesale Contract by reason of a Force Majeure Event provided that the Party claiming to be prevented or delayed in the performance of its obligations by reason of a Force Majeure Event (the Non-Performing Party) shall use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which the obligations contained in the Wholesale Contract may be performed
- 12.2 The Non-Performing Party shall:
- 12.2.1 notify the other Party of the Force Majeure Event as soon as reasonably practicable and in any event within two (2) Business Days of the Force Majeure Event occurring; and
- 12.2.2 upon request, within five (5) Business Days of the Force Majeure Event occurring, provide a report containing all relevant available information relating to the Force Majeure Event and details of the measures the Non-Performing Party is taking to overcome or circumvent such Force Majeure Event.
- 12.3 The Parties shall not be relieved by reason of the Force Majeure Event from any obligation to indemnify or make payment.
- 12.4 If the Force Majeure Event does not affect the Wholesale Services to all of the Eligible Premises, the Non-Performing Party shall only be relieved of its obligations in respect of those Eligible Premises which are affected.

Part G: Indemnity and liability

13. Retailer Equipment and network damage

- 13.1 Subject to Sections 14.1 and 14.2, in the event that the Contracting Retailer suffers or incurs any Costs in relation to the Retailer Equipment which is caused by an act or omission of the Contracting Wholesaler or its agents or sub-contractors, the Contracting Retailer shall be entitled to recover from the Contracting Wholesaler the total cost of the actual work involved in repairing or replacing the damaged Retailer Equipment.
- 13.2 Subject to Sections 14.1 and 14.2, in the event that the Contracting Wholesaler suffers or incurs any Costs in relation to the Network which is caused by an act or omission of the Contracting Retailer or its agents or sub-contractors, the Contracting Wholesaler shall be entitled to recover from the Contracting Retailer the total cost of the actual work involved in repairing or replacing the damaged Network or damaged meter in accordance with the charges and policies set out in the Wholesale Tariff Document.

14. Limitation of liability

- 14.1 A Party shall only be liable to the other Party in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising in connection with the Wholesale Contract for direct losses. All other losses are expressly excluded (subject always to Sections 14.4 and 14.5).
- 14.2 Subject to Sections 14.3, 14.4, 14.5 and 14.8, each Party's liability resulting from negligence or any breach or non-performance of the Wholesale Contract (except for a breach by the Contracting Retailer of its obligation under Section 9 to make payment to the Contracting Wholesaler, or any other breach or non-performance of the Wholesale Contract arising from a failure by the Contracting Retailer to pay for the Wholesale Services) or any misrepresentation or other tort on the part of that Party or its servants or agents shall be limited as follows:
- 14.2.1 in respect of any claims relating to tangible property damage provided hereunder, shall not exceed £5,000,000 in any Year; and
- 14.2.2 in respect of any other claims which may arise hereunder, shall not exceed the aggregate of the Wholesale Charges under the Wholesale Contract in the preceding Year (or if in respect of the first Year of the Wholesale Contract, then the amount of charges incurred by the Contracting Retailer's Non-Household Customers with the Contracting Wholesale in the preceding Year). All conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this Section 14.2 are hereby expressly excluded (subject always to Sections 14.3, 14.4 and 14.5).
- 14.3 Section 14.2 shall not limit a Party's liability for breach of Section [7.7] or any Section in Part H.
- 14.4 Nothing in the Wholesale Contract shall operate so as to exclude or limit a Party's liability for fraud, or for death or personal injury caused by its negligence or the negligence of any of its officers, or any other liability that may not be excluded or limited as a matter of Law.

- 14.5 Save as otherwise expressly provided in the Wholesale Contract, this Section 14 (insofar as it excludes or limits liability) shall override any other provision in the Wholesale Contract provided that nothing in this Section 14 shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, duties and obligations of either Party hereto which are conferred or created by any Appointment or Licence granted under the Water Industry Act 1991 or by any other Law.
- 14.6 Subject to the rest of this Section 14: (a), any liability under the Wholesale Contract or otherwise on the part of either Party shall be reduced to the extent that the other Party has itself caused or contributed to the same and; (b) in the event of liability to any third party, the Party who has caused or contributed to that liability shall indemnify the other Party in respect of the same, subject to the rest of this Section 14.
- 14.7 The Parties agree to use reasonable endeavours to mitigate any loss, damage or injury to which they might be subject as a result of a breach of the Wholesale Contract or any other Law by the other Party.
- 14.8 Subject to Section 14.9, the Contracting Wholesaler shall not be liable for any consequences arising from the non-availability of water during any period of interruption or suspension arising under Sections 5.1 and 5.2.
- 14.9 The liability of the Contracting Wholesaler to the Contracting Retailer for any failure to comply with a Guaranteed Service Standard or for interruption to water supplies as a result of a Drought Order shall be limited to payment of the sums referred to in Section 2.4.2.
- 14.10 Notwithstanding Section 14.9, the Contracting Wholesaler's liability to the Contracting Retailer in respect of any failure to comply with a Guaranteed Service Standard or Sections 5.1 or 5.2 shall be reduced by the amount of any payment made by the Contracting Wholesaler to the Contracting Retailer's Non-Household Customer in respect of the same failure to comply with a Guaranteed Service Standard or for interruption to water supplies as a result of a Drought Order .
- 14.11 Each Party acknowledges and agrees that the other Party has the benefit of this Section 14 for itself and as trustee and agent for each of its officers, employees and agents.
- 14.12 Each of the sub-clauses of this Section 14 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties.
- 14.13 The Parties agree that they do not intend that either of them should be able to make any claim in damages or any other claim of a financial nature against the Market Operator; and, without prejudice to their respective rights to refer an MO Dispute to an expert in accordance with Section 18 (MO Dispute Process) of the Market Arrangements Code, each Party (to the fullest extent permitted by Law) waives any such claims against the Market Operator and releases the Market Operator from any such liability in respect of any breach by the Market Operator of its duties under the Market Terms, the Disputes Procedures and this Market Arrangements Code or in tort (including negligence) or otherwise.

15. Insurance

Each Party shall, at all times during the Supply Period, effect and maintain with insurers authorised and regulated by the Prudential Regulation Authority and the Financial Conduct Authority under the Financial Services Act 2012 public liability insurance of not less than £5,000,000 for any one incident and unlimited as to the number of incidents, and shall, upon request, produce to the other Party documentary evidence that the above insurance is and remains in place.

Part H: Confidentiality

16. Confidentiality

16.1 Confidentiality obligation

16.1.1 Each Party (the "Receiving Party") shall procure that all confidential information which comes into its ownership, possession or control, or the ownership, possession and control of any of its Affiliated Companies, pursuant to or in the course of the negotiation, implementation or performance of the Wholesale Contract relating to the affairs of the other Party (the "Protected Party") or its operation or management, or otherwise in connection with or in anticipation of the performance of the Wholesale Contract ("Protected Party Confidential Information") shall not be disclosed to any third party except insofar as this may be required for the proper operation of the Wholesale Contract (including disclosure to agents and sub-contractors) or except where disclosure is otherwise expressly permitted by the provisions of the Wholesale Contract.

16.1.2 Each Party (the "Receiving Party") shall each procure that all confidential information which comes into its ownership, possession or control, or the ownership, possession and control of any of its Affiliated Companies, pursuant to or in the course of the negotiation, implementation or performance of the Wholesale Contract relating to the affairs of a Non-Household Customer (the "Protected Customer") or its operation or management, or otherwise in connection with or in anticipation of the performance of the Wholesale Contract ("Customer Confidential Information") shall not be disclosed to any third party except insofar as this may be required for the proper operation of the Wholesale Contract (including disclosure to agents and sub-contractors) or except where disclosure is otherwise expressly permitted by the provisions of the Wholesale Contract.

16.2 Parties' further obligation

16.2.1 Where Protected Party Confidential Information or Customer Confidential Information is disclosed by any Receiving Party as permitted under this Wholesale Contract, the Receiving Party shall (subject to Section 16.4.1(e) and without prejudice to its other obligations under this Part H):

- (a) ensure that the person to whom the information is disclosed is aware of the Receiving Party's obligations under this Part H in relation thereto; and
- (b) take reasonable steps to procure that the person to whom the information is disclosed does not use or disclose the information other than as is permitted of such Receiving Party in accordance with this Part H.

16.3 Restrictions on use

16.3.1 The Receiving Party shall not use Protected Party Confidential Information or permit the use of Protected Party Confidential Information for any purpose other than for the purpose of providing, receiving, billing and paying for Wholesale Services or as otherwise expressly permitted by the Wholesale Contract or

required for the purpose of the negotiation, implementation or performance of the Wholesale Contract or, in cases where the Receiving Party is the Contracting Wholesaler, for the purpose of performing the duties imposed on it by Law.

16.3.2 The Receiving Party shall not use Customer Confidential Information or permit the use of Customer Confidential Information for any purpose other than for the purpose of complying with the Wholesale Contract or required for the purpose of the negotiation, implementation or performance of the Wholesale Contract or, in cases where the Receiving Party is the Contracting Wholesaler, for the purpose of performing the duties imposed on it by Law.

16.4 Exceptions

16.4.1 Nothing in this Part H shall apply:

- (a) to the disclosure or use by the Receiving Party of Protected Party Confidential Information to which the other Party has consented in writing;
- (b) to the disclosure or use by the Receiving Party of Customer Confidential Information to which the relevant Non-Household Customer has consented in writing;
- (c) to any Protected Party Confidential Information or Customer Confidential Information which:
 - (i) before it is obtained by the Receiving Party is in the public domain; or
 - (ii) after it is obtained by the Receiving Party enters the public domain, in either case otherwise than as a result of a breach by the Receiving Party of its obligations under this Part H;
- (d) to the disclosure of any Protected Party Confidential Information or Customer Confidential Information to any person (including the Market Operator) if and to the extent that the Receiving Party is required to make such disclosure in accordance with the Wholesale Contract to such person;
- (e) to the disclosure of any Protected Party Confidential Information or Customer Confidential Information which is:
 - (i) in compliance with the duties of the Receiving Party under the Water Industry Act 1991, the Water Act 2014 or any other requirement of a Relevant Authority;
 - (ii) in compliance with the conditions of any Appointment or Licence or any document referred to in any Appointment or Licence with which the Party is required by virtue of the Water Industry Act 1991, the Water Act 2014 or any Appointment or Licence to comply;
 - (iii) in compliance with any other Law provided that, in deciding whether disclosure is required to comply with the Environmental

Information Regulations 2004 (SI 2004 No. 3391), the Receiving Party shall comply with the consultation and other relevant requirement of the code of practice issued from time to time by the Information Commissioner's Office on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004;

- (iv) in response to a requirement of any stock exchange or regulatory authority or the UK Panel on Takeovers and Mergers; or
- (v) pursuant to any judicial or arbitral process or tribunal having jurisdiction in relation to the Receiving Party; or
- (f) to the disclosure of any Protected Party Confidential Information or Customer Confidential Information lawfully in the possession of the Receiving Party before the disclosure to it under or in connection with this Wholesale Contract and not subject to any restriction on use or disclosure.

16.5 Further exception for Special Agreements

- 16.5.1 If a Non-Household Customer requests the Contracting Retailer to supply services in respect of any Eligible Premises in accordance with a Special Agreement then the Contracting Wholesaler shall, if so requested by the relevant Non-Household Customer or by the Contracting Retailer (the Contracting Retailer having obtained the relevant Non-Household Customer's consent) provide the Contracting Retailer with such information as the Contracting Retailer requires (including a copy of the Contracting Wholesaler's contract with the relevant Non-Household Customer) to allow the Contracting Retailer to continue to supply services in respect of those Eligible Premises in accordance with such Special Agreements then and, for the purpose of Section 16.1.2, such disclosure is expressly permitted.

16.6 Survival

- 16.6.1 The confidentiality provisions of this Part H shall continue to bind each Party for a period of five (5) years after the relevant Party ceases to be bound by the Wholesale-Contract.

Part I: Disputes

Introduction: Disputes are categorised into Trading Disputes (relating to Data Items), MO Disputes and Non-Trading Disputes (which are all other disputes).

Non-Trading Disputes: Section 17 provides a mechanism for resolving Non-Trading Disputes, leading ultimately to arbitration under Section 19.

Trading Disputes: Section 18 provides an alternative mechanism for resolving Trading Disputes. A Trading Dispute only concerns an error in a Data Item. Trading Disputes must be raised, dealt with and decided in accordance with Section 18. Section 18 refers to the Market Arrangements Code, Schedule 9 of which sets out the Trading Disputes resolution mechanism via the Trading Disputes Committee.

If not resolved to the satisfaction of the Disputing Parties, Trading Disputes may then be referred to arbitration under Section 19.

Arbitration: Section 19 provides for arbitration, which can be used as the ultimate resolution for both Trading Disputes and Non-Trading Disputes.

MO Disputes: Sections 17, 18 and 19 do not apply to any dispute by any Trading Party with the Market Operator. Any such disputes should be resolved in accordance with Section 5 of the Market Terms and Section 18 of the Market Arrangements Code.

Timescales: The timescales set out in Sections 17 and 18 are expressed as maximum timescales. For the avoidance of doubt, the Disputing Parties are not prevented from agreeing shorter timescales in circumstances where any Dispute requires urgent resolution.

17. Non-Trading Disputes

17.1 Save to the extent that any dispute, application, determination, arbitration, appeal or equivalent right of referral to a third party is expressly provided for in:

17.1.1 the Water Industry Act 1991 or the Water Act 2014; or

17.1.2 any Licence or any Appointment; or

17.1.3 the rights, powers, duties, functions or obligations of the Authority or the Secretary of State under the Water Industry Act 1991, the Water Act 2014, any other Law, any Appointment, Licence or otherwise howsoever,

any Non-Trading Dispute will be resolved in accordance with this Section 17 and Section 19.

17.2 Types of Non-Trading Dispute

Operational Terms Non-Trading Disputes

17.2.1 Where a Non-Trading Dispute arises in respect of any matter which is the subject of the Operational Terms or any Form, then, if the Operational Terms set out any step, or process or other procedure for discussion or resolution the Disputing Parties shall comply with such step, process or other procedure prior to invoking any of the remainder of this Section 17 or Section 19. If such enquiry

is not resolved pursuant to such step, process or other procedure within the timescale set out (or, if no timescale is set out, within ten (10) Business Days) the following provisions of this Section 17, from Section 17.3 onwards, and Section 19 shall apply.

Market Terms Non-Trading Disputes

- 17.2.2 Where a Non-Trading Dispute arises which relates to any matter which is the subject of the Market Terms including any Code Subsidiary Document, the Disputing Parties shall first raise an enquiry with the Market Operator in accordance with any relevant Working Procedure in place from time to time. If such enquiry is not resolved pursuant to such Working Procedure within the timescale set out (or, if no timescale is set out, within ten (10) Business Days) the provisions of Section 17.3 and Section 19 shall apply. For the avoidance of doubt, if a matter is a Trading Dispute the provisions of Section 18 and Section 19 shall apply.

Business Terms and miscellaneous Non-Trading Disputes

- 17.2.3 Where a Non-Trading Dispute arises which relates to any matter which is the subject of the Wholesale Contract (excluding the Market Terms, CSDs, Operational Terms and Forms) or the Business Terms, the Disputing Parties shall resolve this in accordance with the provisions of Section 17.3 and Section 19. For the avoidance of doubt, if a matter is a Trading Dispute the provisions of Section 18 and Section 19 shall apply.

Miscellaneous Non-Trading Disputes

- 17.2.4 All Non-Trading Disputes other than those referred to in Sections 17.2.1 and 17.2.2, shall be resolved in accordance with Section 17.3 and (to the extent not so resolved) Section 19.

17.3 Escalation of Non-Trading Disputes

- 17.3.1 Subject to Sections 17.2.1, 17.2.2 and 17.2.3 above, where a Non-Trading Dispute arises, a Disputing Party or potential Disputing Party that wishes to commence a Non-Trading Dispute (the "Claimant") shall notify the other Disputing Parties in writing of the existence and subject matter of the Non-Trading Dispute.
- 17.3.2 The Claimant shall organise a meeting in person or by conference call or video-conference of representatives of each of the Disputing Parties. Representatives of each of the Disputing Parties who have authority to resolve the Non-Trading Dispute, including the Contract Managers of a disputing Contracting Wholesaler and a disputing Contracting Retailer will meet in person or by conference call or video conference within ten (10) Business Days of receipt of the written notice referred to in Section 17.3.1 ("Initial Meeting"). At such Initial Meeting the Disputing Parties shall negotiate in good faith and shall use their respective reasonable endeavours to resolve such Non-Trading Dispute.
- 17.3.3 Any Non-Trading Dispute that cannot be resolved by the Disputing Parties within twenty (20) Business Days of receipt of the written notice referred to in Section 17.3.1 shall be referred by any Disputing Party to a General Manager of each of the Disputing Parties who has authority to bind the relevant Disputing Party he or she respectively represents. The Claimant shall organise a meeting

in person or by conference call or video-conference of General Managers of each of the disputing Parties and such General Managers shall meet in person or by conference call or video-conference within thirty (30) Business Days of receipt of the notice referred to in Section 17.3.1 and negotiate in good faith and shall use their reasonable respective endeavours to solve amicably the Non-Trading Dispute within forty (40) Business Days of receipt of the notice referred to in Section 17.3.1. Each of the Disputing Parties hereby agrees to provide its General Manager with all such information as its General Manager reasonably requires in order to enable him to resolve the Non-Trading Dispute.

- 17.3.4 Any Non-Trading Dispute that cannot be resolved by the Disputing Parties within forty (40) Business Days of receipt of the written notice referred to in Section 17.3.1 shall be referred by any Disputing Party to a Board Director of each of the Disputing Parties who has authority to bind the relevant Disputing Party they respectively represent. The Claimant shall organise a meeting in person or by conference call or video-conference of such Board Directors and such Board Directors shall meet in person or by conference call or video-conference within fifty (50) Business Days of receipt of the notice referred to in Section 17.3.1 and negotiate in good faith and shall use their reasonable respective endeavours to solve amicably the Non-Trading Dispute within sixty (60) Business Days of receipt of the written notice referred to in Section 17.3.1. Each of the Disputing Parties hereby agrees to provide its Board Director with all such information as he reasonably requires in order to enable him to resolve the Non-Trading Dispute.
- 17.3.5 If the Disputing Parties have not resolved a Non-Trading Dispute to the satisfaction of all Disputing Parties within sixty (60) Business Days of receipt of the notice referred to in Section 17.3.1 then the Non-Trading Dispute may be referred to arbitration in accordance with Section 19.

18. Trading Disputes

18.1 **Save to the extent that any dispute, application, determination, arbitration, appeal or equivalent right of referral to a third party is expressly provided for in:**

18.1.1 the Water Industry Act 1991 or the Water Act 2014; or

18.1.2 any Licence or any Appointment; or

18.1.3 the rights, powers, duties, functions or obligations of the Authority or the Secretary of State under the Water Industry Act 1991, the Water Act 2014, any other Law, any Appointment, Licence or otherwise howsoever,

any Trading Dispute will be resolved in accordance with this Section 18, Section 19 and Schedule 9 to the Market Arrangements Code.

18.2 Escalation of Trading Disputes

18.2.1 Where a Trading Dispute arises which relates to any Data Item matter which is subject to the Market Terms including any Code Subsidiary Document, the Disputing Parties shall first raise an enquiry with the Market Operator in accordance with any relevant Working Procedure in place from time to time. If such enquiry is not resolved pursuant to such Working Procedure the following

provisions of this Section 18, Schedule 9 of the Market Arrangements Code and Section 19 shall apply.

- 18.2.2 Subject to Section 18.2.1 above, where a Trading Dispute arises, a Disputing Party or potential Disputing Party that wishes to commence a Trading Dispute (the “Claimant”) shall notify the other Disputing Party(ies) in writing of the existence and subject matter of the Trading Dispute.
- 18.2.3 The Claimant shall organise a meeting in person or by conference call or video-conference of representatives of each of the Disputing Parties. Representatives of each of the Disputing Parties who have authority to resolve the Trading Dispute, including the Contract Managers of a disputing Contracting Wholesaler and a disputing Contracting Retailer will meet in person or by conference call or video conference within ten (10) Business Days of receipt of the written notice referred to in Section 18.2.1 (“Initial TD Meeting”). At such Initial TD Meeting the Disputing Parties shall negotiate in good faith and shall use their respective reasonable endeavours to resolve such Trading Dispute. Any Trading Dispute that cannot be resolved by the Disputing Parties within twenty (20) Business Days of receipt of the written notice referred to in Section 18.2.1 shall be subject to Section 18.3 and Section 19.
- 18.3 Schedule 9 of the Market Arrangements Code contains a Trading Disputes resolution procedure via the Trading Disputes Committee. Subject to Sections 18.2.1, 18.2.2 and 18.2.3, all Trading Disputes shall be raised, dealt with and (subject only to Section 19) decided in accordance with this Section 18 and Schedule 9 of the Market Arrangements Code. No Disputing Party may refer a Trading Dispute to arbitration in accordance with Section 19 unless and until the Trading Dispute has first been so raised, dealt with and decided in accordance with the provisions of this Section 18 and Schedule 9 of the Market Arrangements Code.

19. Reference to arbitration

19.1 Reference to arbitration

- 19.1.1 Subject to Sections 17.1, 17.2.1 and 17.2.2, Section 17.3, Section 18 and Section 19.7, all Disputes between or among Disputing Parties shall be referred to arbitration pursuant to the arbitration rules of The London Court of International Arbitration (“LCIA” and “LCIA Rules”) in force from time to time. The arbitration tribunal shall be constituted in accordance with the LCIA Rules.
- 19.1.2 Each Disputing Party shall advise the Market Operator promptly upon referring any dispute to arbitration pursuant to Section 19.1.1.
- 19.1.3 Where Disputing Parties agree that any such disputed issue is appropriate to be addressed through a Change Proposal under Sections 6 and 7 of the Market Arrangements Code then the Disputing Parties shall follow the Change Proposal process prior to initiating any reference to arbitration under this Section 19.

19.2 Arbitration tribunal

- 19.2.1 The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the LCIA Rules subject to the provisions of this Section 19.2.

- 19.2.2 Within fifteen (15) Business Days of the filing of the response pursuant to Article 2 of the LCIA Rules (the “Response”), the Disputing Parties shall jointly nominate an agreed proposed arbitrator to the LCIA in writing with a copy to all Disputing Parties.
- 19.2.3 In the event that the Disputing Parties fail to agree upon a sole proposed arbitrator within ten (10) Business Days of the filing of the Response, any of the Disputing Parties may apply in writing, with a copy to all Disputing Parties, to the Panel Chairman for the nomination of a sole arbitrator (the “Panel Request”). The Panel Chairman shall nominate a sole arbitrator in writing to the LCIA with a copy to all Disputing Parties within ten (10) Business Days of receipt of the Panel Request.
- 19.2.4 If the Respondent or Respondents to the arbitration proceedings should fail to file a Response, the Arbitration Claimant or in the event there is more than one Arbitration Claimant all of them jointly shall within ten (10) Business Days of the date on which the Response was due to be filed nominate an agreed proposed arbitrator to the LCIA in writing with a copy to all Disputing Parties.
- 19.2.5 If no nomination is transmitted to the LCIA under this Section 19.2 within twenty (20) Business Days of the filing of the Response pursuant to Article 2 of the LCIA Rules, the LCIA shall appoint the sole arbitrator in accordance with the LCIA Rules. Such arbitrator shall have expertise in the provision of retail services in one or more utilities markets.

19.3 **Law and seat of arbitration**

- 19.3.1 Whatever the nationality, residence or domicile of any Disputing Party and wherever the dispute arose the Laws of England and Wales shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be England or Wales, as the case may be, and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.
- 19.3.2 The language of the arbitration shall be English or Welsh, as the case may be.

19.4 **Arbitration decision**

- 19.4.1 The decision of the arbitration tribunal pursuant to a reference under Section 19.1 shall be final and binding on each of the Disputing Parties and the Disputing Parties shall comply with such decision provided that (for the avoidance of doubt) the arbitration tribunal shall not have the power to modify the Wholesale-Retail Code or the Market Arrangements Code or impose any penalty of a financial nature on the Market Operator.
- 19.4.2 The Disputing Parties hereby waive any right to challenge or appeal any award of the arbitration tribunal to the full extent permitted by Law.

19.5 **Related Disputes**

- 19.5.1 The arbitration tribunal appointed in accordance with Section 19.1 shall have the powers referred to in Section 35 of the Arbitration Act 1996 in relation to the consolidation of related proceedings.

- 19.5.2 If a Dispute has been referred to an arbitration tribunal pursuant to this Section 19 and a Related Dispute has also been so referred to an arbitration tribunal for determination any Disputing Party or the Market Operator may request the relevant arbitration tribunals to consolidate the Related Disputes.
- 19.5.3 Within ten (10) Business Days of receiving the request referred to in Section 19.5.2, the first arbitration tribunal appointed in respect of any Related Dispute may, if it considers it appropriate, order consolidation of some or all of the Related Disputes and shall in such circumstances have the authority and power referred to in Section 19.5.4. Any dispute between arbitration tribunals shall be referred to the LCIA for resolution.
- 19.5.4 In the event of the arbitration tribunal ordering consolidation of the Related Disputes in accordance with Section 19.5.3, the arbitration tribunal shall have the authority and power to direct that all matters arising in the relevant Related Disputes are consolidated in whatever manner the arbitration tribunal determines and the Disputing Parties shall thereafter abide by and implement such consolidation and any such direction.
- 19.5.5 In the event that the Related Disputes are consolidated the arbitration tribunal shall determine all the consolidated Related Disputes at the same time.

19.6 Notification of arbitration determinations

- 19.6.1 Each Disputing Party shall ensure that each of the Market Operator and the Authority receives notification of the outcome of the determination by an arbitration tribunal of any Dispute (whether a Trading Dispute or a Non-Trading Dispute) in which the Disputing Party was a Claimant or a Respondent.

19.7 Interim judicial relief

- 19.7.1 By agreeing to arbitration, the Trading Parties do not intend to deprive the courts of England and Wales of their jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of the courts of England and Wales, the arbitration tribunal shall have full authority to grant provisional remedies and to direct the Trading Parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any Trading Party to respect the arbitration tribunal's orders to that effect. In any such judicial action:
- (a) each of the Trading Parties irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of England and Wales for the purpose of any interim injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings, and to the non-exclusive jurisdiction of such courts for the enforcement of any judgment on any award;
 - (b) each of the Trading Parties irrevocably waives, to the fullest extent they may effectively do so, any objection, including any objection to the jurisdiction based on the grounds of forum non conveniens on account of its place of incorporation or domicile or otherwise, which it may now or

hereafter have to the bringing of any such action or proceeding in any courts in England or Wales; and

- (c) each of the Trading Parties irrevocably consents to service of process to its registered office or, if its registered office is not in England, Wales or Scotland, to the address set out in paragraph 4 of Schedule 2 (in the case of the Contracting Retailer) or Schedule 3 (in the case of the Contracting Wholesaler) of the Wholesale Contract by first-class, guaranteed next day delivery, post with delivery confirmation or receipt (for example special delivery).

Part J: General

20. Notices

20.1 Service

20.1.1 Subject to Sections 20.2 and 20.3, all notices to be given to a Party under the Wholesale Contract shall be in writing in English or Welsh as the case may be, and shall be marked for the attention of the person, and delivered by hand (including courier) or sent by first class pre-paid, guaranteed next day delivery, post with delivery confirmation or receipt (for example special delivery) to the address or by e-mail to the or email address in each case detailed for the Party in the Wholesale Contract or as changed in accordance with this Section 20.1.1.

A Party may change the details recorded for it in this Section by notice to the other Party in accordance with this Section 20.1.1.

20.1.2 Subject to Section 20.3, a notice shall be treated as having been received:

- (a) if delivered by hand (including courier) during Delivery Hours, when so delivered; and if delivered by hand outside Delivery Hours, at the next start of Delivery Hours;
- (b) if sent by first class pre-paid post, guaranteed next day delivery, post with delivery confirmation or receipt (for example special delivery), on the later of actual receipt and 9.00 am on the Business Day after posting if posted on a Business Day, and on the later of actual receipt and 9.00 am on the second Business Day after posting if not posted on a Business Day; and
- (c) if sent by e-mail, or any other electronic means during a Business Day it is received on that Business Day and if it is received outside of a Business Day it is received on the following Business Day.

In proving that a notice has been given it shall be conclusive evidence to demonstrate that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

20.2 Formal Notices

20.2.1 In the case of a notice under Section 10 (Default) or Section 11 (Termination), the Parties agree that such notice may not be sent by e-mail, but may be sent only by hand (including courier) or by first class pre-paid, guaranteed next day delivery, post with delivery confirmation or receipt (for example special delivery).

20.2.2 This Section 20 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.

20.2.3 This Section 20 is without prejudice to Section 216 of the Water Industry Act 1991.

20.3 **Market Terms and Operational Terms notices**

- 20.3.1 In the case of a notice or notification referred to in the Market Terms (including CSDs) or Operational Terms (including Forms) such notice or notification may be served in accordance with the relevant requirement in the Market Terms (including CSDs) or Operational Terms (including Forms).

21. **Announcements**

- 21.1.1 Subject as provided below, no public announcement or statement regarding the Wholesale Contract shall be issued or made by either Party unless, prior thereto, the other Party has been furnished with a copy thereof and has approved the same (such approval not to be unreasonably withheld). Neither Party shall be prohibited from issuing or making any public announcement or statement if it is required to do so in order to comply with any applicable Law or the obligations of any recognised stock exchange.

22. **Third party rights**

- 22.1.1 Unless a right of enforcement is expressly provided for in the Wholesale Contract, it is not intended that a third party shall have the right to enforce any term of this Wholesale Contract under the Contracts (Rights of Third Parties) Act 1999.
- 22.1.2 It is intended that the Market Operator shall be entitled to enforce its rights under the Wholesale Contract as a third party under the Contracts (Rights of Third Parties) Act 1999 for the purpose of securing the orderly participation of Trading Parties in the market.
- 22.1.3 Section 4.8 is intended to be enforceable by the Service Provider referred to in Section 4.8.

23. **Rights cumulative**

- 23.1.1 The rights and remedies of the Contracting Wholesaler and the Contracting Retailer in connection with the Wholesale Contract are cumulative and, except as expressly stated in this Wholesale Contract, are not exclusive of and may be exercised without prejudice to any other rights or remedies provided in this Wholesale Contract by Law or equity or otherwise. Except as expressly stated in this Wholesale Contract (or in Law or equity in the case of rights and remedies provided by Law or equity) any right or remedy may be exercised wholly or partially from time to time.

24. **Sub-Contracting**

- 24.1.1 The Contracting Retailer shall be permitted to sub-contract the performance of its duties under Schedule 1 of the Wholesale Contract unless prohibited from doing so by Law. In sub-contracting any duties, the Contracting Retailer shall remain liable for the acts, defaults and omissions of its sub-contractors.
- 24.1.2 The Contracting Wholesaler shall be permitted to sub-contract the performance of its duties under Schedule 1 of the Wholesale Contract unless prohibited from

doing so by Law. In sub-contracting any duties, the Contracting Wholesaler shall remain liable for the acts, defaults and omissions of its sub-contractors.

25. Use of other Party's name

- 25.1.1 The Contracting Retailer shall not make use of or permit anyone else to make use of the registered or unregistered trademarks and service marks, trading names, brand names, devices, styles, emblems or other manifestations associated with the Contracting Wholesaler (or any Affiliated Company of the Contracting Wholesaler), or any element thereof, either alone or in combination with another word or device mark, where such use constitutes an infringement of the Contracting Wholesaler's (or such Affiliated Company's) registered trade mark or common law rights.
- 25.1.2 The Contracting Wholesaler shall not make use of or permit anyone else to make use of the registered or unregistered trademarks and service marks, trading names, brand names, devices, styles, emblems or other manifestations associated with the Contracting Retailer, or any element thereof, either alone or in combination with another word or device mark, where such use constitutes an infringement of the Contracting Retailer's registered trade mark or common law rights.

26. Governing Law

- 26.1.1 The Wholesale Contract shall be governed by and construed in accordance with the Laws of England and Wales.
- 26.1.2 Subject to Sections 17, 18 and 19 of the Business Terms and Schedule 9 of the Market Arrangements Code, the Parties agree that the courts of England or Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute including any non-contractual dispute in connection with these Business Terms and irrevocably submit to the jurisdiction of these courts.

Part K: Data protection

27. Data Protection Act 1998

- 27.1.1 With respect to Market Personal Data, each Party undertakes that it will comply with both its obligations under Data Protection Laws and the arrangements set out in the Market Arrangements Code in the performance of its obligations under the Wholesale Contract.
- 27.1.2 Neither Party shall, in the performance of its obligations under the Wholesale Contract, process Market Personal Data in a manner that will or is likely to result in the other Party breaching its obligations under data protection arrangements as set out in the Market Arrangements Code.
- 27.1.3 Each Party undertakes that, in any case where information to be disclosed by it under the Wholesale Contract may lawfully be disclosed only with the prior consent of the individual to whom the information relates, it will use its reasonable endeavours to obtain such prior consent so as to enable it promptly to perform its obligations under or as envisaged by the Wholesale Contract.

28. Data processors

- 28.1.1 Each Party undertakes to enter into such appropriate arrangements as are necessary in respect of any third party that may be acting as a data processor and/or sub-contractor on its behalf to facilitate compliance of these third parties with Data Protection Laws including specifically having in place any appropriate legal mechanism for the transfer of Market Personal Data outside of the European Economic Area.

Schedule 1A of the Business Terms: Use of Accredited Entities

Requirements for the provision of Metering Activity and Connection Activity by the Contracting Retailer

Introduction

This Schedule 1 Part A of the Business Terms applies where the Contracting Retailer undertakes Metering Activity and Connection Activity

1. Metering Activity and Connection Activity

- 1.1 The Contracting Retailer will (if so permitted by its Water Supply Licence) be able to provide Metering Activity and Connection Activity as more particularly described in the Operational Terms and in accordance with the following:
 - 1.1.1 the Contracting Retailer will not provide Metering Activity in respect of a Supply Point unless it is a Supply Point to which the Contracting Retailer is Registered;
 - 1.1.2 the Contracting Retailer will not provide Connection Activity in respect of a Supply Point which is:
 - (a) Registered to another Contracting Retailer; or
 - (b) Registered to the Contracting Retailer but is a Supply Point in relation to Eligible Premises which has two or more Supply Points at least one of which is Registered to another Contracting Retailer.
- 1.2 When providing Metering Activity or Connection Activity, the Contracting Retailer must:
 - (a) either be certified as an Accredited Entity or engage as the contractor a person certified as an Accredited Entity (being in each case accredited to carry out the relevant category of works); and
 - (b) ensure its actions and instructions do not cause an Accredited Entity to be in violation of their respective obligations under the Contracting Wholesaler's accreditation scheme.
- 1.3 Prior to providing Metering Activity or Connection Activity, the Contracting Retailer must provide the Contracting Wholesaler with a minimum of two (2) months' written notice that it intends to provide Metering Activity or Connection Activity in respect of a Supply Point.
- 1.4 The Contracting Retailer and the Contracting Wholesaler agree that Sections 17, 18 and 19 of the Business Terms shall govern any Dispute regarding the undertaking of Metering Activity or Connection Activity by the Contracting Retailer. For the avoidance of doubt, the provisions of the Wholesale Contract regarding Disputes

are without prejudice to any right of the Contracting Wholesaler, in court proceedings in which the Contracting Wholesaler is a defendant, to bring, or seek to bring, in the Contracting Retailer as a third party on grounds which relate (in whole or in part) to any act, omission or default of the Contracting Retailer or its contractors in relation to the provision of Metering Activity or Connection Activity.

- 1.5 Nothing in the Wholesale Contract shall exclude or limit the liability of either Party for death or personal injury, loss or damage to property resulting from the negligence, default, breach of contract or breach of any statutory duty by that Party in relation to Metering Activity or Connection Activity;

2. **Provision of metering and connection data by Contracting Retailer**

- 2.1 In the course of the provision of Metering Activity and/or Connection Activity by the Contracting Retailer, the Contracting Retailer must comply with the requirements (including timescales) set out in the Operational Terms or elsewhere in the Wholesale Contract (as the case may be) regarding provision of data to the Contracting Wholesaler.
- 2.2 Subject to paragraph 2.3, if the Contracting Retailer fails to comply with its obligations under paragraph 2.1 in respect of any data, the Contracting Wholesaler may recover from the Contracting Retailer any amounts payable by the Contracting Wholesaler to the Market Operator for failure to comply with the requirements set out in the Operational Terms or elsewhere in the Wholesale Contract (as the case may be) regarding provision of such data to the Market Operator.
- 2.3 The Contracting Wholesaler's right to recover an amount from the Contracting Retailer under paragraph 2.2 in respect of any data provided by the Contracting Retailer shall not apply to the extent that the incurring of such penalty or other amount is attributable to the fault or neglect of the Contracting Wholesaler, including where the Contracting Wholesaler has failed to comply with any applicable requirement that it provide such data to the Market Operator within a specified period after the Contracting Wholesaler's receipt of the same from the Contracting Retailer.

Schedule 1B of the Business Terms: Requirements for the provision of Trade Effluent for the provision of Trade Effluent Sampling and Analytical Activity by the Contracting Retailer

Where the Contracting Retailer opts to provide such services by notice to the Contracting Wholesaler under paragraph 3.1(g) below

1. **Scope of Trade Effluent Sampling and Analytical Activity**

1.1 The Contracting Retailer will provide:

- (a) a Trade Effluent Scheduling, Sampling, Courier and Reporting Service ("TE Service A"); or
- (b) a Trade Effluent Scheduling, Sampling, Courier, Analytical and Reporting Service ("TE Service B"),

to the Contracting Wholesaler, in accordance with, and subject to, the provisions of this Schedule of the Business Terms.

1.2 For the avoidance of doubt, the Contracting Wholesaler will continue to be entitled to carry out any sampling, monitoring, analysis, investigations or enforcement that it deems necessary in relation to Trade Effluent at any Discharge Point for the performance of its statutory duties, and nothing in this Schedule of the Business Terms shall prejudice or affect the rights, remedies or powers of the Contracting Wholesaler under or pursuant to any Trade Effluent Consent.

1.3 A Contracting Retailer will only be able to provide TE Service A or TE Service B at DPIDs to which it is registered under Schedule 1 of the Wholesale Contract.

1.4 Neither TE Service A nor TE Service B includes the taking of Trade Effluent samples other than during Sampling Visits. The Contracting Wholesaler will not be obliged to include samples taken outside of Sampling Visits in any calculations or reports undertaken by it in relation to compliance with any Trade Effluent Consent.

2. **Contracting Retailer responsibilities prior to commencing the provision of TE Service A and TE Service B**

2.1 Prior to commencing the provision of TE Service A or TE Service B, the Contracting Retailer will:

- (a) obtain the written permission of its Non-Household Customer allowing the Contracting Retailer (or its employees, contractors, agents or representatives) safe and unobstructed access to their premises and designated Discharge Points in order to take samples of Trade Effluent to

fulfil the requirements specified within this Schedule of the Business Terms;

- (b) obtain the written permission of its Non-Household Customer to release to the Contracting Wholesaler any data or other information obtained through the carrying out of TE Service A or TE Service B to fulfil the requirements specified within this Schedule of the Business Terms;
- (c) comply with the accreditation requirements specified within Appendix 1 of the Business Terms (including obtaining the confirmation from the Contracting Wholesaler referred to in paragraph 3 of Appendix 1);
- (d) provide the Contracting Wholesaler with documentary evidence of the documentation stated in (a) and (b) above;
- (e) obtain the Contracting Wholesaler's approval to its proposed schedule of Sampling Visits at a Discharge Point in accordance with paragraph 1 of Appendix 2 of the Business Terms; and
- (f) notify the Contracting Wholesaler in accordance with paragraph 3.1(g) below.

3. **Contracting Retailer obligations in providing TE Service A and TE Service B**

3.1 The Contracting Retailer will:

- (a) where providing TE Service A:
 - (i) adhere to the service requirements specified in Appendix 2; and
 - (ii) provide such service in such manner as ensures that the service level specifications in Appendix 8, Table 1 are met;
- (b) where providing TE Service B:
 - (i) adhere to the service requirements specified in Appendix 2 (other than paragraph 8) and Appendix 3; and
 - (ii) provide such service in such manner as ensures that the service level specifications in Appendix 8, Table 1 and Table 2 are met;
- (c) provide all assistance that the Contracting Wholesaler may reasonably require from time to time with respect to resolving operational problems in connection with the provision of TE Service A or TE Service B;
- (d) comply with the accreditation requirements specified within Appendix 1;
- (e) when carrying out TE Service A or TE Service B, adhere at all times to the requirements set out in the Licence or Appointment as applicable;
- (f) adhere to the service review requirements set out in Appendix 5;

- (g) provide the Contracting Wholesaler with a minimum of two (2) months' notice that it intends to provide TE Service A or TE Service B at a Discharge Point;
- (h) provide the Contracting Wholesaler with a minimum of twenty-eight (28) days' notice that it will cease providing TE Service A or TE Service B at a Discharge Point, provided that where such cessation is by reason of the Contracting Retailer's Non-Household Customer becoming a Non-Household Customer of another Contracting Retailer by a transfer under Schedule 1 of the Wholesale Contract, the foregoing reference to twenty-eight (28) days' notice shall be deemed to be a reference to five (5) Business Days' notice;
- (i) at all times keep the dates and other details of planned Sampling Visits confidential from the Non-Household Customer; and
- (j) be responsible for, and release and indemnify the Contracting Wholesaler on demand from and against, any liability for losses arising from death or personal injury, loss of or damage to property, or third party actions, claims or demands which arise out of or in consequence of the presence of the Contracting Retailer or its employees, agents or contractors on a Non-Household Customer's premises for the purposes of or in connection with the sampling, monitoring or analysis of Trade Effluent pursuant to this Schedule of the Business Terms.

3.2 Any notice given by the Contracting Retailer under (g) or (h) above shall not be capable of being withdrawn, save with the agreement of the Contracting Wholesaler.

3.3 The provisions of Sections 14.1 and 14.2 of the Business Terms shall not limit or otherwise affect the operation of (j) above, and the provisions of (j) shall survive the termination of the Wholesale Contract.

3.4 Without prejudice to Section 11.1 of the Wholesale Contract, in all dealings with Non-Household Customers regarding Trade Effluent, the Contracting Retailer:

- (i) shall not hold itself out as being entitled to bind the Contracting Wholesaler in any way;
- (ii) shall indicate clearly in all correspondence and dealings that the Contracting Retailer is acting on its own account and not represent itself to be the agent of the Contracting Wholesaler or incur any liability on behalf of the Contracting Wholesaler; and
- (iii) shall not make or give any promise, representation, statement or undertaking (including any statement regarding the intent, belief, opinion, policy or expectations of the Contracting Wholesaler) which may be construed as made or given on behalf of the Contracting Wholesaler.

4. The Contracting Wholesaler's Obligations

4.1 The Contracting Wholesaler will:

- (a) provide the Contracting Retailer with a Trade Effluent Sampling Plan for each Discharge Point where TE Service A or TE Service B is, or is to be, provided by the Contracting Retailer. The Trade Effluent Sampling

Plan will detail or make provision for the matters referred to in paragraph 1 of Appendix 2 of the Business Terms and (where appropriate) paragraph 1 of Appendix 3 of the Business Terms;

- (b) provide the Contracting Retailer with confirmation of the location of designated Discharge Points within the Non-Household Customer's premises;
- (c) provide the Contracting Retailer with other associated information reasonably required by the Contracting Retailer to facilitate the provision of TE Service A or TE Service B;
- (d) adhere to the service review requirements set out in Appendix 5 of the Business Terms; and
- (e) adhere to the payment requirements set out in Appendix 7 of the Business Terms.

5. **Contacts**

Unless otherwise stated within this Schedule of the Business Terms, key contacts of each Party in relation to the provision of TE Service A or TE Service B are set out in Appendix 4 of the Business Terms. Each Party may from time to time, by notice to the other Party, remove any person as a designated key contact of the Party giving the notice, or designate some other person as a key contact of such Party. Unless otherwise stated, and notwithstanding Section 10 of the Wholesale Contract and Section 20 of the Business Terms, any communication with the Contracting Wholesaler under or for the purposes of this Schedule 1B of the Business Terms (including the giving of any notice or the provision of any report or other document) will be sent to a designated key contact of the Contracting Wholesaler.

6. **Sub-contracting**

The Contracting Retailer may sub-contract any of its obligations under this Schedule 1B of the Business Terms, subject to Appendix 1 of the Business Terms. The Contracting Retailer shall be liable and continue to be liable for all and any acts or omissions of any sub-contractor, and the sub-contracting shall not affect any of the provisions of this Schedule 1B of the Business Terms or the obligations of the Contracting Retailer. Unless the context otherwise requires, references to the Contracting Retailer in this Schedule 1B of the Business Terms include a reference to the sub-contractor.

Schedule 1B of the Business Terms: Appendix 1 - Accreditation requirements, TE Service A and TE Service B

1. The Contracting Retailer will ensure that at all times it (or the sub-contractor providing services to the Contracting Retailer), and the specific staff utilised to undertake services, are accredited for sampling (or analysis, as the case may be) of Trade Effluent to an appropriate standard equivalent to the Contracting Wholesaler Scientific Services and its staff, with a scope of accreditation for analysis of Trade Effluent covering the same or a wider range of methods as that of the Contracting Wholesaler's Scientific Services.
2. The accredited sampling procedures must be MCERTS or equivalent.
3. The Contracting Retailer must provide to the Contracting Wholesaler documentary evidence of accreditation of the Contracting Retailer (or its sub-contractor) and copies of its (or its sub-contractor's) accredited sampling procedures prior to undertaking the service.
4. The Contracting Retailer must receive written confirmation from the Contracting Wholesaler that it (or its sub-contractor) has the necessary accreditation before it can commence the provision of services.
5. The Contracting Retailer will also be required to provide documentary evidence of the scope of its (or its sub-contractor's) accreditation on demand to the Contracting Wholesaler and inform the Contracting Wholesaler of the findings of all external and internal audits, including but not limited to the details of any improvement action necessary to uphold such accreditation. This information will be provided to the Contracting Wholesaler within twenty-eight (28) days of the original publication date of the audit findings.
6. The Contracting Wholesaler reserves the right to inspect or examine, and take copies of, any documentation in relation to the accreditation of the Contracting Retailer (or the sub-contractor providing services to the Contracting Retailer) at any time. The Contracting Retailer will produce such documentation to the Contracting Wholesaler (or its employees, agents or representatives) upon reasonable notice.

Schedule 1B of the Business Terms: Appendix 2 - Sampling, Service Requirements

1. Sampling General

- 1.1 The Contracting Wholesaler will provide the Contracting Retailer with a Trade Effluent Sampling Plan including sample point locations for each Discharge Point which are subject to the provision of services by the Contracting Retailer.
- 1.2 Each Trade Effluent Sampling Plan will cover a period running from 1 April in a calendar year (or, if different, in the case of the first Trade Effluent Sampling Plan, the commencement date for TE Service A or TE Service B) until 31 March in the following calendar year.
- 1.3 The Trade Effluent Sampling Plan will include the sampling frequency, i.e. the number of samples to be taken each year, and the name and contact details of the Contracting Wholesaler's Trade Effluent Quality Adviser responsible for monitoring the premises. the Contracting Wholesaler may also provide additional information regarding the sampling arrangements at each site e.g. whether an automatic sampler has been provided by the Non-Household Customer, if the Contracting Retailer is to undertake 24-hour composite sampling utilising a portable automatic sampler, or if there are any seasonal variations in sampling requirements.
- 1.4 Within ten (10) Business Days of receiving the Trade Effluent Sampling Plan and additional information from the Contracting Wholesaler, or any subsequent annual update of such Trade Effluent Sampling Plan, the Contracting Retailer will produce and submit to the Contracting Wholesaler a schedule of Sampling Visits for the Discharge Point. The schedule will provide the anticipated dates that the samples will be taken. Samples should be taken from a Discharge Point at regular intervals over the year (subject to any seasonal variations in sampling requirements notified by the Contracting Wholesaler) and, so far as practicable, should not be taken on the same day of the week or at the same time of day. The Contracting Retailer must obtain the Contracting Wholesaler's approval of the sampling schedule in advance of commencing sampling and must inform the Contracting Wholesaler of any subsequent changes it intends making to the schedule. The Contracting Wholesaler may accompany the Contracting Retailer at any Sampling Visit.
- 1.5 The Contracting Wholesaler may change the Trade Effluent Sampling Plan at any time, notifying the Contracting Retailer of such changes in which case the Contracting Retailer will produce and submit to the Contracting Wholesaler a revised schedule of Sampling Visits within twenty-eight (28) days of the Contracting Wholesaler's notification. The Contracting Retailer must obtain the Contracting Wholesaler's approval of any revised schedule in advance of implementing its terms. As a matter of course, the Contracting Wholesaler will provide the Contracting Retailer with annual updates to the Trade Effluent Sampling Plan and associated information as appropriate.
- 1.6 The Contracting Retailer shall use its best endeavours to adhere to the intended dates of the Sampling Visits set out in its sampling schedule. In any case, samples must be taken not earlier than two (2) Business Days before, and not later than two (2) Business Days after, the scheduled date. If for any reason the Contracting Retailer is

unable to take the sample within that period, it must contact the Contracting Wholesaler and agree an alternative date for the Sampling Visit. Such alternative date must be within ten (10) days after the scheduled date. The Contracting Retailer must also inform the Contracting Wholesaler of the failure to take a sample through the submission of an observation report to the Contracting Wholesaler as set out in paragraph 3 below.

- 1.7 If, during the course of a Sampling Visit to a Non-Household Customer's premises or through any other contact with the Non-Household Customer, the Contracting Retailer becomes aware of any change to the company name or the company contact details, the Contracting Retailer shall notify the Contracting Wholesaler within five (5) days and the Contracting Wholesaler shall amend the Trade Effluent Sampling Plan as appropriate.

2. **Transportation**

Samples must be taken from the designated Discharge Points notified by the Contracting Wholesaler and transported to the designated analytical laboratory according to the accredited procedures previously supplied to the Contracting Wholesaler. This normally means that samples are submitted to the analytical laboratory on the same day that they are taken and in any case within 24 hours of the Sampling Visit. The Contracting Retailer must ensure that samples transported to the laboratory are stored in the appropriate conditions. This generally means that the samples must be stored between 2°C and 8°C in transit.

3. **Sampling observation reports**

In the course of each Sampling Visit, the Contracting Retailer will carry out site-specific observations in accordance with its accredited procedures or where specifically required by the Contracting Wholesaler under the Trade Effluent Sampling Plan, including the site-specific observations listed in the Trade Effluent Sampling Code of Practice. The Contracting Retailer must record any site-specific observations which it carries out under this paragraph, and, within five (5) Business Days of the date of each Sampling Visit, it must submit to the Contracting Wholesaler a Sampling Observation Report containing details thereof. This paragraph 3 is without prejudice to the provisions of the next following paragraph.

4. **Immediate contact**

- 4.1 If in the course of a Sampling Visit the Contracting Retailer observes any discharge to sewer, event, equipment defect or act or omission by the Non-Household Customer which in its opinion constitutes:
 - 4.1.1 a breach or an anticipated or threatened breach of a Trade Effluent Consent; and/or
 - 4.1.2 an event which could have a significant detrimental impact on the Sewerage System or the Contracting Wholesaler's staff,
 - 4.1.3 it must immediately contact the Contracting Wholesaler's Trade Effluent Quality Adviser associated with that Discharge Point using the telephone contact details previously provided. It must then submit its Sampling

Observation Report to the Contracting Wholesaler's Trade Effluent Quality Adviser within 24 hours of that initial contact.

4.2 In considering and determining whether it requires to contact the Contracting Wholesaler under this paragraph, the Contracting Retailer shall use that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in similar sampling work.

5. **Items of data required for sampling**

5.1 The following items of data are required for sample reporting:

- Contracting Retailer ID/Name
- Sample Point DPID
- Sample ID
- Date Sample Taken
- Time Sample Taken
- Name of Person Taking Sample
- On-Site pH Test Result (if required)
- On-Site Temperature (if required)
- Observation Comments
- Date and Time Sample Logged into Laboratory

5.2 The Contracting Retailer must ensure that the above parameters are recorded on a Laboratory Information Management System (LIMS) and transferred to the Contracting Wholesaler within 48 hours of the Sampling Visit, by means of the designated IT interface.

6. **Sample submission to the Contracting Wholesaler scientific services (TE Service A)**

6.1 Where the Contracting Retailer chooses not to provide analytical services, i.e., is providing TE Service A, it will be provided with sample labels and sample worksheets by the Contracting Wholesaler. The Contracting Retailer must affix these sample labels and must deliver samples and associated worksheets to the Contracting Wholesaler at the address specified in writing by the Contracting Wholesaler during Business Hours.

6.2 For each sample submitted the sample worksheet will include the following details:

- Contracting Retailer ID/Name
- Sample Point DPID Sample ID

- Date Sample Taken Time Sample Taken
- Name of Person Taking the Sample On-Site pH Test Result (if required) On-Site Temperature (if required) Observation Comments.

6.3 All Trade Effluent samples taken by the Contracting Retailer during each Sampling Visit must be submitted for analysis to the Contracting Wholesaler Scientific Services' laboratory in bottles that are suitable for the analysis required. Specific bottling requirements are specified in the Trade Effluent Sampling Code of Practice.

7. Performance reporting

7.1 The Contracting Retailer will provide the Contracting Wholesaler with the reports detailed below:

- Daily summary of samples taken in the previous 24 hours (to be provided by noon of each day);
- Monthly summary of samples scheduled and samples taken including reasons for missed/cancelled samples; and
- Monthly summary list of Sample Observation Reports submitted to the Contracting Wholesaler under paragraph 3 above.

7.2 Except where otherwise stated, these reports will be provided within five (5) Business Days of the end of the relevant month.

7.3 The format of the above reports will be specified by the Contracting Wholesaler.

Schedule 1B of the Business Terms: Appendix 3 - Analysis - Service requirements

1. General

- 1.1 The Contracting Wholesaler will provide the Contracting Retailer with a list of determinands to be analysed at each Discharge Point as part of the Trade Effluent Sampling Plan.
- 1.2 The Contracting Retailer's analytical laboratory should utilise a Laboratory Information Management System (LIMS) to track a sample's progress and to enable effective reporting.

2. Early warning of determinand Failures

- 2.1 Details on required reports are listed in paragraph 3 below, but must include the ability to provide the Non-Household Customer by telephone or other direct contact, and the Contracting Wholesaler by electronic means, with early warning of determinand failures as soon as possible and in any case within one (1) Business Day of the completion of the specific determinand analysis.

3. Items of data required for sample analysis reporting

- 3.1 The following items of data are required for sample analysis reporting:

- LICENSEE ID/Name
- Analytical Laboratory ID
- Sample Point DPID
- Sample ID
- Date Sample Taken
- Time Sample Taken
- Name of Person Taking Sample
- On-Site pH Test Result (if required)
- On-Site Temperature (if required)
- Observation Comments
- Date and Time Sample Logged into Laboratory
- Result and Unit of Measure for each individual determinand
- Date/Time Analysis Completed for each individual determinand

- Date/Time Analysis Authorised for each individual determinand
- Date/Time Sample Authorised by the laboratory
- Date/Time Analysis Sent to the Contracting Wholesaler

3.2 The Contracting Retailer must ensure that the above parameters are recorded on a Laboratory Information Management System (LIMS) and transferred to the Contracting Wholesaler within 48 hours of the completion of laboratory analysis of the sample by means of the designated IT interface.

3.3 The Contracting Retailer’s laboratory will cooperate with the Contracting Wholesaler in any subsequent investigation into specific sample test results.

4. Turnaround times for analysis

4.1 The Contracting Retailer will complete analysis within the turnaround times as detailed below:

Analysis	Turnaround (days from date sample received into Contracting Retailer’s analytical laboratory)
pH	6
Ammonia	6
COD	6
TSS	6
BOD	7
Pesticides	15
All other parameters	10

5. Performance reporting

5.1 The Contracting Retailer will provide the Contracting Wholesaler with the reports detailed below:

- Monthly summary of the status of samples active within the laboratory i.e. submitted but not complete or authorised;
- Monthly summary of compliance against turnaround times; and
- Monthly summary of laboratory quality control statistics.

5.2 Except where otherwise stated, these reports will be provided within five (5) Business Days of the end of the relevant month.

5.3 The format of the above reports will be specified by the Contracting Wholesaler.

Schedule 1B of the Business Terms: Appendix 4 - Key contacts

1. Subject to paragraph 5 of Schedule 1B of the Business Terms, the following persons have been designated as key contacts to provide information and support in relation to the provision of TE Service A and TE Service B.

Contracting Wholesaler		
••	••	••
••	••	••
••	••	••
Contracting Wholesaler Contact Centre for any out-of-hours communication		••

Contracting Retailer	
Contracting Retailer Sampling Manager	••
Contracting Retailer Laboratory Manager (where TE Service B is undertaken)	••
Out-of-Hours Contact	••

Schedule 1B of the Business Terms: Appendix 5 - Service review

1. **Contacts**

There will be regular contract review meetings between the Contracting Retailer and the Contracting Wholesaler. A named contact of the Contracting Retailer will be designated to liaise with the Contracting Wholesaler.

2. **Monitoring meetings**

2.1 The contacts listed in paragraph 1 above will attend Monitoring Meetings that will be held to assess general progress in provision of TE Service A or TE Service B. The frequency of the meetings will be dependent on the number of DPIDs that the Contracting Retailer is providing the services to, but in any case will be no less frequent than annually.

2.2 The agenda for the Monitoring Meetings will include:

- the Contracting Retailer's general performance in providing services;
- the Contracting Retailer's performance against the service level specifications in Appendix 8 of the Business Terms; and
- a review of performance reports required under Appendix 2, paragraph 7 of the Business Terms and Appendix 3, paragraph 5 of the Business Terms (as appropriate), including agreement on corrective action to be taken, where performance is of concern and/or where service levels are not being achieved.

2.3 Actions from Monitoring Meetings are to be recorded and agreed post-meeting.

3. **Escalation**

3.1 Should actions agreed and recorded at the Monitoring Meetings not be completed to the satisfaction of either the Contracting Wholesaler or the Contracting Retailer, then the issue will be escalated to a representative of the Contracting Retailer and a representative of the Contracting Wholesaler who have the authority to resolve the issue.

3.2 If the issue remains unresolved then the Contracting Wholesaler or the Contracting Retailer may initiate termination proceedings as specified in Appendix 6.

Schedule 1B of the Business Terms: Appendix 6 - Termination of TE Service A or TE Service B

1. Termination by the Contracting Wholesaler

- 1.1 Subject to the provisions of this Appendix, the Contracting Wholesaler may terminate the provision of TE Service A or TE Service B for any material breach of the terms or conditions set out in this Schedule 1B of the Business Terms. Material breach for the purposes of this Schedule 1B of the Business Terms is defined as any of the following events:
- (a) failure by the Contracting Retailer to comply with any of its obligations specified or referred to in paragraph 2 of this Schedule of the Business Terms;
 - (b) persistent failure by the Contracting Retailer to comply with any of its obligations specified or referred to in sub-paragraphs (a) and (b) of paragraph 3 of this Schedule of the Business Terms, or any failure by the Contracting Retailer to comply with any of those obligations where such failure has a material and adverse effect on the Contracting Wholesaler's ability to carry out the activities or perform the statutory duties or functions referred to in the second sub-paragraph of paragraph 1 of this Schedule of the Business Terms; and/or
 - (c) failure by the Contracting Retailer to comply with any of its obligations specified or referred to in sub- paragraphs (c) to (j) (inclusive) of paragraph 3 of this Schedule of the Business Terms.
- 1.2 The Contracting Wholesaler may also terminate the provision of TE Service A or TE Service B if any change in any Law causes the Contracting Retailer to be unable to comply with all or a material part of its obligations under this Schedule 1B of the Business Terms.
- 1.3 Where the Contracting Wholesaler considers it has grounds for termination, it will send an intended notice of termination to the Contracting Retailer, specifying the grounds for reaching such decision. Upon receipt of the notice, the Contracting Retailer will have ten (10) Business Days to respond to the Contracting Wholesaler, making any representations regarding the Contracting Wholesaler's notice. Such representations may include confirmation by the Contracting Retailer of the corrective action that it intends taking to rectify any material breach which has occurred. The Contracting Wholesaler must act reasonably at all times in considering such representations.
- 1.4 Within ten (10) Business Days of receiving the Contracting Retailer's representations, the Contracting Wholesaler will respond in writing to the Contracting Retailer:
- (a) enclosing a final notice of termination confirming the effective date of termination of the provision of TE Service A or TE Service B by the Contracting Retailer. The date of termination will be no less than twenty-

eight (28) days from the date of issue of the intended notice of termination;
or

(b) confirming that the Contracting Wholesaler is willing to accept the representations made by the Contracting Retailer and notifying any consequential changes in the status of the intended notice of termination and any conditions which the Contracting Wholesaler may reasonably apply.

1.5 If the Contracting Retailer fails to make any representations within the specified period of ten (10) Business Days, the Contracting Wholesaler may, within ten (10) Business Days following expiry of such period, send a final notice of termination to the Contracting Retailer confirming the effective date of termination for provision of TE Service A or TE Service B by the Contracting Retailer, which date shall be no less than twenty-eight (28) days from the date of issue of the intended notice of termination. If the Contracting Wholesaler does not serve a final notice within the specified period, the intended notice of termination will lapse.

1.6 For the avoidance of doubt the Contracting Retailer will remain responsible for the provision of TE Service A or TE Service B up to the date of termination.

2. Termination by the Contracting Retailer

2.1 The Contracting Retailer may terminate the provision of TE Service A or TE Service B upon giving the Contracting Wholesaler notice in accordance with paragraph 3(h) of this Schedule 1B of the Business Terms.

2.2 For the avoidance of doubt the Contracting Retailer will remain responsible for the provision of TE Service A or TE Service B up to the date of termination.

3. Supplemental

3.1 Termination of the provision of TE Service A or TE Service B under this Schedule 1B of the Business Terms pursuant to paragraph 1 or 2 above shall not affect the operation or continued operation of the other provisions of the Wholesale Contract.

3.2 The termination rights under paragraphs 1 and 2 above are without prejudice to the rights of the Parties to terminate the Wholesale Contract under Section 14 of the Business Terms.

3.3 For the avoidance of doubt, if the Wholesale Contract is terminated under Section 14 of the Business Terms, the provision of TE Service A or TE Service B shall cease immediately upon termination.

Schedule 1B of the Business Terms: Appendix 7 - Terms of payment

- 1.1 The Contracting Wholesaler will pay the Contracting Retailer charges for the provision of TE Service A and TE Service B in accordance with this Schedule 1B and Section 9 of the Business Terms.
- 1.2 For the avoidance of doubt, the Contracting Wholesaler will pay the Contracting Retailer by means of the provision of a credit against the respective Primary Charge, in accordance with the Wholesale Tariff Document in force from time to time.
- 1.3 No charge will be payable by the Contracting Wholesaler in respect of (a) the taking, transporting, reporting upon or analysing of a sample of Trade Effluent taken other than during a Sampling Visit, or (b) a Sampling Visit during which no sample of Trade Effluent is taken.

Schedule 1B of the Business Terms: Appendix 8 - Service level specifications

1. Service level specifications for provision of TE Service A and TE Service B

- (a) A schedule of sampling visits must be produced under Appendix 2, paragraph 1 of the Business Terms within ten (10) Business Days of receiving a Trade Effluent Sampling Plan from the Contracting Wholesaler.
- (b) Sampling Visit must be made not earlier than two (2) Business Days before, and not later than two (2) Business Days after, the date set out in the sampling schedule.
- (c) Samples of Trade Effluent must be delivered to the designated analytical laboratory within 24 hours of completion of the Sampling Visit.
- (d) Any data items required under Appendix 2, paragraph 5 must be provided to the Contracting Wholesaler via a designated IT interface within 48 hours of completion of the Sampling Visit.
- (e) The Performance Reporting requirements set out in Appendix 2, paragraph 7 must be adhered to.

2. Further service level specifications for provision of TE Service B

- (a) Early warning of determinand failures must be notified to the relevant Non-Household Customer and the Contracting Wholesaler (electronically) within one (1) Business Day of completion of the specific determinand analysis.
- (b) Any data items required under Appendix 3, paragraph 3 of the Business Terms must be provided to the Contracting Wholesaler via a designated IT interface within 48 hours of completion of the laboratory analysis of the relevant sample.
- (c) The analysis turnaround times set out in Appendix 3, paragraph 4 of the Business Terms must be adhered to.
- (d) The performance reporting requirements set out in Appendix 3, paragraph 5 of the Business Terms must be adhered to.

Schedule 2A of the Business Terms: Cash Security Account

This Schedule of the Business Terms sets out the key terms that are required to be included in any Cash Security Account Agreement between the Contracting Wholesaler and the Contracting Retailer ("Schedule 2A Key Terms").

The Cash Security Account Agreement entered into between the Parties should also be substantially in the form of the template Cash Security Account Agreement set out in this Schedule of the Business Terms.

Key Terms

1. The Cash Security Account shall be either a new account opened in the name of the Contracting Wholesaler or be an existing account in the name of the Contracting Wholesaler in both cases with a member bank of the national cheque clearing system;
2. be entered into in relation to the Primary Charge payment obligations of the Contracting Retailer but no other obligations under the Wholesale Contract;
3. the Cash Security Account shall be a sterling bank account and all payments to and from the Cash Security Account shall be in sterling;
4. all right, title and interest in and to any Eligible Credit Support, which the Contracting Retailer transfers to the Contracting Wholesaler under the terms of this Cash Security Account Agreement shall vest in the recipient Contracting Wholesaler free and clear of any liens, claims, charges or encumbrances or any other interest of the Contracting Retailer or of any third person;
5. the Cash Security Account Agreement is a form of Eligible Credit Support provided by the Contracting Retailer to the Contracting Wholesaler to meet its obligations under Section 9.11. For the avoidance of doubt, any cash deposited by the Contracting Retailer under the terms of the Cash Security Account Agreement may not be used as a primary means of invoice payment by the Contracting Retailer who shall pay all invoices in accordance with the Business Terms;
6. only the Contracting Wholesaler will have the right to withdraw sums credited to the Cash Security Account;
7. the Contracting Wholesaler, following written request at any time by the Contracting Retailer, shall promptly transfer any Excess Eligible Credit Support Amount to the Contracting Retailer. Save as set out in this Schedule 2A of the Business Terms and Sections 9.11- 9.13, the Contracting Retailer shall not be entitled to request that funds deposited in the Cash Security Account be returned to it;
8. the Cash Security Account shall accrue interest at the Bank Base Rate for each day it is held by the Contracting Wholesaler. The amount of interest accrued since the last Credit Support Notice shall be set out in each Credit Support Notice and shall at the election of the Contracting Retailer be:
 - (a) added to the cash balance held as Eligible Credit Support and become part of that Eligible Credit Support; or
 - (b) returned to the Contracting Retailer; and

all costs, fees and expenses in respect of the management of the Cash Security Account shall be payable by the Contracting Wholesaler.

Schedule 2A of the Business Terms: Cash Security Account Agreement Template

Whereas

- A. The Contracting Wholesaler, has entered into a Wholesale Contract dated [insert date] with the Contracting Retailer (such contract and its schedules together with confirmations exchanged between the Contracting Wholesaler and the Contracting Retailer pursuant thereto, in each case as amended from time to time, the "**Contract**");
- B. The credit support requirements contained within the Contract require the Contracting Retailer to provide Eligible Credit Support as defined within the Business Terms, and with that being the case;
- C. The Contracting Retailer has agreed to provide cash security in favour of the Contracting Wholesaler on the terms of this Cash Security Account Agreement to satisfy all or part of the credit support requirements.

1. Definitions and Interpretation

- 1.1. **Definitions:** Unless the context otherwise requires, terms not otherwise defined in this Cash Security Account Agreement shall have the meaning ascribed to them in the Wholesale Contract as at the date of this Cash Security Account Agreement.
- 1.2. **Interpretation:** Headings and titles are for convenience only and do not affect the interpretation of this Cash Security Account Agreement. Unless otherwise described, references in this Cash Security Account Agreement to sections are to sections of this Cash Security Account Agreement. References to "transfer" in this Cash Security Account Agreement mean, in relation to cash, payment.

2. Cash Security Account

- 2.1 The Contracting Wholesaler shall either open and maintain a new account, or nominate and maintain an existing account both to be in the name of the Contracting Wholesaler to be used, for the purposes of this Schedule 2A of the Business Terms, which shall be denominated in sterling with a member bank of the national cheque clearing system, the ("**Cash Security Account**"). The Contracting Wholesaler is not required to, (although it may choose to) open and maintain a separate Cash Security Account for each Contracting Retailer that may, from time to time, be required to post Eligible Credit Support in the form of cash denominated in sterling to it.
- 2.2 The Contracting Wholesaler will provide the account number, sort code and name of the bank with whom the account is held to the Contracting Retailer, prior to the first request for a transfer to allow the Contracting Retailer to verify that the bank is a member of the national cheque clearing system.
- 2.3 Only the Contracting Wholesaler will have authority to make withdrawals from the Cash Security Account.

3. Credit Support Notice

- 3.1 The Contracting Wholesaler shall provide to the Contracting Retailer within five (5) Business Days of the issue by the Market Operator of the P1 Settlement Report, a Credit Support Notice, in the format specified in Schedule 4 to the Business Terms.

4. Payment of Cash Collateral

- 4.1 By no later than ten (10) Business Days from the issue by the Market Operator of the P1 Settlement Report setting out the Provisional Monthly Charge, the Contracting Retailer must transfer the required amount of cash to the Cash Security Account for the following Invoice Period calculated using the latest available P1 Settlement Report, such that the total aggregated amount of Eligible Credit Support and/or Alternative Eligible Credit Support, is at least equal to the Credit Support Amount.

5. Excess Cash Collateral

- 5.1 Where a Contracting Wholesaler notifies a Contracting Retailer in a Credit Support Notice that it is holding an Excess Eligible Credit Support Amount then at the option of the Contracting Retailer:
- (a) the Contracting Wholesaler shall continue to hold the Excess Eligible Credit Support Amount; or
 - (b) in the case of cash, it shall be returned promptly to the Contracting Retailer upon its written request.

6. Transfer of Title, Representation and No Security Interest

- 6.1 Each of the Contracting Wholesaler and the Contracting Retailer agrees that, all right, title and interest in and to any cash which it transfers to the other Party under the terms of this Cash Security Account Agreement will vest in the Contracting Wholesaler free and clear of any liens, claims, charges or encumbrances or any other interest of the transferor or of any third person.
- 6.2. Each Party represents to the other Party (which representation is deemed to be repeated on each day on which it transfers cash) that it is the sole owner of or otherwise has the right to transfer all such cash to the other Party under this Cash Security Account Agreement, free and clear of any security interest, lien, encumbrance or other restriction.
- 6.3. Nothing in this Cash Security Account Agreement is intended to create or does create in favour of either Contracting Wholesaler any mortgage, charge, lien, pledge, encumbrance or other security interest in any cash or other property transferred by one Party to the other Party under this Cash Security Account Agreement.

7. Interest Income on Cash

- 7.1 The Cash Security Account shall accrue interest at the Bank Base Rate for each day from the day cash is deposited until it is returned to the Contracting Retailer, or the Contracting Wholesaler no longer has an obligation to return the cash deposited, whichever is later. The amount of interest accrued since the last Credit Support Notice

shall be set out in each Credit Support Notice and shall at the election of the Contracting Retailer be:

- (a) added to the cash balance held as Eligible Credit Support and become part of that Eligible Credit Support; or
- (b) returned to the Contracting Retailer at its written request.

8. Costs and Expenses

8.1 All costs, fees and expenses in respect of the management of the Cash Security Account shall be payable by the Contracting Wholesaler.

9. Termination of the Agreement

9.1 In the event of termination of the Contract, the Contracting Wholesaler shall determine the amount of all Eligible Credit Support deposited under this Cash Security Account Agreement as at the termination date. At the same time, all claims of the Parties for the transfer of any Eligible Credit Support amount pursuant to section 4 or section 5 shall expire.

10. Expenses

10.1 Each Party will pay its own costs and expenses in connection with performing its obligations under this Cash Security Account Agreement, including, without limitation for negotiating the terms of or enforcing its rights in relation to this Cash Security Account Agreement and neither Party will be liable for any such costs and expenses incurred by the other Party.

11. Bank Accounts

11.1 Transfers of cash pursuant to Section 4 and Section 5 as well as payments of interest shall be effected to the following accounts:

Contracting Wholesaler:

Bank:

Account number:

Swift:

Contracting Retailer:

Bank:

Account number:

Swift:

12. Assignment and Transfer

- 12.1 Neither Party may assign or transfer any of its rights or obligations under this Cash Security Account Agreement without the prior written consent of the other, such consent not to be unreasonable withheld, delayed or caveated.

13. Law and Jurisdiction

- 13.1 This Cash Security Account Agreement and all matters arising from or connected with it are governed by, and shall be construed in accordance with, the law of England and Wales.
- 13.2 The courts of England and Wales have exclusive jurisdiction to settle any dispute (including any non-contractual dispute) arising from or connected with this Cash Security Account Agreement (including a dispute regarding the existence, validity or termination of this Cash Security Account Agreement) or the consequences of its nullity. The Parties agrees that the courts of England and Wales are appropriate and convenient courts to settle any such dispute and, accordingly, that they will not argue to the contrary.

IN WITNESS WHEREOF this Cash Security Account Agreement has been executed as a deed by the Parties and is intended to be and is hereby delivered by it as a deed on the date specified above.

Schedule 2B of the Business Terms: Guarantee

This Schedule of the Business Terms sets out the key terms that are required to be included in any Guarantee provided in favour of the Contracting Wholesaler (“Schedule 2B Key Terms”).

The Contracting Retailer shall notify the Authority that the Guarantee has been provided on an arm’s length basis and provide the Authority with the requisite information to determine the commercial consideration, including the cost and other relevant terms of the Guarantee to the Contracting Retailer, within twenty (20) Business Days of the execution of the Guarantee as well as making the same notification for all Guarantees in effect on 30 September 2019 within twenty (20) Business Days.

The Contracting Retailer shall provide the Market Operator with the Declaration of Assurance and the Guarantee Details within twenty (20) Business Days of the execution of the Guarantee as well as all the Declarations of Assurance and Guarantee Details of all Guarantees in effect on 30 September 2019 within twenty (20) Business Days.

Any redactions, which should be clearly marked, may only apply to Personal Data the disclosure of which would breach Data Protection Laws.

The Market Operator shall publish the Guarantee Details and the Declaration of Assurance on its website within five (5) Business Days following provision by the Contracting Retailer of the Guarantee Details and Declaration of Assurance.

The Guarantee should also be substantially in the form of the template Guarantee set out in this Schedule of the Business Terms.

Key Terms

The Guarantee shall:

1. be an irrevocable, unconditional and continuing guarantee granted in favour of the Contracting Wholesaler;
2. be in respect of a sum at least equal to the Credit Support Amount (when taken in aggregate with all other Eligible Credit Support and Alternative Eligible Credit Support provided by the Contracting Retailer) which represents a proportion of the Primary Charges, but no other obligations under the Wholesale Contract;
3. contain an indemnity provision creating a primary obligation on the Guarantor in favour of the Contracting Wholesaler as beneficiary;
4. contain representations and warranties from the Guarantor (including, without limitation, in relation to due incorporation, power and capacity, relevant authorisations, valid and legally binding obligations, amendments of the Wholesale Contract, illegality, insolvency of Obligor or any other matter not to affect the validity of the Guarantee, non-contravention of constitutional documents or existing Laws, solvency);

5. permit the assignment by the Contracting Wholesaler of its rights under the Guarantee only with the prior consent of the Guarantor, such consent not to be unreasonably withheld, delayed or caveated;
6. ensure that any payments due to the Contracting Wholesaler from the Guarantor are made without set-off or withholding;
7. ensure that the Contracting Wholesaler may recover any costs incurred by it in relation to the enforcement of the Guarantee from the Guarantor;
8. ensure that the Guarantor postpones any claims it has against the Contracting Retailer until the Contracting Wholesaler has received all Primary Charge payments due to it under the Wholesale Contract;
9. ensure that the Contracting Wholesaler may call upon the Guarantee without first exhausting any rights or remedies against the Obligor to the Guarantor;
10. ensure that any payment due under the Guarantee is made within five (5) Business Days of a valid application by the Contracting Wholesaler to the Guarantor for release of funds;
11. ensure that interest at four (4) per cent per annum above the Bank Base Rate is accrued on amounts not paid when due under the Guarantee;
12. ensure that any decision made under any dispute resolution procedure in relation to the amount of Primary Charges due by the Contracting Retailer is binding on the Guarantor as to the amount so payable;
13. be governed by the Laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales;
14. be provided by a Guarantor that satisfies the "Minimum Credit Rating" criteria at all times;
15. ensure that payments thereunder are made in sterling;
16. otherwise be in form and substance satisfactory to both Parties acting reasonably and, in particular, in accordance with the Principles of Non-Discrimination and No Barriers to Entry as set out in Schedule 1 Part 1 of the Wholesale Contract; and
17. be subject to an obligation on the Contracting Wholesaler to provide consent in writing for the Contracting Retailer to release the items in the Guarantee Details within eighteen (18) Business Days of the execution of the Guarantee as well as being subject to the same obligation for all Guarantees in effect on 30 September 2019 within eighteen (18) Business Days.

Guarantees to be provided by Overseas Parent Company

18. Where it is proposed that the Guarantee to be provided will be issued by a parent company of any Contracting Retailer which is not incorporated in any part of the United Kingdom ("Overseas Parent Company") then, before any Guarantee is provided and agreed to by the Contracting Wholesaler a legal opinion, which is issued by a law firm with a registered and principal place of business in England or Wales, authorised and regulated by the Solicitors Regulation Authority and addressed to the Contracting Wholesaler, must be provided at a cost to be borne by the Contracting Retailer;

19. This legal opinion must comprehensively address, to the satisfaction of the Contracting Wholesaler acting reasonably and in particular, accordance with the Principles as set out in Schedule 1 Part 1 of the Wholesale Contract each of the following matters:
- a) whether the Overseas Parent Company has taken all corporate and other action to authorise the entering of the Guarantee and whether it has duly executed the relevant Guarantee;
 - b) whether any filings or registrations are required to be made in the jurisdiction in which the Overseas Parent Company is domiciled;
 - c) whether the Guarantee could be enforced in the courts of that jurisdiction and whether the relevant courts would recognise the law of England and Wales as the choice of law;
 - d) whether a judgment or court decree obtained in England and/or Wales would be enforced in that jurisdiction;
 - e) where security is being created by a company in that jurisdiction, whether any perfection requirements apply;
 - f) where security assets are located in that jurisdiction, whether security created over those assets will be recognised, the form it needs to take and how it will be enforced; and
 - g) whether that the Overseas Parent Company has appointed a process agent in England authorised to accept service of proceedings on its behalf.
20. any Guarantee issued by an Overseas Parent Company must meet all of the Schedule 2B Key Terms but, in light of the content of the legal opinion, the Contracting Wholesaler may request the inclusion of additional terms, acting reasonably; and
21. the form of any Guarantee, including any additional terms, provided by the Overseas Parent Company must be in a form and substance that is to the satisfaction of both Parties acting reasonably.

Schedule 2B of the Business Terms: Guarantee Template

THIS DEED OF GUARANTEE is made on [date]

BY

[] a company incorporated under the laws of [] whose registered office is at [] (the "**Guarantor**")

IN FAVOUR OF

[] a company incorporated under the laws of [] whose registered office is at [] (the "**Counterparty**").

WHEREAS

- A. The Counterparty, as Contracting Wholesaler, has entered into a Wholesale Contract with a Contracting Retailer [] ("**Obligor**") (such agreement and its schedules, together with confirmations exchanged between the Obligor and the Counterparty pursuant thereto, in each case as amended from time to time, the ("**Contract**"));
- B. the credit support requirements contained within Schedule 1 Part 2 of the Wholesale Contract (Business Terms) require the Obligor to provide any means, or combination of means of Eligible Credit Support and/or Alternative Eligible Credit Support as defined within the Business Terms for an aggregated sum at least equal to the Credit Support Amount, and with that being the case;
- C. the Guarantor has agreed to provide a guarantee in favour of the Counterparty at the request and on behalf of the Obligor.

NOW THIS DEED OF GUARANTEE WITNESSES as follows:

1. Guarantee

- 1.1. The Guarantor hereby irrevocably and unconditionally guarantees to the Counterparty the due and punctual immediate payment of a sum equal to the Credit Support Amount which represents a proportion of the all Primary Charge amounts from time to time payable by the Obligor under the Contract when the same become due and payable, whether on invoice, in accordance with a Settlement Report, upon demand, upon declaration of termination or otherwise, in accordance with the terms of the Contract and giving effect to any applicable grace period ("**Guaranteed Obligations**") and agrees that, upon failure of the Obligor punctually to pay any such Guaranteed Obligations, the Guarantor shall pay or cause to be paid such Guaranteed Obligations to the Counterparty, provided that the Guarantor shall have no liability under this clause 1 in respect of any such Guaranteed Obligations unless and until it has received written demand from the Counterparty in respect thereof (but a delay by the Counterparty in giving such demand shall in no event affect the Guarantor's obligations under this Guarantee).
- 1.2. The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 1.1 agrees

to indemnify and keep indemnified the Counterparty in full and on demand against the Guaranteed Obligations not being recoverable for any reason or any failure of the Obligor to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations. Provided however, that this indemnity shall be limited to the amount that the Guarantor would have been liable for (subject to the cap in clause 2.6) had the Guaranteed Obligations not been void or unenforceable.

- 1.3. Each payment made by the Guarantor under this Guarantee shall be made in full in pounds sterling, without set-off, and free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Counterparty receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 1.4. If demand for payment is made by the Counterparty hereunder and the Counterparty's written demand conforms to the terms and conditions hereof, payment shall be made to the Counterparty no later than five (5) Business Days after the date the demand is received by the Guarantor.
- 1.5. If the Guarantor fails to make any payment due to the Counterparty under this Guarantee by the due date for payment, in accordance with the terms of clause 1.3 above, the Guarantor shall pay interest on the overdue amount at the rate of four (4) per cent per annum above the Bank Base Rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 1.6. The Guarantor agrees that to be bound by any decision made in accordance with the dispute resolution procedure contained within the Business Terms as to the amount payable to the Counterparty by the Obligor under the Contract shall be conclusive evidence for the purposes of this Guarantee that such amount is due and payable.
- 1.7. For the avoidance of doubt, in respect of any Guarantee issued before the Go Live Date, the Contracting party shall not be entitled to make any demand or claim under this Guarantee until on or after the Go Live Date.

2. Preservation of Rights

2.1. The obligations of the Guarantor contained in this Guarantee shall:

2.1.1. be deemed to be undertaken as principal obligor and not merely as surety; and

2.1.2. constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever and shall not be considered satisfied by any intermediate payment or satisfaction of all or any the Obligor's obligations to pay Primary Charges under or in respect of the Contract and shall continue in full force and effect for so long as the Contract remains in effect and thereafter until all amounts due from the Obligor under or in respect of the Contract have been paid and all other actual or contingent obligations of the Obligor to pay any amounts thereunder or in respect thereof have been satisfied in full.

- 2.2. Neither the obligations of the Guarantor contained in this Guarantee nor the rights, powers and remedies conferred upon the Counterparty by this Guarantee or by law shall be discharged, impaired or otherwise affected by:
- 2.2.1. the winding-up, dissolution, administration, reorganisation or moratorium of the Obligor or any other person or any change in its status, function, control or ownership;
 - 2.2.2. any of the obligations of the Obligor under or in respect of the Contract becoming illegal, invalid, unenforceable or ineffective in any respect;
 - 2.2.3. any time or other indulgence (including for the avoidance of doubt, any composition) being granted or agreed to be granted to the Obligor or any other person in respect of any of such obligations;
 - 2.2.4. any amendment to, or any variation, waiver or release of the Contract however fundamental; or
 - 2.2.5. any other act, event or omission which, but for this sub-clause, might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this Guarantee or any of the rights, powers or remedies conferred upon the Counterparty by this Guarantee or by law.
- 2.3. Any settlement or discharge between the Guarantor and the Counterparty shall be conditional upon no payment to the Counterparty by the Obligor or any other person on the Guarantor's behalf being avoided or reduced by virtue of any laws relating to bankruptcy, insolvency, liquidation or similar laws of general application for the time being in force and, in the event of any such payment being so avoided or reduced, the Counterparty shall be entitled to recover the amount by which such payment is so avoided or reduced from the Guarantor subsequently as if such settlement or discharge had not occurred.
- 2.4. Except as required under the Contract, the Counterparty shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by law to make any demand of the Obligor, to take any action or obtain judgment in any court against the Obligor or to make or file any claim or proof in a winding-up or dissolution of the Obligor.
- 2.5. Until all Primary Charge amounts which may be or become payable by the Obligor under the Contract have been irrevocably paid in full to the Counterparty, the Guarantor shall not exercise any security or other rights or pursue any claims it has against the Obligor whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise.
- 2.6. The Guarantor shall on a full indemnity basis pay to the Counterparty on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any value added tax on those costs and expenses) which the Counterparty incurs in connection with the preservation, or exercise and enforcement, of any rights under or in connection with this Guarantee or any attempt so to do. Always provided that the Guarantor's maximum aggregate liability under this Guarantee including under the indemnity set out in clause 1.2, shall not exceed GBP [amount in words] (£ amount in figures).

3. Representations and Warranties

3.1. The Guarantor represents to the Counterparty as at the date of this Guarantee (which representations shall be deemed to be repeated by the Guarantor on each date on which a Primary Charge under the Contract is due) that:

3.1.1. it is duly organised and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

3.1.2. its execution, delivery and performance of this Guarantee have been and remain duly authorised by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

3.1.3. all consents, authorisations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

3.1.4. this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganisation or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

4. General

4.1. This Guarantee shall expire on [] (the 'Expiry Date').

4.2. Any demand by the Counterparty under this Guarantee must be received by the Guarantor on or before the Expiry Date and any demand received by the Guarantor after the Expiry Date shall be ineffective.

4.3. Unless the context otherwise requires, terms not otherwise defined in this Guarantee shall have the meaning ascribed to them in the Wholesale Contract. Any demand or other notice to the Guarantor hereunder shall be given to its address stated above (or such other address as it may from time to time specify).

4.4. The Counterparty may not assign or transfer any of its rights or obligations under this Guarantee without the prior written consent of the Guarantor such consent not to be unreasonably withheld, delayed or caveated and any such assignment shall not release the Guarantor from liability under this Guarantee.

5. Law and Jurisdiction

5.1. This Deed of Guarantee and all matters arising from or connected with it are governed by, and shall be construed in accordance with, the law of England and Wales.

5.2. The courts of England and Wales have exclusive jurisdiction to settle any dispute (including any non-contractual dispute) arising from or connected with this Deed of

Guarantee (including a dispute regarding the existence, validity or termination of this Deed of Guarantee) or the consequences of its nullity. The Guarantor agrees that the courts of England and Wales are appropriate and convenient courts to settle any such dispute and, accordingly, that it will not argue to the contrary.

IN WITNESS WHEREOF this Guarantee has been executed as a deed by the Guarantor and is intended to be and is hereby delivered by it as a deed on the date specified above.

Schedule 2B of the Business Terms: Form of Guarantee Details and Declaration of Assurance

This Schedule of the Business Terms sets out the form the Contracting Retailer must use when providing the Market Operator with the Guarantee Details and Declaration of Assurance as described in Schedule 2B.

[RETAILER'S LETTERHEAD]

[INSERT DATE SUBMITTED]

TO: [MARKET OPERATOR], [MARKET OPERATOR'S ADDRESS]

DEAR SIRs,

RE: GUARANTEE DETAILS AND DECLARATION OF ASSURANCE UNDER SCHEDULE 2B OF SCHEDULE 1 PART 2 (BUSINESS TERMS) OF THE WHOLESALE CONTRACT.

WE CONFIRM THE FOLLOWING INFORMATION IN ACCORDANCE WITH SCHEDULE 2B.

GUARANTEE DETAILS	
Guarantor	
Guarantor's company registration number	
Counterparty (Contracting Wholesaler)	
Counterparty's Trading Party ID	
Obligor (Contracting Retailer)	
Obligor's Trading Party ID	
Start date	
End date	
Deed date	
DECLARATION OF ASSURANCE	
We declare that the Guarantee has been provided on an arm's length basis.	
We declare that we have provided the Authority with the requisite information to determine the commercial consideration, including the cost and other relevant terms of that Guarantee.	

YOURS FAITHFULLY

DIRECTOR / AUTHORISED SIGNATORY
[INSERT NAME OF RETAILER]

Schedule 2C of the Business Terms: Letter of Credit

This Schedule of the Business Terms sets out the key terms that are required to be included in any Letter of Credit to be issued in favour of the Contracting Wholesaler ("Schedule 2C Key Terms").

The Letter of Credit should also be substantially in the form of the template Letter of Credit set out in this Schedule of the Business Terms.

Key Terms

The Letter of Credit shall:

1. be a form of irrevocable standby letter of credit in favour of the Contracting Wholesaler;
2. be in respect of a sum at least equal to the Credit Support Amount (when taken in aggregate with all other Eligible Credit Support and Alternative Eligible Credit Support provided by the Contracting Retailer) which represents a proportion of the Primary Charges, but no other obligations under the Wholesale Contract;
3. be payable on sight against presentation of a written demand in the required form by the Contracting Wholesaler to the issuer of the Letter of Credit;
4. incorporate standard rules for letters of credit (including, without limitation, under any of the International Standby Practices, Uniform Customary Practices or Uniform Rules for Demand Guarantees published by the International Chamber of Commerce);
5. be issued in sterling;
6. permit the assignment by the Contracting Wholesaler of its rights under the Letter of Credit only with the prior consent of the Issuer, such consent not to be unreasonably withheld, delayed or caveated;
7. be governed by the Laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales;
8. prohibit any right of set-off by the issuer of the Letter of Credit;
9. be provided by an issuer that satisfies the "Minimum Credit Rating" criteria at all times; and
10. otherwise be in form and substance satisfactory to both Parties acting reasonably, and, in particular, in accordance with the principles of Non-Discrimination and No Barriers to Entry as set out in Schedule 1 Part 1 of the Wholesale Contract.

Schedule 2C of the Business Terms: Letter of Credit –Template

FORM OF
IRREVOCABLE STANDBY LETTER OF CREDIT
ISSUING BANK'S LETTER OF CREDIT NO. _____

DATE OF ISSUANCE: _____

EXPIRY DATE: _____

FROM: [Opening Bank]

TO:[Beneficiary]

Re: Issuing Bank's Credit No. _____

We hereby establish our Irrevocable Standby Letter of Credit in your (the "**Beneficiary**") favour for the account of _____ (the "**Applicant**"), for [Insert Amount in Words] Pounds Sterling (£ [Insert Amount in Numbers]), available to you at sight upon demand at our counters at [London or other location to be agreed between the parties] on or before the Expiry Date (as defined below) against presentation to us of the following statements, dated and signed by an authorised representative of the beneficiary:

"Applicant has failed to make a payment ("**Unpaid Amount**") relating to the Primary Charge payment obligations owed pursuant to an Wholesale Contract between the Applicant and Beneficiary dated as of [Insert Date] such agreement and its schedules together with confirmations exchanged between the Applicant and Beneficiary pursuant thereto, in each case as amended from time to time, (**the Contract**), and such Unpaid Amount remains unpaid at the time of drawing hereunder. Wherefore, the undersigned does hereby demand payment of [Insert Amount in Words] Pounds Sterling (£ [Insert Amount in Numbers]) under the Letter of Credit."¹

For the avoidance of doubt, in respect of any Letter of Credit issued before the Go Live Date, the Contracting Wholesaler shall not be entitled to make any demand or claim under such Letter of Credit until on or after the Go Live Date.

This Letter of Credit shall expire at our counters on [Insert Date] at 5:00 pm (London time) (the "**Expiry Date**").

Partial and multiple drawings are permitted hereunder.

Drawing cover letter must include wire instructions to Beneficiary's account.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by (i) the amount of any drawings by you under this Letter of Credit [and (ii) the

amount of any payment made outside this Letter of Credit to you, provided such payment is made by us and reference is made to this Letter of Credit].

All costs and banking charges pertaining to this Letter of Credit are for the account of the Applicant. Failure of the Applicant to pay any such amounts shall not affect your rights to make drawings under this Letter of Credit.

We hereby agree with you that draw requests presented under and in compliance with the terms of this Letter of Credit shall be duly honoured and paid in immediately available funds as specified herein.

Any notice, demand, draw request or other communication hereunder shall be delivered by hand, or by nationally recognized overnight courier:

Attention: _____

Telecopier No.: _____

The Beneficiary may assign its rights to receive payment under this Letter of Credit with our prior written consent, which consent shall not be unreasonably, withheld delayed or caveated.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, in which case the terms of this Letter of Credit shall govern. As to matters not covered by the UCP and to the extent not inconsistent with the UCP or the terms hereof, this Letter of Credit shall be governed by and construed in accordance with the laws of England and Wales.

[BANK SIGNATURE]

Schedule 2D of the Business Terms: Surety Bond

This Schedule of the Business Terms sets out the key terms that are required to be included in any Surety Bond to be issued in favour of the Contracting Wholesaler ("Schedule 2D Key Terms").

The Surety Bond should also be substantially in the form of the template Surety Bond set out in this Schedule of the Business Terms.

Key Terms

1. be a form of irrevocable surety bond in favour of the Contracting Wholesaler;
2. have the issuer, Contracting Wholesaler and Contracting Retailer as parties;
3. be in respect of a sum at least equal to the Credit Support Amount (when taken in aggregate with all other Eligible Credit Support and Alternative Eligible Credit Support provided by the Contracting Retailer) which represents a proportion of the Primary Charges, but no other obligations under the Wholesale Contract;
4. be payable on sight against presentation of a written demand in the required form by the Contracting Wholesaler to the issuer of the surety bond;
5. stipulate that the issuer is liable to the same extent as the Contracting Retailer or, subject to the overall limit imposed by the bond amount;
6. incorporate either:
 - (a) the Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758. (The URDG 758 came into force on 1 July 2010 superseding the previous version of the URDG, URDG 458); or
 - (b) the Uniform Rules for Contract Bonds of 1993, ICC Publication No. 524;
7. be issued in sterling;
8. permit the assignment by the Contracting Wholesaler of its rights thereunder the Surety Bond without the consent of the issuer such consent not to be unreasonably withheld, delayed or caveated;
9. be governed by the Laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales;
10. prohibit any right of set-off by the issuer of the Surety Bond;
11. be provided by an issuer that satisfies the "Minimum Credit Rating" criteria at all times; and

12. otherwise be in form and substance satisfactory to both Parties acting reasonably, and, in particular in accordance with the principles of Non-Discrimination and No Barriers to Entry as set out in Schedule 1 Part 1 of the Wholesale Contract.

Schedule 2D of the Business Terms: Surety Bond – Template

This Surety Bond is made as a deed between the following parties whose names and addresses are set out in the Schedule to this Bond:

1. The 'Contracting Retailer' as Obligor;
2. The 'Guarantor' as Guarantor, and
3. The 'Contracting Wholesaler' as Counterparty.

Whereas

- A. The Counterparty, has entered into a Wholesale Contract dated [] with the Obligor as Contracting Retailer (such contract and its schedules, together with confirmations exchanged between the Obligor and the Counterparty pursuant thereto, in each case as amended from time to time, the "**Contract**");
- B. The Guarantor has agreed with the Counterparty at the request of the Obligor to guarantee the payment of a sum equal to the Credit Support Amount which represents a proportion of the Primary Charges payable payment obligations by the Obligor under the Contract upon the terms and conditions of this Surety Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:

1. The Guarantor hereby irrevocably and unconditionally guarantees to the Counterparty the due and immediate payment of a sum equal to the Credit Support Amount representing a proportion of the Primary Charge amounts from time to time payable by the Obligor under the Contract when the same become due and payable, whether on invoice, in accordance with a Settlement Report, upon demand, upon declaration of termination or otherwise, in accordance with the terms of the Contract and giving effect to any applicable grace period ("Guaranteed Obligations") and agrees that, upon failure of the Obligor punctually to pay any such Guaranteed Obligations, the Guarantor shall pay or cause to be paid such Guaranteed Obligations to the Counterparty, provided that the Guarantor shall have no liability under this clause 1 in respect of any such Guaranteed Obligations unless and until it has received written demand from the Counterparty in respect thereof (but a delay by the Counterparty in giving such demand shall in no event affect the Guarantor's obligations under this Guarantee).
2. The maximum aggregate liability of the Guarantor and the Obligor under this Surety Bond shall not exceed the sum set out in the Schedule (the "Bond Amount").
3. The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract and no allowance of time by the Counterparty under or in respect of the Contract shall in any way release reduce or affect the liability of the Guarantor under this Surety Bond.

4. For the avoidance of doubt, in respect of any Surety Bond issued before the Go Live Date, the Contracting Wholesaler shall not be entitled to make any call or claim under such Surety Bond until on or after the Go Live Date.
5. Whether or not this Surety Bond shall be returned to the Guarantor the obligations of the Guarantor under this Surety Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
6. The Obligor having requested the execution of this Surety Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Counterparty or the Guarantor against the Obligor) to perform and discharge the obligations on its part set out in the Contract.
7. The Counterparty may assign or transfer any of its rights or obligations under this Surety Bond without the prior written consent of the Guarantor, such consent not to be unreasonably withheld, delayed or caveated.
8. The parties to this Surety Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
9. This Surety Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

The schedule

The Obligor: [details], whose registered office address is at [details];

The Guarantor: [details], whose registered office address is at [details];

The Counterparty: [details], whose registered office address is at [details].

The Contract: contract dated [details] between the Counterparty and the Obligor.

The Bond Amount: The sum of [details]

Expiry: [To be agreed between the parties]

In witness whereof the Obligor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this day of [details]

Executed and delivered as a deed by

Schedule 2E of the Business Terms: Unsecured Credit Allowance

This Schedule of the Business Terms sets out the terms upon which an Unsecured Credit Allowance shall be made available by the Contracting Wholesaler to the Contracting Retailer in relation to the Credit Support Amount ("Schedule 2E Key Terms").

For the avoidance of doubt, any amount represented by the Unsecured Credit Allowance may not be recoverable by the Contracting Wholesaler in the event of the Contracting Retailer becoming a Defaulting Trading Party.

Key Terms

An Unsecured Credit Allowance shall be available to the Contracting Retailer in the following terms:

1. it shall be only for the proportion of the Credit Support Requirement specified in this Schedule 2E of the Business Terms and for no other purpose. Accordingly, the Contracting Retailer is required to ensure the remainder of the Credit Support Amount is met through additional Eligible Credit Support and/or Alternative Eligible Credit Support;
2. where a Contracting Retailer holds a Current Credit Rating, this shall be used for the purposes of calculating or removing any Unsecured Credit Allowance. Where it holds two or more of such ratings it shall use the Current Credit Rating of its choice, providing the Contracting Retailer gives a notice of no less than three (3) months (in accordance with Section 9.13.1) prior to changing the Credit Rating Agency providing its selected Current Credit Rating to the Contracting Wholesaler;
3. as an alternative to 2 above, a Contracting Retailer shall be entitled to obtain a Current Credit Score at its own cost and provide evidence of this Current Credit Score to the Contracting Wholesaler in calculating and/or adjusting any Unsecured Credit Allowance. Where it holds two or more scores, it shall use the score of its own choice, providing the Contracting Retailer gives a notice of no less than three (3) months (in accordance with Section 9.13.1) prior to changing the Credit Scoring Agency providing its selected credit score to the Contracting Wholesaler;
4. as an alternative to 2 and 3 above, a Contracting Retailer shall be entitled to provide self-certification of Trade Credit Insurance to the Contracting Wholesaler in calculating and/or adjusting any Unsecured Credit Allowance.
5. all Unsecured Credit Allowances shall be calculated as follows:
 - (a) where a Current Credit Rating is provided for the Contracting Retailer that meets the Minimum Credit Rating or above there shall be an allowance of 40% applied to the Credit Support Requirement; or
 - (b) where a Current Credit Score is provided by the Contracting Retailer, specifically for the purposes of seeking an Unsecured Credit Allowance and this Current Credit Score is:

- (i) 9 or 10, then there shall be an allowance of 20% applied to the Credit Support Requirement; or
 - (ii) 7 or 8, then there shall be an allowance of 10% applied to the Credit Support Requirement;
- (c) where self-certification of Trade Credit Insurance is provided by the Contracting Retailer, specifically for the purposes of seeking an Unsecured Credit Allowance and the percentage of the value of the P1 Settlement Report (calculated in accordance with Schedule 2G paragraph 4(f)) covered by the insurance is:
 - (i) greater than 90%, then there shall be an allowance of 20% applied to the Credit Support Requirement;
 - (ii) 90% – 70%, then there shall be an allowance of 10% applied to the Credit Support Requirement; or
 - (iii) less than 70%, then there shall be no allowance applied to the Credit Support Requirement;
- 6. Schedule 2F of the Business Terms sets out the equivalence of credit assessment scores across the Credit Scoring Agencies to be used for the purposes of this Schedule 2E of the Business Terms;
- 7. for the avoidance of doubt, any Unsecured Credit Allowance shall be made available either on the basis of a Current Credit Rating or the Current Credit Score or the level of Trade Credit Insurance and these shall not be applied cumulatively; and
- 8. in addition to any requirements set out in Section 9.13.1, the Contracting Retailer shall, at least once in any twelve (12) Month rolling period and at its own cost, provide evidence of a Current Credit Score (if the Contracting Retailer is using a Current Credit Score as the basis of qualifying for an Unsecured Credit Allowance) or provide evidence of a Current Credit Rating (if the Contracting Retailer is using Current Credit Rating as the basis of qualifying for an Unsecured Credit Allowance), to the Contracting Wholesaler.

Schedule 2F of the Business Terms: Equivalence of Credit Assessment Scores

This Schedule sets out the equivalence of credit assessment scores to Current Credit Scores provided by Credit Scoring Agencies in their independent credit assessments. The credit assessment score is to be used for the purposes of calculating the Unsecured Credit Allowance in accordance with Schedule 2F.

Credit Assessment Score	Dunn & Bradstreet	Equifax	Experian
	Comprehensive Report		Bronze, Silver or Gold Report
10	5A1/	A+	95-100
9	5A2/4A1	A/A-	90-94
8	5A3/4A2/3A1	B+	80-89
7	4A3/3A2/2A1	B/B-	70-79
6	3A3/2A2/1A1	C+	60-69
5	2A3/1A2/A1	C/C-	50-59
4	1A3/A2/B1	D+	40-49
3	A3/B2/C1	D/D-	30-39
2	B3/C2/D1	E+	20-29
1	C3/D2/E1	E/E-	10-19
0	Below E1	Below E-	Below 10

Schedule 2G of the Business Terms: Trade Credit Insurance

This Schedule of the Business Terms sets out the form of Trade Credit Insurance required to qualify for an Unsecured Credit Allowance as laid out in Schedule 2E.

Key Terms

Trade Credit Insurance is a form of insurance policy obtained by the Contracting Retailer and its operation shall be in accordance with the following terms:

1. The Trade Credit Insurance must be provided by a Financial Conduct Authority authorised insurer and be an insurance industry standard Trade Credit Insurance policy as described by the Association of British Insurers.
2. For each Supply Point that is covered by Trade Credit Insurance, the policy must pay out an amount that is equivalent to no less than 90% of the value of the Primary Charges relating to that Supply Point for Water Services, Sewage Services and/or Trade Effluent Services not paid for by the Non-Household Customer.
3. The Trade Credit Insurance must enable the Contracting Retailer to claim under it, within 6 months of an event of a default by the Non-Household Customer, under any contract for the supply of Water Services, Sewage Services and/or Trade Effluent Services. An event of default shall include (but shall not be limited to);
 - (a) an Insolvency Event arising; or
 - (b) in the event of an Outstanding Debt arising under the relevant contract between the Contracting Retailer and the Non-Household Customer.
4. The Contracting Retailer must provide the Contracting Wholesaler with a form of self-certification in the prescribed format (see Schedule 6) each Month in accordance with section 9.12.1, confirming the following:
 - (a) that the Trade Credit Insurance cover meets the requirements of Schedule 2G;
 - (b) that the Trade Credit Insurance premiums are up to date;
 - (c) the list of all the Supply Points covered by this form of insurance;

(d) the total Primary Charges for that month's P1 Settlement Run for all the Contracting Retailer's registered Supply Points aggregated across all Contracting Wholesaler areas;

(e) the total Primary Charges for that month's P1 Settlement Run for all the Contracting Retailer's registered Supply Points that are covered by the Trade Credit Insurance aggregated across all Contracting Wholesaler areas; and

(f) the proportion of the Retailer's total portfolio covered by insurance that shall be the total calculated under Key Term 4(e) divided by the total calculated under Key Term 4(d), such quotient being expressed as a percentage.

5. The percentage of insurance calculated in accordance with Key Term 4 (f) shall be used to determine the Unsecured Credit Allowance in accordance with Schedule 2E.
6. The Contracting Retailer must provide the Contracting Wholesaler (on no less than five (5) Business Days' notice) access to check the status of the Trade Credit Insurance policy and level of cover at any reasonable time.
7. A Contracting Retailer shall only be entitled to rely on Trade Credit Insurance as a form of Unsecured Credit Allowance for a period of no more than three (3) years from the date which the Contracting Retailer becomes a Trading Party.

Schedule 3 of the Business Terms: Alternative Eligible Credit Support

This Schedule of the Business Terms sets out the terms upon which the Contracting Wholesaler and the Contracting Retailer can enter into Alternative Eligible Credit Support arrangements ("Schedule 3 Key Terms").

Where a Contracting Retailer seeks to establish arrangements for Alternative Eligible Credit Support with the Contracting Wholesaler, the Contracting Wholesaler shall be obliged to give due and proper consideration to such proposals. Both parties shall be obliged, in relation to the proposals:

- (a) to act reasonably towards one another and without unreasonably delay, and
- (b) to negotiate in good faith with each other

in accordance with the principles of Non-Discrimination and No Barriers to Entry set out in Schedule 1 to the Wholesale Contract.

The Market Operator shall publish the agreement on its website within five (5) Business Days, following notification by the Contracting Wholesaler in full of all the terms of any Alternative Eligible Credit Support arrangement.

In the event that the Contracting Wholesaler and Contracting Retailer agree arrangements for Alternative Eligible Credit Support then the following terms shall apply:

Key Terms

Alternative Eligible Credit Support shall:

1. be in respect of a sum at least equal to the Credit Support Amount (when taken in aggregate with all other Eligible Credit Support and Alternative Eligible Credit Support provided by the Contracting Retailer) which represents a proportion of the Primary Charges, but no other obligations under the Wholesale Contract; be negotiated between the Parties;
2. be negotiated between the Parties;
3. be subject to an obligation on the Contracting Wholesaler to notify the Authority and the Market Operator in full, all the terms of any Alternative Eligible Credit Support agreement including the identity of the Contracting Retailer within five (5) Business Days of entering into such agreement as well as all such agreements in effect on 29 March 2019 within five (5) Business Days;
4. be subject to an obligation on the Contracting Wholesaler to publish in full, all the terms of any Alternative Eligible Credit Support agreement in a prominent place, relevant to the Competitive Market, on its website including the identity of the Contracting Retailer within five (5) Business Days of entering into such agreement; and

5. any redactions, which should be clearly marked, may only apply to personal data the disclosure of which would breach the Data Protection Act 1998 or any subsequent or equivalent Law.

Schedule 3A of the Business Terms: Alternative Payment Terms

This Schedule of the Business Terms sets out the terms upon which the Contracting Wholesaler and the Contracting Retailer can enter into Alternative Payment Terms (“Schedule 3A Key Terms”).

Where a Contracting Retailer seeks to establish arrangements for Alternative Payment Terms with the Contracting Wholesaler, the Contracting Wholesaler shall be obliged to give due and proper consideration to such proposals. Both parties shall be obliged, in relation to the proposals:

- (a) to act reasonably towards one another and without unreasonably delay, and
- (b) to negotiate in good faith with each other

in accordance with the principles of Non-Discrimination and No Barriers to Entry as set out in Schedule 1 to the Wholesale Contract.

In the event that the Contracting Wholesaler and Contracting Retailer agree arrangements for Alternative Payment Terms then the following terms shall apply:

Key Terms

Alternative Payment Terms shall be:

1. in respect of the Primary Charges;
2. compatible with the Market Settlement Process and timetable and specific about the payment terms related to subsequent reconciliation invoices resulting from the Market Settlement Process;
3. negotiated and agreed between the Parties;
4. fully documented as a Schedule 3A Alternative Payment Terms agreement;
5. supported by a valid Schedule 3 Alternative Eligible Credit Support arrangement agreed between the Parties that describes the mechanism for determining any adjustment to the Credit Support Amount required to provide the necessary level of credit support associated with the Alternative Payment Terms;
6. specific about the terms and conditions for returning to standard Pre-Payment or Post-Payment arrangements; and
7. subject to an obligation on the Contracting Wholesaler to publish in full, all the terms of any Alternative Payment Terms agreement along with its accompanying Schedule 3 Alternative Eligible Credit Support agreement in a prominent place, relevant to the Competitive Market, on its website including the identity of the Contracting Retailer within five (5) Business Days of entering into such agreement.

8. Any redactions, which should be clearly marked, may only apply to personal data the disclosure of which would breach the Data Protection Act 2018 or any subsequent or equivalent Law.

Save as above, Alternative Payment Terms agreements shall not change any other obligations under the Wholesale Contract.

In the absence of a valid Alternative Payment Terms agreement that meets the terms and requirements of this Schedule 3A and which is signed by both Parties, the Contracting Retailer must select a standard Pre-payment or Post-payment arrangement in accordance with Section 9.2.1.

Schedule 4 of the Business Terms: Form of Credit Support Notice

This Schedule of the Business Terms sets out the form the Contracting Wholesaler must use when notifying the Contracting Retailer of the Credit Support Notice in the case of Post-Payment as described in Section 9.12.

The Credit Support Notice is intended to be issued by the Contracting Wholesaler to the Contracting Retailer on a monthly basis where Post-Payment applies.

It sets out the monthly calculation of the overall Credit Support Amount to be made available by the Contracting Retailer and whether a Credit Support Balance is also due by the Contracting Retailer taking account of the existing aggregate total amount of Eligible Credit Support and/or Alternative Eligible Credit Support already in place.

If no Credit Support Balance is due it may set out that there is an Excess Eligible Credit Support Amount is available to be returned by the Contracting Wholesaler at the election of the Contracting Retailer.

The full requirements of the Credit Support Notice can be found at Section 9.12 of the Business Terms.

[WHOLESALERS LETTERHEAD]

[INSERT DATE OF NOTICE]

TO [INSERT RETAILERS DETAILS]

DEAR SIRs,

RE: CREDIT SUPPORT NOTICE UNDER SECTION 9.12 OF SCHEDULE 1 PART 2 (BUSINESS TERMS) OF THE WHOLESALE CONTRACT.

WE REFER TO THE ABOVE REFERENCED TERMS AND SET OUT BELOW THE CREDIT SUPPORT AMOUNT REQUIRED TO BE POSTED BY YOU FOR THE PERIOD COMMENCING 1ST [INSERT MONTH]

	PREVIOUS MONTH P1 SETTLEMENT REPORT	CURRENT MONTH P1 SETTLEMENT REPORT
Date P1 Settlement Report issued by the Market Operator		

The Credit Support Requirement, being the amount to be provided for the following Invoice Period based upon the P1 Settlement Report;	CSR	CSR
Unsecured Credit Allowance applicable to the Contracting Retailer in accordance with Schedule 2E;	$UCA = CSR \times [] \%$	$UCA = CSR \times [] \%$
Amount of accrued interest held by the Contracting Wholesaler on any cash in the Cash Security Amount to the order of the Contracting Retailer in accordance with Sections 9.12.5 and 9.12.61;	AI	AI
Credit Support Amount (Credit Support Requirement less any applicable Unsecured Credit Allowance and accrued interest) to be provided by the Contracting Retailer in accordance with Section 9.11.3	$CSA = CSR - (UCA + AI)$	$CSA = CSR - (UCA + AI)$
The aggregate total of all Eligible Credit Support and Alternative Eligible Credit Support provided for the previous Invoice Period by the Contracting Retailer in accordance with Section 9.11.4;	ATECSAECS	ATECSAECS
Credit Support Balance (the Credit Support Amount less the aggregate total amount of all Eligible Credit Support and Alternative Eligible Credit Support provided for the previous Invoice Period)	$CSB = CSA - ATECSAECS$	$CSB = CSA - ATECSAECS$

to be provided by the Contracting Retailer for the following Invoice Period.		
The Excess Eligible Credit Support Amount held by the Contracting Wholesaler to the order of the Contracting Retailer in accordance with Sections 9.12.5 and 9.12.6.		

PLEASE NOTE THAT ANY REQUIRED CREDIT SUPPORT AMOUNT DUE TO US SHOULD:

- (1) IN THE CASE OF A GUARANTEE, LETTER OF CREDIT, OR SURETY BOND BE RECEIVED BY US NO LATER THAN 10 BUSINESS DAYS FROM THE DATE OF THE P1 STATEMENT REFERENCED ABOVE; AND
- (2) IN THE CASE OF CASH BE REMITTED TO THE FOLLOWING ACCOUNT NO LATER THAN 10 BUSINESS DAYS FROM THE DATE OF THE P1 STATEMENT REFERENCED ABOVE.

[INSERT RELEVANT BANK DETAILS]

YOURS FAITHFULLY

 AUTHORISED SIGNATORY
[INSERT NAME OF WHOLESALER]

Schedule 5 of the Business Terms: Guaranteed Service Standards

This Schedule of the Business Terms applies to Contracting Wholesalers operating wholly or mainly in England and Contracting Retailers holding Retail Authorisations as regards their obligations under the GSS Regulations. This Schedule of the Business Terms and any provisions within the Wholesale Contract regarding obligations arising from the GSS Regulations shall not apply to Contracting Wholesalers operating wholly or mainly in Wales and Contracting Retailers holding Restricted Retail Authorisations.

This Schedule of the Business Terms reflects the GSS Regulations and shall not apply to a Self-Supply Retailer other than in circumstances where any failure to meet any Guaranteed Service Standard is the fault of the Contracting Wholesaler.

This Schedule sets out:

- (i) any Guaranteed Service Standard under the GSS Regulations that may create potential liabilities for the Contracting Wholesaler and Contracting Retailer respectively in relation to certain events; and
- (ii) the allocation of timescales which will apply for the purposes of the Wholesale Contract between the Contracting Wholesaler and the Contracting Retailer respectively for the timing of any payments due as a result of any failure to meet their obligations under any Guaranteed Service Standard.

GSS Regulations	Party Potentially Liable		Timescale in GSS Regulations for payment	Timescale Allocation for WRC	
	Wholesale	Retail		Contracting Wholesaler	Contracting Retailer
Making appointments – GSS Regulation 6	✓	✓	10 business days	5 business days	5 business days
Keeping appointments – GSS Regulation 6	✓	✓	10 business days	5 business days	5 business days
Low pressure – GSS Regulation 10	✓		n/a	n/a	n/a
Notice of interruption to supply – GSS Regulation 8	✓	✓	20 business days	15 business days	5 business days
Supply not restored* – GSS Regulation 9	✓		20 business days	15 business days	5 business days
Account queries and requests to change payment arrangements – GSS Regulation 7		✓	10 business days	n/a	n/a
Complaints – GSS Regulation 7	✓	✓	10 business days	8 business days	2 business days
Flooding from sewers (internal flooding) – GSS Regulation 11	✓		20 business days	15 business days	5 business days
Flooding from sewers (external flooding) – GSS Regulation 12	✓		20 business days	15 business days	5 business days

* Supply not restored within time notified (planned work) or when supply is interrupted for an extended time under unplanned /emergency situations.

Schedule 6 of the Business Terms: Form of Trade Credit Insurance Self-Certification

This Schedule of the Business Terms sets out the form the Contracting Retailer must use when notifying the Contracting Wholesaler of the Trade Credit Insurance as described in Section 9.12.1, Schedule 2E and Schedule 2G.

The form of Trade Credit Insurance self-certification is to be issued by the Contracting Retailer to the Contracting Wholesaler for each month where it intends to use Trade Credit Insurance to qualify for an Unsecured Credit Allowance as laid out in Schedule 2E.

The self-certification confirms that the Trade Credit Insurance is valid, that the Trade Credit Insurance cover premiums are up to date, provides a list of all the Supply Points covered by this form of insurance, the total Primary Charges for that month's P1 Settlement Run for all the Contracting Retailer's registered Supply Points aggregated across all of its Contracting Wholesaler areas, the total Primary Charges for that month's P1 Settlement Run for all the Contracting Retailer's registered Supply Points that are covered by the Trade Credit Insurance aggregated across all of its Contracting Wholesaler areas and the percentage of Supply Points covered by this form of insurance.

The full requirements of the form of Trade Credit Insurance self-certification can be found at Schedule 2G of the Business Terms.

[RETAILERS LETTERHEAD]

[INSERT DATE OF SELF-CERTIFICATION]

TO [INSERT WHOLESALERS DETAILS]

DEAR SIRS,
RE: FORM OF TRADE CREDIT INSURANCE SELF-CERTIFICATION UNDER SECTION 9.12.1, SCHEDULE 2E AND SCHEDULE 2G OF SCHEDULE 1 PART 2 (BUSINESS TERMS) OF THE WHOLESALE CONTRACT.

WE CONFIRM THE FOLLOWING INFORMATION IN ACCORDANCE WITH SCHEDULE 2G KEY TERM 4.

	Current Month P1 Settlement Report
Trade Credit Insurance meets the requirements of Schedule 2G	[Yes]

Trade Credit Insurance cover premiums are up to date	[Yes]
List of Supply Points covered by this form of Trade Credit Insurance	[See below/ in attached appendix]
The total Primary Charges for all the Contracting Retailer's registered Supply Points aggregated across all of its Contracting Wholesaler areas	
The total Primary Charges for all the Contracting Retailer's registered Supply Points that are covered by the Trade Credit Insurance aggregated across all of its Contracting Wholesaler areas	
Percentage of Supply Points covered by this form of insurance (%)	

YOURS FAITHFULLY

AUTHORISED SIGNATORY
[INSERT NAME OF RETAILER]