

AGREEMENT TO PROVIDE METER READING SERVICES

Affinity Water Limited

(1)

and

[XXX]

(2)

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DRAFT

DATED

2022 ("**Commencement Date**")

PARTIES

- (1) **AFFINITY WATER LIMITED** incorporated and registered in England and Wales with company number **02546950** whose registered office is at Tamblin Way, Hatfield, Hertfordshire, AL10 9EZ (the "**Service Provider**")
- (2) **[XXX]** incorporated and registered in **[XXX]** with company number **[XXX]** whose registered office is at **[XXX]** (the "**Retailer**")

BACKGROUND

- (A) The Retailer supplies water to the Non-Household Customers (as defined in Schedule 1) pursuant to a water supply licence with retail authorisation granted under the Act.
- (B) The Retailer wishes to appoint the Service Provider to collect and provide meter reading data in connection with the Retailer's supply of water to Non-Household Customers Schedule 1.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Act" means the Water Industry Act 1991 and any re-enactment, amendment or modification of the same whether made before or after the date of this Agreement and any regulations, orders, directives, requirements or delegated or secondary legislation made under it;

"Applicable Law" means the laws of England and Wales and the European Union (as they apply to the Service Provider) and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.

"Claim" means any claim, action or demand (whether for damages, an injunction or otherwise) made against the Retailer arising out of or in connection with a breach of clauses 14.2-14.10 (whether by the Service Provider or by the Service Provider's employees, representatives, agents or sub-contractors). If a number of Claims (whether made by the same claimant or multiple claimants) arise directly or indirectly out of the same cause or event or a series of connected causes or events, those claims shall be treated as a single Claim, which shall be deemed to have arisen on the happening of the first cause or event in question;

"Confidential Information" means all information designated as such by either party in writing together with all such other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of either party or information which may reasonably be regarded as the confidential information of the disclosing party or of a Non-Household Customer as defined in Schedule 1;

"Data" means all Services Data and other data collected, generated or otherwise processed by the Service Provider as a result of, or in connection with, the provision of the Services;

"Data Controller" has the meaning set out in the Data Protection Legislation;

"Data Protection Legislation" means laws and regulations that apply in relation to the Processing of Personal Data including (without limitation) the GDPR, the Data Protection Act 2018 and any replacement legislation coming into effect from time to time together with any codes of practice or other guidance issued by a Regulatory Authority;

"Data Subject" means the living individual to whom Personal Data relates;

"Default Interest Rate" means the rate of 1% per annum above the base rate of Barclays Bank PLC from time to time;

"Fee" means the amount payable by the Retailer to the Service Provider for an individual Meter Read as particularised in the table at paragraph 1.2 of Schedule 2;

"Force Majeure Event" means any circumstance not within a party's reasonable control including, without limitation:

- (a) adverse weather conditions;
- (b) acts of God, flood, drought, earthquake or other natural disaster;
- (c) epidemic or pandemic;
- (d) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (e) nuclear, chemical or biological contamination or sonic boom;
- (f) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (g) collapse of buildings, fire, explosion or accident; and

(h) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party).

"GDPR" means the General Data Protection Regulation (EU) 2016/679;

"Notice of Dispute" has the meaning given in Clause 7.1 (Dispute Resolution);

"Ofwat" means the Water Services Regulation Authority established by section 1A of the Act;

"Permitted Purposes" means processing the Personal Data for the purpose of, and to the extent required for, the provision of the Goods and/or Services;

"Permitted Recipient" means a director, employee or professional advisor of the Service Provider or an agent, temporary worker or permitted sub-contractor used by the Service Provider in the provision of the Services who has a legitimate need to receive and Process Personal Data for the Permitted Purposes;

"Personal Data" means personal data (as such term is defined in the Data Protection Legislation) that is Processed by the Service Provider in connection with the provision of the Goods and/or Services;

"Process", "Processed" or "Processing" has the meaning set out in the Data Protection Legislation;

"Regulatory Authority" means any competent data protection or privacy authority by which the Retailer is regulated;

"Retailer Contract Manager" means [xxx] – [xxx] or such other person notified in writing by the Retailer to the Service Provider;

"RPI" means the Retail Price Index as published by the Office of National Statistics (or any successor body) or, if abolished, such other measure of retail price inflation that might take its place;

"Service Compensation" means the compensation set out in column 3 of the table in Schedule 4;

"Service Levels" means those performance indicators set out in column 2 of the table in Schedule 4;

"Service Provider Contract Manager" means:

Matthew Turner

Email: **Matthew.Turner@affinitywater.co.uk**

or such other person notified in writing by the Service Provider to the Retailer;

"Services" means the services specified and detailed in Schedule 1 (Service Description);

"Services Data" means **Personal Data** which is collected, generated or otherwise processed by the Service Provider as a result of, or in connection with, the provision of the Services;

"Term" means the period in which this Agreement continues in force as specified in clause 3 (Term);

"Termination" means the termination or expiry of this Agreement, howsoever occurring;

"Working Day" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business; and

"Year" shall mean each period of 12 months starting on 1 April and ending on 31 March in the Term and:

- (a) in the case of the first Year during the Term shall mean the period from the Commencement Date to the next date of 1 April;
- (b) in the case of the last Year during the Term shall mean the period between the date of termination and the previous date of 31 March.

if, in the case of either (a) or (b) in this definition, such period is less than 12 months.

1.2 In this Agreement, unless the context otherwise requires:

- (a) a reference to a clause, paragraph or Schedule is to a clause, paragraph of, or Schedule to, this Agreement;
- (b) a reference to a person includes any person, individual, firm, company, government, state or agency of a state, local or municipal authority, government or regulatory body or any undertaking, joint venture, association or partnership (whether or not having separate legal personality and irrespective of the jurisdiction or law under which it was incorporated or exists);
- (c) a reference to a company includes any company or body corporate irrespective of the jurisdiction or law under which it was incorporated or exists;
- (d) **"includes"** or **"including"** means including without limitation;
- (e) the singular shall include the plural and vice versa, words denoting any gender shall include any other gender;

- (f) a reference to a statute or a provision of a statute includes:
 - (i) any statutory instrument, regulations or other subordinate legislation made from time to time under that statute or that provision; and
 - (ii) any amendment, consolidation or re-enactment of that statute or that provision in force from time to time and includes any statute or statutory provision which it amends, consolidates or re-enacts; and
- (g) a reference to "**writing**" or "**written**" includes any method of representing or reproducing words in a visible and legible form including email unless otherwise expressly provided in this Agreement.

1.3 The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

1.4 The Schedules form part of this Agreement and have the same force and effect as if set out in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2 SERVICES

2.1 The Service Provider shall provide the Services in accordance with the terms of this Agreement, all Applicable Laws and using reasonable skill, care and diligence to be expected of a service provider providing services similar or equivalent to the Services.

2.2 The Retailer shall comply with its obligations in respect of the Services as provided in Schedule 1.

3 TERM

This Agreement shall commence on the Commencement Date and shall continue until 31 March 2024 subject to earlier termination in accordance with its terms.

4 FEE AND PAYMENT

4.1 The Retailer will pay the amounts owed to the Service Provider in accordance with Schedule 2.

5 QUALITY ASSURANCE

5.1 Performance of the Services shall be subject to the provisions in Schedule 3.

6 TERMINATION

6.1 Either party may terminate this Agreement at any time by giving written notice to the other party if:

- (a) the other party commits a material breach of any of the terms of this Agreement and, where such a breach is capable of remedy, fails to remedy the same within ten Working Days after receipt of a written notice from the other requiring it to be remedied;
 - (b) the other party suspends, or threatens to suspend, payment of its debts;
 - (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 6.2 The Service Provider may terminate this Agreement forthwith if the Retailer does anything which causes the Service Provider or is reasonably likely to cause the Service Provider to be in breach of any law including without limitation any condition of the Service Provider's appointment under the Act.
- 6.3 Either party may terminate this Agreement upon giving no less than three months' written notice to the other party.
- 6.4 Termination or expiry of this Agreement shall not:
- (a) affect either of the parties' accrued rights, remedies, obligations, or liabilities including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry; or
 - (b) affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such Termination, including (without limitation) Clause 7 (Dispute Resolution), Clause 8 (Limitation of liability), Clause 12 (Confidentiality), Clause 14 (Personal Data) Clause 15 (Notices), and Clause 16 (Governing law & Jurisdiction).

7 DISPUTE RESOLUTION

- 7.1 If a dispute arises between the parties in connection with, or arising out of, this Agreement, either party may issue to the other party a notice giving full details of the nature of the dispute. Such notice ("**Notice of Dispute**") shall state that it is given under this Clause 7.
- 7.2 The Service Provider Contract Manager and the Retailer Contract Manager shall meet to negotiate and settle the dispute. If the Parties do not resolve the dispute to the satisfaction of both Parties within ten (10) Working Days of the Notice of Dispute, the parties shall arrange a further meeting which shall be attended by senior representatives from each Party. At the meeting the senior representatives shall attempt to agree a resolution of the dispute. In the event that the senior representatives do not resolve the dispute to the satisfaction of both Parties within ten (10) Working Days of the referral of the dispute to the senior representatives (or such period as the parties agree), the parties may, by

agreement, attempt to settle the dispute by means of mediation or early neutral evaluation in accordance with the Centre for Effective Dispute Resolution (CEDR) model mediation or early neutral evaluation procedure in force for the time being.

7.3 Nothing in this Agreement shall limit the right of a party to raise court proceedings in connection with any matter under this Agreement.

8 LIMITATION OF LIABILITY

8.1 Subject to Clauses 8.2 and 8.3 the liability of the Service Provider under or in connection with this Agreement, whether arising from breach of contract, negligence or otherwise, in a given Year shall not exceed the Fees payable to the Service Provider in that Year.

8.2 Neither party shall be liable for:

- (a) loss of profit (whether direct or indirect);
- (b) loss of reputation;
- (c) loss of revenue; or
- (d) any other indirect or consequential losses

arising under or in connection with this Agreement, whether arising from breach of contract, negligence or otherwise.

8.3 The exclusions and limitations of liability set out in Clauses 8.1 and 8.2 do not apply to:

- (a) liability arising from death or injury to persons caused by negligence;
- (b) either party's liability arising as a result of fraud or fraudulent misrepresentation; and/or
- (c) any other liability which cannot be excluded or limited at law.

9 INDEMNITY FOR DAMAGE TO PERSONS AND PROPERTY

Subject to the limit of liability in Clause 8 (Limitation of Liability) the Service Provider shall indemnify and keep indemnified the Retailer from and against all losses, damages, expenses and claims in respect of the death of or injury to any person or loss of or damage to any property which may arise out of or in consequence of the carrying out of the Services.

10 LOSS OF DATA

10.1 In the event that through any default of the Service Provider, its servants or agents, data transmitted or processed in connection with the Services is either lost or sufficiently

degraded as to be unusable, the Service Provider shall be liable for the cost of re-constitution of that data and/or the costs and expenses incurred by the Retailer in re-creating any such data.

- 10.2 Payment of costs by the Service Provider in accordance with Clause 10.1 shall not prejudice or affect any other right of action or remedy which shall have accrued or shall thereafter accrue to the Retailer.

11 FORCE MAJEURE

- 11.1 Provided it has complied with clause 11.2, if a party is prevented, materially hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (an "**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 11.2 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration (in the Affected Party's reasonable opinion), and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 11.3 If the Force Majeure Event prevents, materially hinders or delays the Affected Party's performance of its obligations for a continuous period of more than six weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' written notice to the Affected Party. If the Force Majeure Event is a pandemic related to COVID-19 however then no right to termination in such circumstances will arise.

12 CONFIDENTIALITY

- 12.1 The Service Provider shall procure that:

- (a) the Service Provider (and any person employed or engaged by the Service Provider in connection with this Agreement in the course of such employment or engagement (including any sub-contractor and any person employed or engaged by any sub-contractor)) shall use Confidential Information only for the purposes of this Agreement;
- (b) the Service Provider (and any person employed or engaged by the Supplier in connection with this Agreement in the course of such employment or engagement

(including any sub-contractor and any person employed or engaged by any sub-contractor)) shall not disclose any Confidential Information to any third party without the prior written consent of the disclosing party;

- (c) the Service Provider shall take all reasonable precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by the Service Provider's employees, servants, agents or sub-contractors (or any employees, servants or agents of such sub-contractors);

12.2 The Retailer and its employees, agents and representatives:

- (a) shall treat as confidential all Confidential Information obtained from the Service Provider; and
- (b) shall not disclose to any third party without the express permission of the Service Provider any Confidential Information obtained from the Service Provider.

12.3 The provisions of Clauses 12.1 to 12.2 shall not apply to any information which:

- (a) is or becomes public knowledge other than by breach of this Clause 12;
- (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
- (c) is required to be disclosed by law;
- (d) is required to be disclosed to Ofwat or any other regulatory body; or
- (e) is independently developed by the receiving party without access to the Confidential Information.

12.4 Nothing in this Clause 12 shall prevent the Service Provider or Retailer from using:

- (a) data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business to the extent that this does not constitute a disclosure of Confidential Information: or
- (b) data obtained in the performance of obligations within this Agreement in the fulfilment of its statutory functions under the Act

to the extent that this does not constitute infringement by the Retailer or the Service Provider of any intellectual property right.

13 PUBLICITY

Except with the prior written consent of the other party, neither party shall make any press announcements or publicise this Agreement or its contents in any way.

14 PERSONAL DATA

14.1. When Processing Personal Data, the Service Provider undertakes to the Retailer that it shall:

14.1.1. taking into account the nature of the Processing and the information available to the Service Provider, provide reasonable assistance to the Retailer with any data protection impact assessments, and prior consultations with Regulatory Authorities or other competent data privacy authorities, which the Retailer is required to undertake under Article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Legislation;

14.1.2. Process the Personal Data only to the extent necessary for the Permitted Purposes;

14.1.3. not Process the Personal Data other than on the Retailer's documented instructions, including with regard to transfer of Personal Data to a or an international organisation, unless required to do so by Applicable Laws, in which case the Service Provider shall to the extent permitted by Applicable Laws inform the Retailer of that legal requirement before the relevant Processing of that Personal Data;

14.1.4. keep a record of any Processing of Personal Data it carries out on behalf of the Retailer;

14.1.5. comply with Data Protection Legislation when Processing the Personal Data and not knowingly do or omit to do or permit anything to be done which causes the Retailer to breach the Data Protection Legislation or any relevant enactments, regulations, orders, standards and other similar instruments relating to the Processing of the Personal Data;

14.1.6. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk;

14.1.7. immediately after becoming aware of any breaches of any Applicable Laws, enactments, regulations, orders, standards and other similar instruments relating to the Processing of the Personal Data (including the Data Protection

Legislation) notify and provide sufficient information to the Retailer to allow the Retailer to meet any obligations to report or inform Data Subjects of such breach under the Data Protection Legislation. The Service Provider shall co-operate with the Retailer to assist in the investigation, mitigation and remediation of such breach and shall provide further information where so required by a Regulatory Authority;

- 14.1.8. restrict access to the Personal Data to Permitted Recipients (and in the case of any access by any employee, ensure that access to the Personal Data is limited to such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties), ensure that all such Permitted Recipients are subject to confidentiality undertakings or professional or statutory obligations of confidentiality and impose upon such persons obligations of confidentiality and security at least equivalent to those contained in the Agreement and not disclose any Personal Data to any other person without the prior written consent of the Retailer;
- 14.1.9. ensure that all Permitted Recipients have undertaken training in the laws relating to handling Personal Data and are aware both of the Service Provider's duties and their personal duties and obligations under such laws and the Agreement. The Service Provider shall keep training records to show training is being provided adequately for a minimum of 6 years from the date of the training. The Service Provider shall produce such training records, where necessary, following a request from the Retailer to allow it to defend Claim(s);
- 14.1.10. take reasonable steps to ensure the reliability of all Permitted Recipients who have access to the Personal Data;
- 14.1.11. promptly notify the Retailer of any unauthorised, unlawful or accidental Processing, disclosure, loss of, damage to, access to or destruction of the Personal Data or if the Personal Data is or becomes corrupted or unusable, and give to the Retailer all assistance reasonably required by the Retailer in such respect;
- 14.1.12. promptly amend, transfer, vary and/or delete any Personal Data held by or on behalf of the Service Provider upon request from the Retailer;
- 14.1.13. promptly notify the Retailer of any request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited;
- 14.1.14. promptly notify the Retailer of any request of a Regulatory Authority in relation to the Personal Data and co-operate and comply with the directions or decisions of any Regulatory Authority in relation to the Personal Data, and in each case

within such timescale as would enable the Retailer to meet any time limit imposed by any Regulatory Authority (as applicable);

- 14.1.15. taking into account the nature of the Processing, assist the Retailer by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Retailer's obligations to respond to requests for exercising the Data Subject's rights under the Data Protection Legislation;
 - 14.1.16. promptly notify the Retailer of any request from a Data Subject for access to that person's Personal Data and provide the Retailer with reasonable co-operation and assistance in complying with any such request;
 - 14.1.17. not respond to any request from a Data Subject or third party except on the documented instructions of the Retailer or as required by Applicable Laws, in which case the Service Provider shall to the extent permitted by Applicable Laws inform the Retailer of that legal requirement before the Service Provider responds to the request; and
 - 14.1.18. promptly on request, provide to the Retailer a copy of all Personal Data held or controlled by it in the format and on the media reasonably specified by the Retailer.
- 14.2. If the Service Provider receives any complaint, notice or communication which relates to the Processing of the Personal Data or to either party's compliance with the Data Protection Legislation, it will immediately notify the Retailer and it shall provide the Retailer with full co-operation and assistance in relation to any such complaint, notice or communication.
 - 14.3. The Service Provider shall not transfer the Personal Data to any country outside the EEA without the prior express written consent of the Retailer.
 - 14.4. The Service Provider shall co-operate with any Regulatory Authority requests relating to the Processing of Personal Data.
 - 14.5. The Service Provider agrees to indemnify and keep indemnified the Retailer against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities of whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Retailer and arising out of or in connection with any breach by the Service Provider, its employees, representatives, agents or sub-contractors, of its obligations under these Data Processing Obligations.
 - 14.6. Subject to the Service Provider being required to maintain such copies by law, upon expiry or termination of the Agreement (for any reason whatsoever), the Service Provider shall

at the request of the Retailer promptly return to the Retailer or destroy all Personal Data securely (regardless of form, and whether computerised or physical). The Service Provider shall certify the deletion or destruction (as applicable) to the Retailer in writing.

- 14.7. The Service Provider shall immediately notify the Retailer if, in its opinion, an instruction given by the Retailer to the Service Provider under this clause 14 infringes the GDPR or any other relevant Data Protection Legislation.
- 14.8. The Service Provider shall make available to the Retailer all information necessary to demonstrate compliance with this clause 14 and allow for and contribute to audits including inspections conducted by the Retailer or another auditor mandated by the Retailer in relation to the Processing of Personal Data and the implementation of technical and organisational measures by the Service Provider as referred to in these Data Processing Obligations.
- 14.9. The Service Provider may only authorise a third party (**sub-contractor**) to process the Personal Data:
 - 14.9.1. provided that the Service Provider has carried out adequate due diligence to ensure that the sub-contractor is capable of providing the level of protection required by the Agreement;
 - 14.9.2. subject to the Retailer's prior written consent where the Service Provider has supplied the Retailer with full details of such sub-contractor;
 - 14.9.3. provided that the relationship between the Service Provider and the sub-contractor is governed by a written contract which contains obligations in relation to the Processing of Personal Data that are at least as onerous as those set out in this Addendum; and
 - 14.9.4. provided that the sub-contractor's contract terminates automatically on termination of the Agreement for any reason.
- 14.10. Any sub-contracting or transfer of Personal Data permitted by the Retailer shall not relieve the Service Provider from any of its liabilities, responsibilities and obligations to The Retailer under the Agreement and the Service Provider shall remain fully liable for the acts and omissions of its sub-contractors.

15 NOTICES

- 15.1 Any notice under this Agreement will be in writing and delivered by personal delivery, express courier, confirmed email or certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, one (1) Working Day after deposit with express courier, upon confirmation of receipt of email or five (5) Working Days after deposit in the mail.

15.2 Unless otherwise provided for in this Agreement, notice shall be given to the Company Secretary of the relevant party at the registered address of that party and a copy shall be sent to the Service Provider Contract Manager or the Retailer Contract Manager as appropriate.

16 GOVERNING LAW AND JURISDICTION

16.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

16.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

17 COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement will be construed so as to create a partnership, joint venture or agency relationship between the parties.

19 ENTIRE AGREEMENT

19.1 This agreement and the Technical Specifications (as defined in Schedule 1) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

20 VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21 SEVERANCE

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 21 shall not affect the validity and enforceability of the rest of this agreement.

22 WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23 THIRD PARTY RIGHTS

Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

24 ASSIGNMENT AND SUBCONTRACTING

- 24.1 Neither party will assign or transfer or purport to assign or transfer all or any of its rights or obligations contained in this Agreement without the prior written consent of the other or as expressly permitted pursuant to this Agreement.
- 24.2 Clause 24.1 shall be without prejudice to the right of the Service Provider to appoint a subcontractor in respect of any of its rights and/or obligations under this Agreement for the purpose of performance of the Services.

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

Schedule 1

Service Description

1 INTERPRETATION

1.1 In this Schedule 1:

“**Appointed Meter Read**” means the attempt to collect Meter Reading Data in respect of a Meter at the premises of a Service Customer pursuant to a request for a single meter read by appointment made by the Retailer and accepted by the Service Provider in accordance with the relevant provisions in the Technical Specification;

“**Customer Data**” has the meaning given in paragraph 4.1 (Service Customers);

“**Expected Read**” means in respect of a Service Customer the baseline for Meter Reading Data for that Service Customer as provided by the Retailer to the Service Provider as part of the Customer Data;

“**Meter**” shall have the meaning given in section 219 of the Act;

“**Meter Read**” means any of:

- (a) a Scheduled Meter Read;
- (b) an Unscheduled Meter Read; or
- (c) an Appointed Meter Read;

“**Meter Reading Data**” means in each case, the volume of water recorded by the relevant Meter in the course of a completed Meter Read;

“**Missed Appointment Charges**” means payments accruing pursuant to regulation 6 of the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008;

“**New Customer**” means either:

- (a) a customer:
 - (i) who has become a Non-Household Customer at any point following the Commencement Date but prior to termination or expiry of this Agreement; and
 - (ii) whom the Retailer intends to be Service Customer; or

- (b) a Non-Household Customer who was not a Service Customer at the Commencement Date but whom the Retailer subsequently intends to be a Service Customer and has given sufficient notice to the Service Provider in this regard;

“Non-Household Customer” means a person who may be identified as the customer of the Retailer for any Non-Household Premises;

“Non-Household Premises” means those premises that are not Household Premises within the meaning of Section 17C of the Act;

“Scheduled Meter Read” means the attempt to collect Meter Reading Data in respect of a Meter at the premises of a Service Customer on either (a) a monthly or (b) a six-monthly basis;

“Service Customer” means a Non-Household Customer whereby its Non-Household Premises is within the Affinity Water network in respect of whom the Service Provider is to provide Meter Reading Data to the Retailer;

“Technical Specifications” means specifications provided by the Service Provider from time to time setting out technical criteria in respect of provisions in this Agreement;

“Temetra” means the proprietary data management software of that name in use by the Service Provider;

“Tolerance Range” means in respect of a Service Customer the range of 75% to 150% of the Expected Read for that Service Customer;

“Unscheduled Meter Read” means an attempt to collect Meter Reading Data in respect of a Meter at the premises of a Service Customer other than in the course of a Scheduled Meter Read or an Appointed Meter Read pursuant to an Unscheduled Request; and

“Unscheduled Request” has the meaning given in paragraph 6.1 (Unscheduled Meter Read).

2 SUPPLY OF METER READING DATA

The Service Provider will supply the Retailer with the Meter Reading Data for all of the Service Customers in accordance with this Schedule 1 (the **“Services”**). Nothing in this Agreement shall prevent the Retailer from obtaining meter reads using alternative methods.

3 TRANSFER OF METER READING DATA

- 3.1 The Meter Reading Data will be made available by the Service Provider to the Retailer in accordance with the Technical Specifications.

3.2 The Service Provider will use reasonable endeavours to make the Meter Reading Data available to the Retailer within 24 hours of each Meter Read.

4 SERVICE CUSTOMERS

4.1 The Retailer shall provide such information in respect of each of the Service Customers as is required by the Service Provider from time to time for the performance of the Services in compliance with the Technical Specifications (the “**Customer Data**”).

4.2 The Service Provider shall provide the Retailer with the Technical Specifications on the Commencement Date.

4.3 On the Commencement Date the Retailer shall provide the Service Provider with the Customer Data.

4.4 The Service Provider shall be responsible for any errors in the form of the Technical Specifications. The Retailer shall be responsible for any errors in the form or content of the Customer Data.

4.5 A Scheduled Meter Read shall be carried out for each Service Customer in accordance with paragraph 5 (Scheduled Meter Read). Where the Retailer requires an Unscheduled Meter Read in respect of a Service Customer it shall follow the procedure in paragraph 6 (Unscheduled Meter Read).

4.6 The Retailer shall notify the Service Provider of:

- (a) those elements of Customer Data as may be required by the Service Provider on a periodic basis in accordance with the Technical Specifications in order for the Service Provider to perform the Services; and
- (b) any change of information in respect of a Service Customer (including without limitation the Customer Data in respect of that Service Customer) that has or is likely to have a material effect on performance of the Services within five (5) Working Days of the Retailer becoming aware of such change and in accordance with the Technical Specifications.

4.7 The Retailer shall notify the Service Provider (in advance where possible or in any event as soon as reasonably practicable) of circumstances where:

- (a) the Retailer intends the Services to be provided in respect of a New Customer;
- (b) the Retailer intends a Non-Household Customer to cease to be a Service Customer; and / or
- (c) a customer ceases to be a Non-Household Customer.

such notice to include the information specified in the Technical Specifications.

- 4.8 Notification pursuant to paragraphs 4.7(b) or 4.7(c) shall be treated as cancellation of all future Meter Reads in respect of the former Service Customer in question.
- 4.9 Upon giving notification in respect of a New Customer pursuant to paragraph 4.7(a) the Retailer may make arrangements for an Appointed Meter Read or an Unscheduled Meter Read in respect of that New Customer to take place as soon as reasonably practicable following the giving of such notification.

5 SCHEDULED METER READ

- 5.1 The Customer Data shall specify whether the Scheduled Meter Read for that Service Customer is to be carried out:
- (a) at monthly intervals; or
 - (b) at approximate six-monthly intervals.
- 5.2 Where a Scheduled Meter Read is to be carried out at monthly intervals pursuant to paragraph 5.1(a) the Service Provider shall use its reasonable endeavours to ensure that each such Scheduled Meter Read is carried out between twenty two (22) and forty (40) days since the previous Scheduled Meter Read.
- 5.3 Where a Scheduled Meter Read is to be carried out at six monthly intervals pursuant to paragraph 5.1(b) the Service Provider shall use its reasonable endeavours to ensure that each such Scheduled Meter Read is carried out between one hundred and sixty (160) and two hundred and fifteen (215) days since the previous Scheduled Meter Read.
- 5.4 Subject to paragraphs 5.2 and 5.3 the date of each individual Scheduled Meter Read shall be at the Service Provider's discretion. The Service Provider shall make available to the Retailer the range of dates within which each Scheduled Meter Read is to take place.
- 5.5 The Retailer shall procure that each Service Customer is informed of the range of dates in respect of each relevant Scheduled Meter Read with reference to paragraph 5.4 and shall inform the Service Provider of any circumstances that are likely to prevent the Scheduled Meter Read from taking place promptly upon becoming aware of such circumstances.
- 5.6 Performance of a Scheduled Meter Read pursuant to this paragraph 5 is subject to the Retailer providing relevant accurate Customer Data to the Service Provider in accordance with the Technical Specifications.

6 UNSCHEDULED METER READ

- 6.1 The Retailer may request that the Service Provider perform an Unscheduled Meter Read in respect of a specific Meter by relevant operation of Temetra or email to NHHMeterReading@affinitywater.co.uk (or such other address as notified by the Service Provider from time to time) in either case in accordance with the Technical Specifications (an "**Unscheduled Request**").
- 6.2 The Unscheduled Meter Read shall be performed according to the code selected (see table below) in respect of the first fifty (50) Unscheduled Requests received on any Working Day. Where the Retailer has requested more than fifty (50) Unscheduled Meter Reads on any Working Day, the Service Provider shall use reasonable endeavours to perform all such Unscheduled Meter Reads, but shall not be subject to the provisions of Schedule 3 in respect of those additional Unscheduled Meter Reads. The table below shows the individual code for each category of Unscheduled Meter Read:

Code	Description	Processed within (Working days)
M911	Urgent Unscheduled read	3
M33C	Change of Occupancy Unscheduled Read - Online	5
M777	Rejected Reads - To quality check reads already undertaken by the Service Provider at the Retailers request	5
M618	Transfer Unscheduled Read	5
M222	For any other non-cyclic purpose	10

- 6.3 The Retailer shall inform the Service Provider of any circumstances that are likely to prevent the Unscheduled Meter Read from taking place promptly upon becoming aware of such circumstances.

7 APPOINTED METER READ

- 7.1 The Service Provider shall provide the Retailer with the ability to raise requests for Appointed Meter Reads.
- 7.2 The procedure for raising requests for Appointed Meter Reads and the procedure for acceptance of such requests by the Service Provider shall be provided in the Technical Specifications.
- 7.3 Acceptance of any request for an Appointed Meter Read is subject to capacity of the Service Provider.
- 7.4 The Retailer shall inform the Service Provider of any circumstances that are likely to prevent the Appointed Meter Read from taking place promptly upon becoming aware of such circumstances.

7.5 In each case it shall be the Retailer's responsibility to ensure in advance that the relevant Service Customer is aware of and agrees to the time and date of an Appointed Meter Read.

8 CONDUCT OF METER READS

8.1 The Service Provider shall make two attempts at each Meter Read and shall use reasonable endeavours to ensure that the relevant Meter Reading Data is obtained at each such attempt.

8.2 If pursuant to paragraph 8.1 the Service Provider is unable to complete the second attempt of a given Meter Read, then a "skip" shall be recorded in respect of that Meter Read. Written confirmation of such "skip" with the relevant skip reason code shall be provided to the Retailer with photographic evidence within two (2) Working Days in accordance with the Technical Specifications. The skip codes are as follows:

Skip Code	Skip Code Description	Skip Chargeable	Trouble codes	
			Chargeable	Not Chargeable
CFOG	Meter fogged	Yes, all trouble codes		
CLMR	Can't locate meter	Yes, all trouble codes		
FLOD	Meter pit flooded	Yes, all trouble codes		
PBYC	Permanently buried	Yes, all trouble codes		
CPRP	Can't locate property	No		
DAMM	Damaged meter	No		
NCOM	AMR No Communication	No		
LIDP	Lid Problem	No		
MREM	Meter removed	No		
NACC	No access	No		
WRTE	Wrong route	No		
HAZZ	Hazardous location	Per trouble codes	RIOT - PUBLIC RIOT - RIOT NDLE - Needle/Syringe(s) DOG - DOG CUST - Customer! COMM - Commercial internal meter NA - Not Applicable MISC - Miscellaneous DIIM - Domestic internal individual meter DCOM - Domestic communal internal meter DEMO - Property demolished MT - Property empty OCC - Property occupied PRIV - Private Ground COVID19 - Dumb Internal Meter	2MAN - Heavy Lid LOCN - Location COVS - Lid damage - Soft Dig COVH - Lid damage - hard dig PUBL - Public Ground
OVGN	Area is Overgrown	Per trouble codes	MISC - Miscellaneous DEMO - Property demolished NA - Not Applicable PRIV - Private Ground OCC - Property occupied	PUBL - Public Ground
TCOV	Temporarily covered	Per trouble codes	BMOP - BLDG material on pit MISC - Miscellaneous COMM - Commercial internal meter NA - Not Applicable MT - Property empty OCC - Property occupied DCOM - Domestic communal internal meter DIIM - Domestic internal individual meter PRIV - Private Ground	CAR - Car on pit PUBL - Public Ground
ADVV	Adverse Weather	Per trouble codes	PFLD - Property Flooded RFLD - Road Flooded FRZL - Frozen Lid SNOW - Snow MISC - Miscellaneous SURF - Surface water COMM - Commercial internal meter DIIM - Domestic internal individual meter DEMO - Property demolished MT - Property empty OCC - Property occupied	NWHI - New meter head/index NBATT - New batteries fitted

- 8.3 Where the Service Provider is unable to complete a given Meter Read in accordance with paragraph 8.2 and due to any reason other than those set out in paragraph 8.4 the Retailer shall not be liable to pay the Fee in respect of that Meter Read.
- 8.4 Where the Service Provider is unable to complete a given Meter Read in accordance with paragraph 8.2 and due to:
- (a) act or omission by the Retailer; or
 - (b) act or omission by the relevant Service Customer; or
 - (c) as detailed in the table at paragraph 8.2 above as being payable by the Retailer,
- the Retailer shall remain liable to pay the Fee in respect of that Meter Read subject to the Service Provider having given written confirmation of a "skip" in respect of that Meter Read with photographic evidence to the Retailer pursuant to paragraph 8.2.
- 8.5 Where a Meter Read returns Meter Reading Data outside of the relevant Tolerance Range the Service Provider shall notify the Retailer and shall provide photographic evidence in accordance with the Technical Specifications.

9 CANCELLATION OF APPOINTED METER READS

- 9.1 Where the Retailer gives at least two (2) Working Days advance notice by email to NHHMeterReading@affinitywater.co.uk that an Appointed Meter Read is to be cancelled the Retailer shall not be liable to pay the Fee in respect of that Meter Read.
- 9.2 Where notice of cancellation of an Appointed Meter Read is not given in accordance with paragraph 9.1 the Retailer shall remain liable to pay the Fee in respect of that Appointed Meter Read.

10 ACCESS TO METERS

The Retailer shall procure that the Service Provider and its subcontractors shall have such access to those Meters as is required for performance of the Services.

11 ACCESS TO TEMETRA

- 11.1 The Service Provider shall make reasonable endeavours to grant the Retailer access to Temetra to view the following data held by the Service Provider for each Service Customer:
- (a) historic water usage;
 - (b) Meter Reading Data; and
 - (c) photographs in respect of Meter Reads

in accordance with the Technical Specifications.

11.2 The Retailer shall follow the Service Provider's reasonable directions (including without limitation such of the Service Provider's IT usage and IT security polices as are provided to the Retailer from time to time) when using or accessing Temetra including, without limitation, pursuant to this paragraph 11, paragraph 6.1 and/or the Technical Specifications.

11.3 The Retailer shall indemnify the Service Provider against all liabilities, costs, expenses damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Service Provider arising out of or in connection with:

- (a) any breach by the Retailer of its obligations in respect of paragraph 11.2; and/or
- (b) any claim made against the Service Provider by a third party arising out of or in connection with the Retailer's usage of or access to Temetra to the extent that such claim arises out of:
 - (i) negligent or deliberate misuse of Temetra; and/or
 - (ii) the breach, negligent performance or failure or delay in performance of this agreement,by the Retailer.

12 CONTACTS

12.1 The Service Provider will provide the Retailer with the details of relevant persons to contact in respect of queries relating to:

- (a) Scheduled Meter Reads;
- (b) Unscheduled Meter Reads; and
- (c) Appointed Meter Reads

12.2 The relevant contact for other queries is the Service Provider Contract Manager.

12.3 The Retailer will provide the Service Provider with a Retailer Contract Manager for raising all queries in respect of this Agreement.

Schedule 2

Fees

1 MONTHLY FEE

- 1.1 The Retailer shall pay the monthly fee to the Service Provider for the Services provided calculated as set out in paragraph 1.3.
- 1.2 The table below shows the individual Fee for each category of Meter Read:

	£ (excl. VAT)
Fee for each Scheduled Meter Read – Six Monthly (pursuant to paragraph 5.1(b) (Scheduled Meter Read) of Schedule 1)	■
Fee for each Scheduled Meter Read – Monthly (pursuant to paragraph 5.1(a) (Scheduled Meter Read) of Schedule 1)	■
Fee for each Unscheduled Meter Read or Appointed Meter Read	■

- 1.3 The amount payable for each month will be calculated as:

Number of Meter Reads carried out in respect of Service Customers in that month (including, for the avoidance of doubt:

- (a) incomplete Meter Reads for which the Retailer remains liable pursuant to paragraph 8.4 (Conduct of Meter Reads) of Schedule 1; and
- (b) cancelled Meter Reads for which the Retailer remains liable pursuant to paragraph 9.2 (Cancellation of Meter Reads) of Schedule 1,

multiplied by the relevant Fee shown in the table in paragraph 1.2.

E.g.

Six monthly Scheduled Meter Reads = 5,000

Monthly Scheduled Meter Reads = 1,000

Unscheduled Meter Reads = 500

(5,000 * £ [REDACTED]) + (1,000 * £ [REDACTED]) + (500 * £ [REDACTED])

Total for the month = £ [REDACTED]

- 1.4 The Fee for each category listed in paragraph 1.2 are applicable from 1st April 2022. On 1 April of each Year the Fee for each category of Meter Read shall increase by the rate for CPIH for the 12 months directly preceding 1 April each Year, as published by the Office for National Statistics (ONS). E.g., Increase for 1 April 2023 will be the rate for CPIH for the 12 months to March 2023.

2 INVOICING

- 2.1 Each month the Service Provider shall be entitled to issue an invoice to the Retailer in respect of the Fee for the preceding month (calculated in accordance with paragraph 1 (Monthly Fee)).
- 2.2 Each invoice pursuant to paragraph 2.1 shall include a statement setting out the basis of calculation of the sums contained therein.

3 VAT

The Fees do not include VAT which, where relevant, the Retailer shall pay to the Service Provider at the rate prevailing at the date monies are due and in the manner prescribed by law.

4 PAYMENT OF INVOICES

- 4.1 Any disputes in respect of an invoice shall be raised by the Retailer within twenty (10) Working Days of date of issue of that invoice.
- 4.2 Undisputed amounts under this Agreement shall be due and payable by the Retailer within one calendar month of the date of a valid invoice in respect of such amount and overdue amounts shall attract interest at the Default Interest Rate, (both before and after any judgment) on that amount for the period from the due date to and including the date of payment.
- 4.3 Paragraph 4.2 shall apply to disputed amounts to the extent that such sums are subsequently agreed or determined to have been properly payable to the Service Provider.
- 4.4 Payment is to be made by BACS, details will be provided by the Service Provider to the Retailer.

Schedule 3

Quality Assurance

1 PERIODIC REVIEW

The Service Provider and the Retailer shall carry out annual reviews of the Services and the Service Levels being provided under this Agreement in the light of the Retailer's requirements.

2 POOR SERVICE COMPENSATION

2.1 If at any time the Service Provider fails to meet any of the Service Levels other than due to

- (a) failure by the Retailer to comply with its obligations pursuant to this Agreement;
or
- (b) Force Majeure Event

then, notwithstanding any other provision in this Agreement, the Service Provider shall use its reasonable endeavours to remedy such failure.

2.2 If at any time the Service Provider fails to meet any of the Service Levels then subject to the Retailer having materially complied with all of its obligations under this Agreement, then in accordance with paragraph 2.4 of this Schedule 3 below, the Service Provider shall pay to the Retailer on demand (or the Retailer may set off against any sum owed by it to the Supplier) by way of liquidated damages the applicable Service Compensation.

2.3 The liquidated damages payments in paragraph 2.2 represent a genuine pre-estimate of the Retailer's loss and do not impose a detriment on the Service Provider which is disproportionate to the legitimate interests of the Retailer in the enforcement of the Service Levels and are without prejudice to the Service Provider's obligation to fulfil its obligations under this agreement if it is reasonably able to do so.

2.4 The total Service Compensation payments due to the Retailer in any month are capped at 10% of the monthly fee to the Service Provider for the Services provided calculated as set out in Schedule 2. For the avoidance of doubt, amounts above the cap do not roll forward into subsequent months.

2.5 The Service Compensation payments set out in Schedule 4 are subject to any change in the Wholesale Retail Market Codes, including but not limited to CSD 0002 (Market Performance Framework). During periods where the Authority, Panel, Market Performance Committee or Market Operator has reduced or suspended (either

temporarily or permanently) the Market Performance Standard (MPS) Charges the corresponding Service Compensation payments set out in Schedule 4 will also be suspended or reduced accordingly. For example, CPM023/CPW090 (Suspension of Performance Standard Charges), CPM027/CPW098 (Extending the Suspension of Market and Operational Performance Standard Charges due to Covid 19) and the letter from Georgina Mills (Ofwat) to Steve Arthur (MOSL) dated 9 February 2021 which suspended all MPS & OPS Charges during the period affected by the coronavirus pandemic (OPS March 2020 to December 2021 and MPS March 2020 to March 2021) has the effect of setting all Service Compensation payments set out in Schedule 4 to zero during the applicable time period.

- 2.6 In the event of a change as set out in paragraph 2.5 above, the Service Provider shall provide the Retailer with written notice of the change in the Wholesale Retail Market Codes promptly, once becoming aware of such change, and include the details and the effective date of such subsequent changes to the Service Compensation.

Schedule 4

Service Levels

Service	Service Level	Service Compensation
Six monthly reads - Meter visits	Visit each relevant Meter half yearly not less than 160 calendar days since the previous cyclic read and not more than 215 calendar days since the last cyclic read and provide a result (read or confirmation of skip with a reason).	£ [REDACTED] per Meter result not provided
Monthly read – meter visits	Visit each relevant Meter not less than 22 calendar days since the previous cyclic read and not more than 40 calendar days since the last cyclic read and provide a result (read or confirmation of skip with a reason) to the Retailer.	£ [REDACTED] per Meter result not provided.
Unscheduled Meter Read	Read taken according to the code selected (three (3)/ five(5)/ ten (10) Working Days) and result (read or confirmation of skip with a reason and photograph) will be available on Temetra within 2 Working Days of the read being taken.	£ [REDACTED]

Appointed Meter Read	<p>Attendance at each Appointed Meter Read pursuant to paragraph 8.1 of Schedule 1 and in accordance with the time range and/or date agreed between the Service Provider and the Retailer.</p>	<p>The Service Provider shall be liable to the Retailer for relevant payments accruing to the Retailer pursuant to regulation 6 of the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 in respect of that Appointed Meter Read.</p>
	<p>In each case where the Service Provider attempts and is unable to complete an Appointed Meter Read, Service Provider is to provide photographic evidence in accordance with paragraph 8.2 of Schedule 1</p>	

Signed by:)

for and on behalf of **AFFINITY WATER LIMITED**)

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Signed by:)

for and on behalf of [xxx])

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