

DRAFT

**AGREEMENT TO PROVIDE METER
READING SERVICES**

Affinity Water Limited

(1)

and

[insert company name]

(2)

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DRAFT

DATED [insert day] [insert month] [insert year]

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) [insert company name] incorporated and registered in [insert country] with company number [insert company number] whose registered office is at [insert registered office] (the "Retailer")

BACKGROUND

- (A) The Retailer supplies water to the Non-Household Customers 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 (as defined in 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;

"Affected Party" shall have the meaning given at Clause 11.1 (Force Majeure);

"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;

"Commencement Date" means the date of this Agreement;

"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 Protection Laws" means the Data Protection Act 1998 and any other data protection laws and regulations applicable in the UK and any codes of practice, issued under Section 51(3) of the Data Protection Act 1998 by the Information Commissioner (as defined in the Data Protection Act 1998);

"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)].

"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;

"Personal Data" has the meaning given in the Data Protection Act 1998;

"Retailer Contract Manager" means **[insert name and title]** 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;

"Security Measures" has the meaning given in Clause 14.4 (Personal Data);

"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:

Andrew McIlwraith

Email: Andrew.McIlwraith@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;

"Subject Access Request" means any request from a data subject concerning his or her Personal Data;

"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 April

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 and using reasonable skill, care and diligence.

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 [insert date] 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 or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - (f) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (g) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 6.1(b) to clause 6.1(h) (inclusive); or
 - (j) 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 if the Retailer does anything which causes the Service Provider or is likely to cause the Service Provider to be in breach of any law including without limitation any condition of the Service Providers' 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.

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 higher of:
- (a) the Fees payable to the Service Provider in that Year; and
 - (b) £500,000.
- 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
- (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, 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, 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.

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 The Service Provider shall in accordance with the requirements of Section 4(4) of the Data Protection Act 1998 comply with the data protection principles in respect of all Personal Data utilised by the Service Provider in the course of providing the Services, and shall not knowingly do anything or permit anything to be done which might lead to a breach by the Retailer of the Data Protection Laws.

14.2 The Service Provider shall only process Services Data as required to deliver the Services and in accordance with this Agreement save that nothing in this Clause 14.2 shall prejudice the Service Provider's exercise of its right pursuant to Clause 12.4(b).

14.3 The Service Provider shall:

- (a) deal promptly and properly with all enquiries from the Retailer relating to the processing of the Data in relation to the Services;
- (b) not transfer the Services Data to a country or territory outside the European Economic Area without ensuring an adequate level of protection in accordance with Data Protection Laws.

14.4 The Service Provider shall have in place, and will maintain throughout the Term of this Agreement, all appropriate technical and organisational measures against unauthorised or unlawful processing of the Data and against accidental loss or destruction of or damage to, the Data ("**Security Measures**"). If at any time the Service Provider changes the Security Measures it has implemented in a manner which could have a material

adverse effect on the security of the Data, the Service Provider will notify the Retailer of that change.

14.5 In relation to the Services Data, the Service Provider shall immediately notify the Retailer of:

- (a) any unauthorised or unlawful processing, loss of, damage to or destruction of the Services Data including (without limitation) any disclosure or accidental or unauthorised access made by an employee, sub-contractor or any other person as well as the known facts as regards the above mentioned disclosure or use;
- (b) any complaint, notice or communication which relates directly to the processing of the Services Data;
- (c) any request for disclosure of the Services Data by a law enforcement authority (unless such notification is forbidden by law); and
- (d) any Subject Access Request relating to the Services Data,

and shall provide the Retailer with full co-operation and assistance in relation to any such incident, complaint, notice, communication, request or Subject Access Request.

15 NOTICES

15.1 Any notice under this Agreement will be in writing and delivered by personal delivery, express courier, confirmed facsimile, 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 facsimile or 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);

"Effective Date" means the tenth Working Day after (but not including) the Commencement Date;

"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 either:

- (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 Effective 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 Effective 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 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**") from the Effective Date.

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 reading.

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 No later than 5 Working Days prior to the Effective 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 eight (28) and thirty two (32) 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 seventy (170) and one hundred and ninety (190) 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 a 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 within two (2) Working Days 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 attempt 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.
- 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 "no read" shall be recorded in respect of that Meter Read. Written confirmation of such "no read" shall be provided to the Retailer with photographic evidence within two (2) Working Days in accordance with the Technical Specifications.

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;
- (b) act or omission by the relevant Service Customer; or
- (c) defect or non-operation of the relevant Meter

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 "no read" 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 act or omission; 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.

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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)	2.91
Fee for each Scheduled Meter Read – Monthly (pursuant to paragraph 5.1(a) (Scheduled Meter Read) of Schedule 1)	2.91
Fee for each Unscheduled Meter Read or Appointed Meter Read	6.49

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

$$(5,000 * £2.91) + (1000 * £2.91) + (500 * £6.49)$$

Total for the month = £20,705

- 1.4 On 1 April of each Year the Fee for each category of Meter Read shall increase by the rate of RPI for the previous Year.

2 INVOICING

- 2.1 On the first day of 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 (20) 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 day of receipt 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 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.

Schedule 4

Service Levels

Service	Service Level	Service Compensation
Six monthly reads - Meter visits	Visit each relevant Meter half yearly not less than 170 calendar days since the previous cyclic read and not more than 190 calendar days since the last cyclic read and provide a result (read or confirmation of no read with a reason).	£40 per Meter result not provided
Monthly read – meter visits	Visit each relevant Meter not less than 28 calendar days since the previous cyclic read and not more than 32 calendar days since the last cyclic read and provide a result (read or confirmation of no read with a reason) to the Retailer.	£40 per Meter result not provided.
Unscheduled Meter Read	Read taken within 48 hours of request and result (read or confirmation of no read with a reason and photograph) provided within 72 hours of request by the Retailer.	£10
Appointed Meter Read	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.	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

	<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>	<p>Standards) Regulations 2008 in respect of that Appointed Meter Read.</p>
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Signed by:

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

Signed by:

for and on behalf of **[insert company name]**

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