

ALTERNATIVE PAYMENT TERMS AGREEMENT

This Agreement is made on 18 October 2023 between

- (1) Anglian Water Services Limited, a company incorporated in England and Wales (No.02366656) whose registered office is at Lancaster House, Lancaster Way, Huntingdon Cambs PE29 6XU (the "**Contracting Wholesaler**"); and
- (2) Everflow Limited, a company incorporated in England and Wales (No. 09651912) whose registered office is at is at Traynor Hub (T2) Traynor Way, Whitehouse Business Park, Peterlee, SR8 2RU (the "**Contracting Retailer**").

WHEREAS:

- A. The Contracting Wholesaler and the Contracting Retailer entered into a wholesale contract dated 21 March 2017 (such contract and its schedules together with confirmations exchanged between the Contracting Wholesaler and the Contracting Retailer pursuant thereto, in each case as amended from time to time, the "**Wholesale Contract**"). The Wholesale Contract is entered into pursuant to the Wholesale Retail Code (the "**Wholesale Code**") issued by the Market Operator. The Wholesale Contract incorporates the Business Terms mandated by the Wholesale Code.
- B. The Contracting Wholesaler and the Contracting Retailer entered into an alternative eligible credit support agreement dated 2nd October 2019 which supplements the Wholesale Contract by enabling the Contracting Wholesaler to reduce the amount of Eligible Credit Support required from the Contracting Retailer ("**Alternative Eligible Credit Support Agreement**")
- C. The Contracting Wholesaler and the Contracting Retailer entered into an alternative payment terms agreement dated 6th November 2019 enabling the Contracting Wholesaler to reduce the amount of Eligible Credit Support required from the Contracting Retailer which was varied by agreement, on or around May 2020 ("**Alternative Payment Terms Agreement**").
- D. Due to the implementation of a Reduced Notice Post- Payment provisions in the Business Terms, the parties wish to replace the existing Alternative Payment Terms Agreement with this new Agreement.

1. Definitions and Interpretation

- 1.1. Unless the context requires otherwise, terms not otherwise defined in this Agreement shall have the meaning ascribed to them in the Wholesale Contract.
- 1.2. Headings and titles are for convenience only and do not affect the interpretation of this Agreement.

2. Consideration

- 2.1. In consideration of the Contracting Wholesaler's agreement set out in clause 3 below, the Contracting Retailer agrees to pay to the Contracting Wholesaler on demand the sum of £1 (one pound Sterling).

3. Alternative Payment Terms

- 3.1. The Contracting Retailer has selected to pay Primary Charges in accordance with the Reduced Notice Post-Payment arrangements set out section 9.2.5. The amendments set out herein shall take effect from 6 October 2023 provided that this Agreement has been signed by the parties

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prior to that date. In the event that this Agreement is not signed by the parties by 6th October 2023, subject to signature by both parties, this agreement shall take effect on the 6th November 2023. The parties have agreed to amend the relevant Business Terms to read as follows

- (a) amend section 9.2.5 of the Business Terms to read:

Business Term section number	Amendment
9.2.5	<p>Reduced Notice Post-Payment of the Primary Charges</p> <p>9.2.5 Where the Reduced Notice Post-Payment option has been selected by the Contracting Retailer pursuant to Section 9.2.1</p> <p>(a) subject to Section 9.3.5 in respect of Corrective Settlement Runs, for each Month during the Supply Period ("Month X"), an amount (the "R1 Monthly Charge") shall be established as being the amount payable by the Contracting Retailer as set out in the first Planned Settlement Report (R1) issued by the Market Operator to the Contracting Wholesaler and the Contracting Retailer, in respect of the provision of Wholesale Services during Month X;</p> <p>(b) in accordance with its published invoicing calendar, but in any event within ten (10) Business Days of receiving the first Planned Settlement Report (R1) from the Market Operator, the Contracting Wholesaler shall invoice the Contracting Retailer the R1 Monthly Charge using the relevant Aggregated Settlement Report from the Market Operator;</p> <p>(c) the R1 Monthly Charge in respect of Month X shall be paid by the Contracting Retailer to the Contracting Wholesaler in accordance with Section 9.6, by the 15th day after the end of Month X ("Agreed Payment Date"), being the R1 Monthly Charge set out in the relevant Aggregated Settlement Report. Where the Agreed Payment Date is a Saturday or Sunday, payment will be received by the Contracting Wholesaler by the Friday prior to the Agreed Payment Date. For the avoidance of doubt, the parties expressly acknowledge and agree that the payment of the R1 Month Charge is not conditional or dependent upon the Contracting Wholesaler issuing an invoice for the R1 Monthly Charge prior to the Agreed Payment Date</p>

- (b) amend section 9.2.3 of the Business Terms to read (which shall apply in the event that the Contracting Retailer reverts to Post Payment arrangements under section 9.2.3 as opposed to Reduced Notice Post Payment arrangements under section 9.2.5) :

Business Term section number	Amendment
9.2.3	<p>Post-Payment of the Primary Charges</p> <p>Where the Post-Payment option has been selected by the Contracting Retailer pursuant to Section 9.2.1, and save where the provisions of Section 29 ("Payment Deferral – Medium Term Measures") apply:</p> <p>(a) subject to Section 9.3.5 in respect of Corrective Settlement Runs, for each Month during the Supply Period ("Month X"), an amount (the "R1 Monthly Charge") shall be established as being the amount payable by the Contracting Retailer as set out in the first Planned Settlement Report (R1) issued by the Market Operator to the Contracting Wholesaler and the Contracting Retailer, in respect of the provision of Wholesale Services during Month X;</p> <p>(b) in accordance with its published invoicing calendar, but in any event within ten (10) Business Days of receiving the first Planned Settlement Report (R1) from the Market Operator, the Contracting Wholesaler shall</p>

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	invoice the Contracting Retailer the R1 Monthly Charge using the relevant Aggregated Settlement Report from the Market Operator; (c) the R1 Monthly Charge in respect of Month X shall be paid by the Contracting Retailer to the Contracting Wholesaler in accordance with Section 9.6, by the 15 th day after the end of Month X ("Agreed Payment Date"), being the R1 Monthly Charge set out in the relevant Aggregated Settlement Report. Where the Agreed Payment Date is a Saturday or Sunday, payment will be received by the Contracting Wholesaler by the Friday prior to the Agreed Payment Date. For the avoidance of doubt, the parties expressly acknowledge and agree that the payment of the R1 Monthly Charge is not conditional or dependent upon the Contracting Wholesaler issuing an invoice for the R1 Monthly Charge prior to the Agreed Payment Date
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- (c) Amend the definition of "Credit Support Requirement" in Schedule 1, Part 1 of the Wholesale Contract as follows:

"Credit Support Requirement" is the amount, expressed in pounds sterling, calculated on a monthly basis in accordance with the following formula
 $xx = (\gamma / zz) \times 41$
where:
xx is the Credit Support Requirement;
γ is the amount specified in the P1 Aggregated Settlement Report and issued to the relevant Contracting Wholesaler and Contracting Retailer; and
z is the number of days in the Month for which the Provisional Monthly Charge relates;

3.2 The parties agree that nothing in this Agreement shall prejudice or otherwise undermine the obligation or other liability of the Contracting Retailer to pay any amount to the Contracting Wholesaler under the Wholesale Contract, and the rights and remedies of the Contracting Wholesaler in respect of such obligations and liabilities shall be unaffected.

3.3 In accordance with section 9.2.1 of the Business terms, the parties acknowledge that the Contracting Retailer may only amend its selection to or from Reduced Post-Payment once in any period of twelve (12) Months. Where the Contracting Retailer wishes to amend its payment selection under section 9.2.1 it shall give the Contracting Wholesaler at least 20 Business Days notice prior to the issue of the P1 Settlement Report for the relevant Invoice Period, save in the case of a return from Post-Payment or Reduced Notice Post-Payment to Pre-Payment which shall be notified in accordance with Section 9.12.4.

4. Termination of this Agreement

4.1 This Agreement shall automatically terminate on the earlier of: (i) termination or expiry for any reason of the Wholesale Contract; or (ii) the termination or expiry of the Alternative Eligible Credit Support Agreement; or (iii) in the event that the Contracting Retailer elects to change from Post Payment of its Primary Charges, to Pre Payment of its Primary Charges.

4.2 Without prejudice to the foregoing, this Agreement may be terminated by either party giving written notice to the other party on 60 days written notice.

4.3 On termination of this Agreement for any reason

(a) the arrangements set out herein shall cease with immediate effect; and

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- (b) the Contracting Retailer shall automatically return to Pre Payment of its Primary Charges unless and until the Contracting Retailer is able to agree alternative Post Payment arrangements with the Contracting Wholesaler.

5. General

- 5.1 No variation to this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each party.
- 5.2 Each party will pay its own costs and expenses in connection with performing its obligations under this Agreement, and the negotiation of it.
- 5.3 This Agreement supplements the Wholesale Contract. In the event of a conflict between this Agreement and the Wholesale Contract, the terms of the Wholesale Contract shall take precedence.
- 5.4 The parties do not intend any third party to have the right to enforce any provision of this Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).
- 5.5 All notices served under this Agreement shall be served in accordance with the requirements of the Wholesale Contract relating to the provision of notices on that party. For the avoidance of doubt, all notices served on the Contracting Wholesaler shall also be served on the Company Secretary of the Contracting Wholesaler at the registered office of the Contracting Wholesaler.
- 5.6 The Contracting Retailer acknowledges and agrees:
- (a) that it is entering into this Agreement as a means of obtaining Alternative Payment Terms within the meaning of Schedule 3A of the Wholesale Contract; and
 - (b) that in order to comply with Schedule 3A, this Agreement shall be published in full on the Contracting Wholesaler's website.
- 5.7 Save to the extent varied or amended by the arrangements set out in this Agreement, the Wholesale Contract (and all provisions of it) shall remain in full force and effect without amendment and shall continue to govern the relationship between the parties as Contracting Wholesaler and Contracting Retailer (including, for the avoidance of doubt, the liabilities and obligations of the respective parties). No greater liability shall be assumed by the Contracting Wholesaler to the Contracting Retailer as a consequence of entering into this Agreement.
- 5.8 Each party shall only assign, novate or transfer its rights and/or obligations under this Agreement strictly in accordance with the restrictions imposed under the Wholesale Contract. In the event that the Wholesale Contract is assigned, novated or transferred to another party, this Agreement shall be simultaneously assigned, novated or transferred to the same party, and in the event that such assignment or novation is not completed, this Agreement shall be deemed to automatically terminate on the date that the Wholesale Contract is assigned or novated.
- 5.9 The parties hereby agree that the existing Alternative Payment Terms Agreement shall simultaneously automatically terminate upon execution of this Agreement, by the mutual agreement of both parties.

6. Entire Agreement

- 6.1 This Agreement, together with the Wholesale Contract, sets out the entire agreement and understanding between the parties, and supersedes all proposals and prior agreements, arrangements, course of dealings and understandings between the parties, whether written or oral, relating to its subject matter.

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6.2 Each party acknowledges that in entering into this Agreement it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to this Agreement or not) that is not set out in this Agreement.

7. Cumulative Rights

7.1 Save as expressly indicated otherwise, all rights, powers and remedies granted to either of the parties shall be cumulative and without prejudice to any other right, power or remedy of that party and no single or partial exercise of any right, power or remedy shall restrict or prejudice any other or further exercise of it or the exercise of any other right, power or remedy available to it.

8. Law and Jurisdiction

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

8.2 Without prejudice to the rights of the Authority, the courts of England and Wales have exclusive jurisdiction to settle any dispute (including any non-contractual dispute) arising from or connected with this Agreement. The parties agree that the courts of England and Wales are appropriate and convenient courts to settle any such dispute.

IN WITNESS WHEREOF this Agreement has been executed by the parties and takes effect from the date specified at the head of it.

Signed by a duly authorised

Signed by a duly authorised

Representative for and on behalf of

Representative for and on behalf of

The Contracting Wholesaler

The Contracting Retailer