

ANNEX

Wholesale-Retail Code:

**Wholesale Contract for
Wholesale Services**

CONTENTS

Clause	Page No
1	Definitions and interpretation3
2	Term and termination.....3
3	Wholesale Services commencement and supply4
4	Wholesale-Retail Code5
5	Charges and payment.....5
6	Change Control process5
7	Dispute resolution6
8	Limitation of liability6
9	Assignment/transfer6
10	Notices7
11	Relationship of the Contracting Wholesaler and the Contracting Retailer .7
12	Third party rights7
13	Entire agreement.....8
14	Survival of rights.....8
15	Waiver9
16	Severance9
17	Counterparts9
18	Governing Law9
Schedule 1 - Terms and Conditions of a Wholesale Contract 10	
Part 1: Objectives, Definitions and Principles 10	
Part 2: Business Terms..... 10	
Part 3: Operational Terms..... 10	
Part 4: Market Terms 10	
Part 5: Code Subsidiary Documents..... 10	
Part 6: Forms associated with the Operational Terms..... 10	
Schedule 2 - Contracting Retailer information 11	
Schedule 3 - Contracting Wholesaler information..... 12	

This Wholesale Contract is made on

Between

- (1) _____, a company incorporated in _____ (No. _____) in whose registered office is at _____ (the Contracting Wholesaler); and
- (2) _____, a company incorporated in _____ (No. _____) whose registered office is at _____ (the Contracting Retailer).

Whereas

- (A) The Contracting Wholesaler holds an Appointment under the Water Industry Act 1991 and the Contracting Retailer holds a Licence under the Water Industry Act 1991.
- (B) The Contracting Retailer has requested that the Contracting Wholesaler supply it with Wholesale Services under sections 66A and 66AA and/or sections 117A and 117B of the Water Industry Act 1991 and the Contracting Wholesaler is required by the Water Industry Act 1991 to make such supply.
- (C) This Wholesale Contract is a section 66D agreement and/or a section 117E agreement (as those terms are defined in sections 66D(9) and 117E(9) of the Water Industry Act 1991).
- (D) The Authority has issued a code called the Wholesale-Retail Code, pursuant to sections 66DA and 117F of the Water Industry Act 1991, which makes provision in relation to the terms and conditions of a section 66D agreement and/or section 117E agreement.
- (E) This Wholesale Contract (together with its Schedules) is in the form prescribed by the Authority in the Wholesale-Retail Code and applies to all of the Wholesale Services required by the Contracting Retailer from the Contracting Wholesaler.

It is agreed

1 Definitions and interpretation

- 1.1 In this Wholesale Contract the definitions and rules of interpretation in Part B of Part 1 of Schedule 1 of this Wholesale Contract shall apply.

2 Term and termination

- 2.1 This Wholesale Contract shall commence or be deemed to commence on [*insert the agreed date*] (the "Effective Date") and continue with full force and effect unless and until terminated in accordance with Clause 2.2.

2.2 This Wholesale Contract may be terminated in accordance with Section 11 of the Business Terms.

3 Wholesale Services commencement and supply

3.1 Under this Wholesale Contract the Contracting Retailer hereby confirms that it requires the Contracting Wholesaler to supply the following Wholesale Services:

3.1.1 Water Services **OR**

3.1.2 Sewerage Services **OR**

3.1.3 Water Services and Sewerage Services. **[DELETE AS APPROPRIATE]**

3.1.4 Where the Contracting Wholesaler operates an accreditation scheme, the Contracting Retailer may use such Accredited Entities to provide, or, where the Contracting Retailer is itself an Accredited Entity it may provide, Metering Activity, Connection Activity and/or Trade Effluent Sampling and Analytical Activity.

3.2 The commencement of the provision of the Wholesale Services by the Contracting Wholesaler shall begin on or after the Effective Date and be conditional on the fulfilment of the following conditions precedent:

3.2.1 the Contracting Retailer holding a Water Supply Licence and/or a Sewerage Licence (as appropriate) and such Licence not having been the subject of any successful appeal notified within fourteen (14) days of the date of its grant;

3.2.2 the Contracting Retailer being entitled to Register Supply Points;

3.2.3 the Contracting Retailer having provided the information specified in Schedule 2 of this Wholesale Contract to the Contracting Wholesaler;

3.2.4 the Contracting Wholesaler having provided the information specified in Schedule 3 of this Wholesale Contract to the Contracting Retailer;

3.2.5 where applicable pursuant to Section 9.11.4(a) of the Business Terms, the Cash Security Account Agreement having been fully executed by all parties thereto and in accordance with Schedule 2A of the Business Terms; and/or

3.2.6 where applicable pursuant to Section 9.11.4(b) of the Business Terms, the Guarantee having been provided to the Contracting Wholesaler on behalf of the Contracting Retailer in accordance with Schedule 2B of the Business Terms;

3.2.7 where applicable pursuant to Section 9.11.4(c) of the Business Terms, the Letter of Credit having been provided to the Contracting Wholesaler on behalf of the Contracting Retailer in accordance with Schedule 2C of the Business Terms; and/or

3.2.8 where applicable pursuant to Section 9.11.4(d) of the Business Terms, a Surety Bond having been provided to the Contracting Wholesaler on behalf of the Contracting Retailer in accordance with Schedule 2D of the Business Terms.

3.3 During the Supply Period, the Contracting Wholesaler shall provide the Wholesale Services specified in Clause 3.1 above in accordance with and subject to the terms of this Wholesale Contract.

3.4 If the Contracting Retailer provides Metering Activity, Connection Activity and/or Trade Effluent Sampling and Analytical Activity itself or through Accredited Entities then it shall do so in accordance with Schedule 1 Parts A and B of the Business Terms.

3.5 If the Contracting Retailer provides Metering Activity, Connection Activity and/or Trade Effluent Sampling and Analytical Activity itself or through Accredited Entities then those services shall not be Wholesale Services provided by the Contracting Wholesaler pursuant to the Wholesale Contract.

4 Wholesale-Retail Code

4.1 The Contracting Wholesaler and the Contracting Retailer agree and undertake to comply with their respective obligations and duties to each other and to the Market Operator (the rights of the Market Operator being provided to it for the purpose of securing the orderly participation of Trading Parties in the market) pursuant to and in accordance with this Wholesale Contract.

4.2 Each Party and the Market Operator (the rights of the Market Operator being provided to it for the purpose of securing the orderly participation of Trading Parties in the market) shall have the rights accorded to it under the Wholesale-Retail Code.

5 Charges and payment

5.1 In consideration of the provision of the Wholesale Services under this Wholesale Contract, the Contracting Retailer shall pay the Contracting Wholesaler the Wholesale Charges, all as calculated and payable in accordance with the Wholesale-Retail Code and the Wholesale Tariff Document.

5.2 Where applicable, the Contracting Wholesaler shall make payments to the Contracting Retailer as calculated and payable in accordance with the Wholesale-Retail Code and the Wholesale Tariff Document.

6 Change Control process

6.1 The Parties acknowledge and agree that the following changes to the Wholesale Contract may be made by the Parties acting without reference to the Authority:

6.1.1 the insertion of the parties' details,

- 6.1.2 the insertion of the Effective Date in Clause 2,
- 6.1.3 the selection of the Appropriate Wholesale Services in Clause 3.1, and
- 6.1.4 the insertion of signing particulars.
- 6.2** The Parties acknowledge and agree that other changes to the Wholesale Contract may only be made by the Authority, and that:
 - 6.2.1 if the Authority makes any Approved Change to the Wholesale-Retail Code then the provisions of this Wholesale Contract shall be deemed to be varied in the same manner with immediate effect from the date on which the Approved Change to the Wholesale-Retail Code becomes effective; and
 - 6.2.2 with effect from that date and without any requirement for the Parties to document any change to this Wholesale Contract resulting from such Approved Change, the Wholesale-Retail Code as amended shall apply to this Wholesale Contract and shall be incorporated into and form part of this Wholesale Contract as if its terms were set out in full in this Wholesale Contract.

7 Dispute resolution

- 7.1 All disputes and differences arising out of or in connection with this Wholesale Contract (including the formation of this Wholesale Contract) shall be dealt with and resolved in accordance with Sections 17, 18 and 19 of the Business Terms and Schedule 9 of the Market Arrangements Code.

8 Limitation of liability

- 8.1 The liability of each Party to the other Party in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising in connection with this Wholesale Contract shall be as set out in Section 14 of the Business Terms.

9 Assignment/transfer

- 9.1 Neither Party may assign or transfer (whether outright or in security) any rights or obligations under this Wholesale Contract save that:
 - 9.1.1 with the prior written consent of the Contracting Wholesaler (such consent not to be unreasonably withheld, delayed or caveated), a Contracting Retailer that is a Water Retailer may assign its rights and obligations under this Wholesale Contract to a third party that holds a Water Supply Licence and has, where required pursuant to Section 9.11.2 of the Business Terms, entered into: one or more forms of Eligible Credit Support referred to in Section 9.11.4 and set out in Schedules 2A to 2D of the Business Terms, substantially in accordance with the terms set out in those Schedules; and/or Alternative Eligible Credit Support referred to in Section 9.11.5 of the Business Terms subject to compliance with the requirements specified in Schedule 3 of the Business Terms;

- 9.1.2 with the prior written consent of the Contracting Wholesaler (such consent not to be unreasonably withheld, delayed or caveated), a Contracting Retailer that is a Sewerage Retailer may assign its rights and obligations under this Wholesale Contract to a third party that holds a Sewerage Licence and has, where required pursuant to Section 9.11.2 of the Business Terms, entered into: one or more forms of Eligible Credit Support referred to in Section 9.11.4 and set out in Schedules 2A to 2D of the Business Terms, substantially in accordance with the terms of those Schedules; and/or Alternative Eligible Credit Support referred to in Section 9.11.5 of the Business Terms subject to compliance with the requirements specified in Schedule 3 of the Business Terms.
- 9.1.3 with the prior written consent of the Contracting Retailer (such consent not to be unreasonably withheld, delayed or caveated), the Contracting Wholesaler may assign its rights and/or obligations under this Wholesale Contract to a third party that holds an Appointment; and
- 9.1.4 a Party may appoint sub-contractors subject to and in accordance with Section 24 and Schedule 1 of the Business Terms.

10 Notices

All notices to be given to a Party under this Wholesale Contract shall be given in accordance with Section 20 of the Business Terms. The parties shall provide to each other the information set out in Schedule 2 and Schedule 3 to this Wholesale Contract. The address and email for each Party and the job title of the persons to whom such notices must be sent shall be as set out in that information.

11 Relationship of the Contracting Wholesaler and the Contracting Retailer

Otherwise than expressly provided herein, nothing contained in this Wholesale Contract shall be construed as giving rise to the relationship of principal and agent or partnership or joint venture between the Contracting Wholesaler and the Contracting Retailer.

12 Third party rights

- 12.1 Except as provided for at Clause 4 and Clause 12.2 and where a right of enforcement is expressly provided for in this Wholesale Contract, it is not intended that a third party shall have the right to enforce any term of this Wholesale Contract under the Contracts (Rights of Third Parties) Act 1999.
- 12.2 It is intended that each of the Market Operator and the Authority shall be entitled to enforce their rights under this Wholesale Contract as a third party under the Contracts (Rights of Third Parties) Act 1999 for the purposes of securing the orderly participation of Trading Parties in the market.

- 12.3** The Contracting Wholesaler and the Contracting Retailer may terminate or vary this Wholesale Contract, acting in accordance with Clause 2.2 and Clause 6 respectively, without the need for consent from the Market Operator.

13 Entire agreement

- 13.1** This Wholesale Contract together with the Cash Security Account Agreement, the Guarantee, the Letter of Credit, Surety Bond and/or any other Alternative Eligible Credit Support arrangement entered into in accordance with Schedule 3 of the Business Terms (as applicable) sets out the entire agreement between the Contracting Wholesaler and the Contracting Retailer and supersedes all prior representations, arrangements, understandings and agreements between the Contracting Wholesaler and the Contracting Retailer relating to the subject matter hereof.

- 13.2** Each Party acknowledges that in entering into this Wholesale Contract it does not rely on any representation, warranty, collateral agreement or other assurance of any person (whether a Party to this Wholesale Contract or not) that is not set out in this Wholesale Contract (including, for the avoidance of doubt, the Wholesale Retail Code), the Cash Security Account Agreement, the Guarantee, the Letter of Credit, the Surety Bond and/or any Alternative Eligible Credit Support arrangement entered into in accordance with Schedule 3 of the Business Terms. Nothing in this Wholesale Contract shall limit or exclude any liability for fraud or fraudulent misrepresentation.

- 13.3** In the event of any conflict among any of this Wholesale Contract, the Cash Security Account Agreement, the Guarantee, the Letter of Credit, Surety Bond and/or any other Alternative Eligible Credit Support arrangement entered into in accordance with Schedule 3 to the Business Terms (as applicable), and any other Law, the following order of precedence shall apply in descending order:

13.3.1 any Law; then

13.3.2 this Wholesale Contract; then

13.3.3 the Cash Security Account Agreement, the Guarantee and/or the Letter of Credit and/or the Surety Bond (as applicable), and/or any Alternative Eligible Credit Support arrangement entered into in accordance with Schedule 3 of the Business Terms.

14 Survival of rights

- 14.1** Termination of this Wholesale Contract for any reason shall not affect any rights or liabilities that have accrued prior to termination or the coming into force of any provision that is expressly or by implication intended to come into force or continue in force on or after termination. Without limitation, the Contracting Wholesaler and the Contracting Retailer intend that the following shall survive termination: Clauses 1, 5, 7, 8, 11 to 16 (inclusive) and 18 of this Wholesale Contract and Sections 9, 11, 14, 16, 17 to 20 (inclusive) and 26 of the Business Terms.

15 Waiver

- 15.1** Delay in exercising, or failure to exercise, any right or remedy in connection with this Wholesale Contract shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Wholesale Contract in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Wholesale Contract shall, in any event, be effective unless it is in writing, refers expressly to this clause, is duly signed by or on behalf of the Party granting it, and is communicated to the other Party in accordance with Section 20 of the Business Terms.

16 Severance

- 16.1** If any clause, sub-clause, schedule, paragraph, part, section, sub-section, annex or other provision of this Wholesale Contract is held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Wholesale Contract but the validity and enforceability of the remainder of this Wholesale Contract shall not be affected.

17 Counterparts

- 17.1** Each Party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by the other Party to implement and give full effect to the terms of this Wholesale Contract.
- 17.2** This Wholesale Contract may be entered into in any number of counterparts and by the Contracting Wholesaler and the Contracting Retailer on separate counterparts, all of which taken together shall constitute one and the same instrument.

18 Governing Law

- 18.1** This Wholesale Contract shall be governed by and construed in accordance with the laws of England and Wales.
- 18.2** Subject to Sections 17, 18 and 19 of the Business Terms and Schedule 9 of the Market Arrangements Code, the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Wholesale Contract and irrevocably submit to the jurisdiction of these courts.

Schedule 1 - Terms and Conditions of a Wholesale Contract

Part 1: Objectives, Definitions and Principles

Part 2: Business Terms

Part 3: Operational Terms

Part 4: Market Terms

Part 5: Code Subsidiary Documents

Part 6: Forms associated with the Operational Terms

Schedule 2 - Contracting Retailer information

1. Contact details (individual names, postal address, telephone number, mobile number, e-mail address) and authorised signatories;
2. Bank account and account number;
3. Postal address and email address for sending invoices and notices;
4. Address in the United Kingdom for the purpose of serving legal documents and formal legal notices;
5. Job title of person for whose attention notices should be marked;
6. Twenty four hour contact details;
7. Business SIC code under the United Kingdom Standard Industrial Classification of Economic Activities, and corresponding VAT status; and
8. Licence Reference or Number where applicable.

Schedule 3 - Contracting Wholesaler information

1. Contact details (individual names, postal address, telephone number, mobile number, e-mail address) and authorised signatories;
2. Bank account and account number;
3. Postal address and email address for sending invoices and notices;
4. Address in the United Kingdom for the purpose of serving legal documents and formal legal notices;
5. Job title of person for whose attention notices should be marked;
6. Twenty four hour contact details; and
7. Business SIC code under the United Kingdom Standard Industrial Classification of Economic Activities, and corresponding VAT status.

This Wholesale Contract has been entered into on the date stated at the beginning of this Wholesale Contract.

Signed by

for and on behalf of

Name of contracting Director/Authorised signatory - Wholesaler

Date:

in the presence of:

Witness Signature:

Print Name:

Address:

Date:

Signed by

for and on behalf of

Name of contracting Director/Authorised signatory - Contracting retailer:

Date:

In the presence of:

Witness signature:

Print name:

Address:

Date: