

**Dated**

**201[ ]**

**AGREEMENT**

**relating to the provision of meter reading services**

**BRISTOL WESSEX BILLING SERVICES LIMITED (1)**

**and**

**[RETAILER] (2)**

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THIS AGREEMENT is dated

201[ ]

## **PARTIES**

(1) **Bristol Wessex Billing Services Limited (company no. 4143955)** whose registered office is at 1 Clevedon Walk, Nailsea, Bristol, BS48 1WA trading as **Pelican Business Services (“Pelican”)**; and

(2) **<TBC>** (company number **<TBC>**) whose registered office is at **<TBC>**, (“Retailer”),

together a (“Party”) or (“Parties”).

## **BACKGROUND**

- (A) The Retailer intends to employ Pelican to perform the Services.
- (B) The Retailer wishes to appoint Pelican on the terms of this Agreement.

## **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply to this Agreement.

“**Affiliate**” means in relation to a party, person who is, from time to time, a subsidiary or holding company of that party, or is a subsidiary of that party’s holding company and/or is otherwise within the same group of companies as the relevant party;

“**Agreement**” means this contract for the provision of the Services entered into between the Retailer and Pelican;

“**Agreement Price Index**” means the contract pricing index calculated in accordance with Clauses 4.9 and 4.10;

“**Applicable Law**” means law, regulation, binding code of practice, rule or requirement of any relevant government or governmental agency, professional or regulatory authority, each as relevant to (i) Pelican in the provision of the Services and/or (ii) The Retailer in the receipt of the Services or the carrying out of its business;

“**BWPLC**” means Bristol Water PLC (company number: 02662226) whose registered office is Bristol Water Plc, Bridgwater Road, Bristol, BS13 7AT;

“**Change Order**” has the meaning given in clause 16.1;

“**Charges**” means the monies payable by the Retailer to Pelican in return for the provision of the Services pursuant to the Agreement, as specified in Schedule 2;

“**Conditions**” means the terms and conditions for the provision of the Services, as set out in this Agreement and its Schedules;

“**Confidential Information**” means confidential information: (i) concerning the business and affairs of a Party, Group companies associated with either Party or a Retailer Group Company that a Party obtains or receives from the other Party; or (ii) which arises out of the performance of any Services and (iii) which includes pricing proposals, financial and other business information, data processes and plans;

**“Customer”** means a Non-Household Customer of the Retailer as defined by the Wholesale Retail Code (Part 1);

**“Data Protection Addendum”** means the Data Protection Addendum set out in Schedule 4 of this Agreement;

**“Data Protection Legislation”** has the meaning given to it in the Data Protection Addendum;

**“Force Majeure Event”** means any circumstances not within a party’s reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) 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;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this definition, or companies in the same group as that Party; and
- (h) interruption or failure of utility service.

**“Insolvent”** a party is insolvent if:

- (a) it 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) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) it 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 its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction; or

- (d) 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 it; or
- (e) a floating charge holder over its assets has become entitled to appoint or has appointed, an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over its assets or a receiver is appointed over its assets; or
- (g) being an individual, it is the subject of a bankruptcy petition or order; or
- (h) a creditor or encumbrancer of it 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 its assets and such attachment or process is not discharged within ten (10) Business Days; or
- (i) any event occurs, or proceeding is taken, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (h) above (inclusive); or
- (j) it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

**“Intellectual Property Rights”** means (i) rights in, and in relation to, any patents, registered designs, design rights, trade-marks, trade and business names (including all goodwill associated with any trade-marks or trade and business names), copyright, moral rights, databases, domain names and any rights in any relevant software and includes the benefit of all registrations of, applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable; (ii) rights in the nature of unfair competition rights and rights to sue for passing off; and (iii) trade secrets, confidentiality and other proprietary rights, including rights to know how and other technical information;

**“Market Performance Standard Charges”** has the meaning given under the Wholesale-Retail Code April 2017 (under the Wholesale Contract, Schedule 1, Part 1 ‘Objectives, Principles and Definitions’) as amended from time to time;

**“Market Operator”** means (MOSL) Market Operator Services Limited, (company number 09276929) with registered office at Milton Gate, 60 Chiswell Street, London, EC1Y 4AG, the private company set up to administer the market for water and wastewater retail services in England;

**“Network”** means the water supply system and/or the sewerage system and all associated meters read by Pelican in the Territory;

**“NHH Retail Market Requirements”** means all requirements relevant to the taking and submission of meter reads in accordance with MOSL’s Wholesale Retail Code and its Code Subsidiary Documents, as amended and replaced from time to time;

**“Personal Data”** has the meaning given to it in the Data Protection Addendum;

**“RPI”** means the retail prices index excluding mortgage interest payments and indirect taxes published monthly by the Office for national statistics or (in the event that such index ceases

to be published) such successor index as may be agreed between the Parties from time to time;

**"Services"** means the services set out in Schedule 1;

**"Territory"** means:

- (a) any area in which WWSL has been appointed as the water and/or sewerage undertaker under section 6 of the Water Industry Act 1991; and
- (b) any area in which BWPLC has been appointed as the water undertaker under section 6 of the Water Industry Act 1991;

**"VAT"** has the meaning given to that term in the Value Added Tax Act 1994 and any tax of a similar nature which may be substituted for or levied in addition to it;

**"WWSL"** means Wessex Water Services Limited (company number: 02366648) whose registered address is Wessex Water Operations Centre, Claverton Down Road, Claverton Down, Bath, BA2 7WW.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.9 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 Any reference to a party's **consent** or **approval** being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.

- 1.12 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.13 A reference to **writing** or **written** includes faxes, but not e-mail.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this Agreement) at any time.
- 1.16 Unless this Agreement expressly provides otherwise, a reference to the Property or the Project is to the whole and any part of it.
- 1.17 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.18 Where this Agreement requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date.

## **2. GENERAL**

- 2.1 These Conditions apply to the Agreement and shall override any proposal and any other service descriptions, terms, conditions or warranties which the Retailer may seek to impose. Acceptance of the provision of the Services by or on behalf of the Retailer shall be conclusive evidence that these Conditions are accepted by the Retailer and apply to the Agreement.

## **3. COMMENCEMENT & TERM**

- 3.1 This Agreement takes effect from the earlier of the date when Pelican began performing the Services and the date of this Agreement and shall continue until terminated on not less than three (3) months written notice by either party or otherwise in accordance with Clause 13 (Termination).

## **4. PAYMENT AND CHARGES**

- 4.1 In consideration of the provision of the Services by Pelican, the Retailer shall pay the Charges and any VAT due on those Charges at the prevailing rate for the Services in accordance with this Clause 4 and Schedule 2 (Charges).
- 4.2 The pricing is based on information provided by the Retailer and the assumption that the Retailer will comply with its obligations. If the information is materially incorrect or the Retailer causes Pelican increased costs by not complying with its obligations, then Pelican is (i) entitled to relief from its obligations for an appropriate period and (ii) to recover any reasonable, costs incurred as agreed by Retailer.
- 4.3 Pelican shall issue an invoice, monthly in arrears to the Retailer (or, where relevant, make available such invoice for download) or shall issue an invoice at such other times as are agreed between the Parties.
- 4.4 The Retailer shall pay all undisputed Charges within thirty [30] days of the date on any invoice or such other period agreed by Pelican from time to time ("Due Date").

- 4.5 Subject to clause 4.6, the Retailer may not withhold, set-off or deduct money from the Charges due in any invoice under this Agreement.
- 4.6 The Retailer may with reasonable cause and acting in good faith, dispute an invoice or any part of it, only by: (i) notifying Pelican within 14 days of invoice date; (ii) including details of why it disputes the invoice and how much it believes is payable; and (iii) paying all undisputed amounts by the Due Date.
- 4.7 Following resolution of an invoice dispute, the Retailer shall make payment to Pelican within the following ten [10] days, as appropriate.
- 4.8 Where the Retailer does not pay the undisputed Charges by the Due Date and has not raised a dispute in accordance with clause 4.6 above, Pelican is entitled, until paid in full, to: (i) charge statutory interest on the unpaid amount at a rate of 4% above Bank of England base rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1988; and (ii) withhold any sums currently owing by Pelican to the Retailer under this Agreement by way of credit note or rebate and offset such sums against the sums owing.
- 4.9 The Pricing Index shall be the annual rate of increase of the Retail Price Index (RPI) as determined at November each year.
- 4.10 Pelican may, at its sole discretion, increase the Charges in Schedule 2 with immediate effect from the 1st April and each anniversary thereafter in accordance with the Retail Pricing Index. Pelican shall confirm on or before the 25th February each year, the revised Charges applicable from 1st April.
- 4.11 Pelican may assign the Charges and the Retailer must pay those Charges to any Pelican assignee as confirmed in writing to the Retailer and the Retailer agrees to the assignment of the Charges to an assignee of Pelican.

## **5. THE RETAILER'S OBLIGATIONS**

- 5.1 For the duration of this Agreement, the Retailer shall:
  - (a) co-operate with Pelican in all matters relating to the Services;
  - (b) supply Pelican (in a timely manner) with all information including the Required Information in Schedule 1 (whether owned by the Customer or third party) or other assistance Pelican may request or require in order to enable it to perform the Services in accordance with Schedule 1 and ensure that they are accurate and complete;
  - (c) ensure, for Pelican, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation and other facilities required by Pelican including any such access as specified in Schedule 1;
  - (d) inform Pelican of all health and safety and security requirements that apply at any of the Customer's premises, such requirements are as set out in Schedule 1;
  - (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Pelican to provide the Services before the date on which the Services are to start;



(f) secure and keep in place all relevant Customer and third party consents and approvals necessary to allow Pelican to access Customer premises for the purposes of providing for the provision of the Service;

(g) not use the Services in any way which may reasonably be considered to be: (i) contrary to the intended purpose of use; (ii) in violation of any person's rights; and

5.2 If Pelican's performance of its obligations under this Agreement is prevented by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Pelican shall be allowed an extension of time and additional costs to perform its obligations equal to the delay caused by the Customer.

## **6. PELICAN OBLIGATIONS**

6.1 Pelican agrees to provide the Services on the occasions and at the locations set out in Schedule 1 and in accordance with the provisions of Schedule 1.

6.2 Pelican shall provide the Services with reasonable skill and care in accordance with its reasonably relevant policies and procedures as updated from time to time.

## **7. INTELLECTUAL PROPERTY RIGHTS & METER DATA**

7.1 Pelican and the Retailer each retain ownership of their own Intellectual Property Rights.

7.2 Pelican and the Retailer respectively grant or will procure the grant to the other a licence or sub-licence to use the Intellectual Property Rights owned by it and which the other needs to use solely for the purpose of complying with this Agreement and in compliance with Clause 7.4 below.

7.3 Subject to clause 7.4 below, each licence is granted on the basis that: (i) it is free and not transferable and is non-exclusive; (ii) the Party granted the licence shall not carry out copying, modification, reverse engineering, adaptation, translation, decompilation, disassembly or error correction, unless expressly permitted by Applicable Law; and (iii) each licence starts as necessary for the performance of the Services and ends when the applicable Services end.

7.4 All rights in and to the Meter Data are and will remain the property of the Retailer. Pelican shall treat all Meter Data as strictly confidential and will not sell it or otherwise disclose it except as is strictly necessary in the performance of this Agreement or as otherwise expressly agreed in writing with the Retailer. Save that, the Retailer agrees that Pelican and its agents, subcontractors, advisers, representatives and Affiliates of both BWPLC and WWSL shall at all times, be entitled to use, copy, reproduce and manipulate Meter Data for Pelican's regulatory compliance and/or internal operational purposes (including leakage detection and flow monitoring) and that this right is reflected in the calculation of Pelican's Charges.

7.5 If Pelican or the Retailer makes third party licences available to each other in compliance with this Agreement they will: (i) notify each other of the applicable licence terms; and (ii) comply with such terms.

- 7.6 The Parties shall indemnify each other for amounts payable to a third party for infringement of that third party's Intellectual Property Rights resulting from each Party's performance of its obligations under this Agreement.

## **8. CONFIDENTIALITY**

- 8.1 Each Party handles the other Party's Confidential Information received by it in connection with this Agreement, the performance of the Services or from use by the Retailer of the Services on the following basis: (i) keep it confidential for three [3] years after date of disclosure; (ii) use it solely for the purpose of performing its obligations or exercising its rights in respect of this Agreement; (iii) not disclose it to any person save to its own directors, officers, employees, agents or professional advisors who need it to perform obligations, exercise rights or conduct audits in connection with the Agreement, or as required by Applicable Law; (iv) ensure that such persons keep it confidential; and (v) return or destroy it on termination of the Agreement save where it is necessary to keep it for regulatory reasons in secure archives.
- 8.2 These provisions do not apply where the Confidential Information received: (i) is or becomes public knowledge without breach of the Agreement; (ii) was already in a Party's possession free of obligations of confidentiality; or (iii) is received from a third Party free of obligations of confidentiality.

## **9. BRIBERY AND CORRUPTION**

- 9.1 Pelican has a comprehensive anti-bribery policy and programme and shall comply with Applicable Law relating to anti-bribery and anti-corruption and shall not give or receive any bribes, including in relation to any foreign public official.

## **10. ANNOUNCEMENTS**

- 10.1 Any announcement or public statement relating to this Agreement or the Services must be approved by both Parties in writing prior to its release.

## **11. LIMITATION OF LIABILITY**

- 11.1 Neither Party is liable under this Agreement (whether in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise) for: (i) any loss (whether direct or indirect) of profit, revenue, anticipated savings or goodwill; (ii) any indirect or consequential losses, regardless of whether they were contemplated by either of the Parties when this Agreement was entered. The Retailer retains responsibility for compliance with the regulatory regime in which it operates and Pelican is not liable for any regulatory fines or penalties imposed on or third-party claims made against the Retailer in this respect. Pelican retains responsibility for compliance with the regulatory regime in which it operates and the Retailer is not liable for any regulatory fines or penalties imposed on or third party claims made against Pelican in this respect. Neither Party excludes any liability which cannot be excluded by Applicable Law.
- 11.2 Subject to clause 11.3 below, a Party's aggregate liability under or in connection with this Agreement (whether in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise) during each consecutive 12 month period starting on the date of last signature of this Agreement ("Liability Period") shall not exceed 100% of the Charges paid or payable in respect of that Liability Period. Where the Charges

have been paid or payable for less than 12 months in any Liability Period, a Party's liability shall not exceed the average monthly Charge paid or payable for that Liability Period multiplied by 12.

- 11.3 A party's aggregate liability to the other party under this Agreement for breaches of Data Protection Legislation provisions or for damages due to breaches of the confidentiality obligations as set out in this Agreement shall not exceed (£500,000) five hundred thousand pounds Sterling.
- 11.4 Neither Party excludes its liability for death or personal injury arising from the performance of its obligations under this Agreement.
- 11.5 The Parties agree and accept that with regard to the limitations of liability set out in Clauses 11.1 to 11.3 (inclusive), that such limitation is perfectly fair and reasonable having regard (amongst other things) to the following circumstances:
- (a) that the potential losses which could or might be caused as a result of the breach or negligence as referred to in Clauses 11.1 to 11.3 (inclusive) are in excess and disproportionate to the amount which is being charged by Pelican in respect of the Services;
  - (b) that Pelican has no information or knowledge as to the value of any contracts to be entered into by the Retailer which may involve the Services in any way.

## **12. SUSPENSION OF SERVICES**

- 12.1 Pelican may, at its sole discretion, suspend the Services without further liability to Retailer (keeping the suspension to a minimum):
- (a) in order to comply with Applicable Law; and
  - (b) where prevented from carrying out the Services by BWPLC or WWSL Wholesale function for maintenance, modification, repair and testing of the Network or where necessary to safeguard or improve the functionality, security and integrity of the Network; and
  - (c) a Force Majeure Event; and
  - (d) without prejudice to its other rights and remedies, until payment in full (including any interest due) has been received by Pelican on giving seven [7] days' written notice of failure to pay undisputed amounts by the Due Date;

## **13. TERMINATION**

- 13.1 Either Party may end this Agreement on giving not less than three [3] months' written notice to the other for any reason.
- 13.2 Pelican may as an alternative to its right to suspend services in clause 12.1 (d) elect to terminate this Agreement immediately, where any undisputed payment is outstanding pursuant to the payment terms in clause 4.
- 13.3 Either Party may end the Agreement with immediate effect by written notice to the other Party if that other Party:

- (a) is in material breach of its obligations under the Agreement and fails to remedy that breach within ten [10] days of receiving written notice requiring it to do so;
- (b) becomes Insolvent.

13.4 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

#### **14. CONSEQUENCES OF TERMINATION**

14.1 On termination in accordance with Clause 13, the Retailer shall pay Pelican:

- (a) any amount properly due for payment under this Agreement at the date of termination; and
- (b) a fair and reasonable proportion of the next instalment of the Charges commensurate with the Services properly performed at the date of termination.

14.2 If Pelican's engagement under this Agreement is terminated by the Retailer in accordance with Clause 13.1, the Retailer shall also pay any expenses and disbursements necessarily incurred by Pelican as a direct result of the termination.

#### **15. NOTICES**

15.1 Any notices required or permitted to be given by either Party to the other shall be in writing addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the Party giving the notice.

#### **16. CHANGE CONTROL**

16.1 Either Party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both Parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) Pelican's existing Charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this Agreement.

16.2 If Pelican wishes to make a change to the Services, it shall provide a draft Change Order to the Retailer.

16.3 If the Retailer wishes to make a change to the Services;

- (a) it shall notify Pelican and provide as much detail as Pelican reasonably requires of the proposed changes, including the timing of the proposed changes; and

- (b) Pelican shall, as soon as reasonably practicable after receiving the information at clause 16.3 (a), provide a draft Change Order to the Retailer.

16.4 If the Parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Clause 22.

16.5 Pelican may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Retailer pursuant to clause 16.3 on a time and materials basis at Pelican's daily rates specified in Schedule 2.

## **17. VARIATIONS**

17.1 Subject to clause 16 (Change Control), no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## **18. THIRD PARTY RIGHTS**

18.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1990 to enforce any term of this Agreement save as expressly set out in this Agreement.

## **19. ASSIGNMENT**

19.1 Pelican may at any time assign its right to collect payments owed under this Agreement.

19.2 Pelican may sub-contract any of its obligations under this Agreement but shall, at all times, be fully responsible to the Retailer for the acts or omissions of its subcontractors.

19.3 The Retailer shall not assign, novate or subcontract any of its rights of obligations under this Agreement without the prior, written consent of Pelican not to be unreasonably withheld or delayed.

## **20. DATA PROTECTION**

20.1 Pelican shall at all times comply with its obligations under the Data Protection Legislation. To the extent that Pelican processes Personal Data on behalf of the Retailer in connection with this Agreement, Pelican shall comply with the provisions of the Data Protection Addendum.

## **21. ENTIRE AGREEMENT**

21.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each Party acknowledges that, in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

21.3 Nothing in this clause shall limit or exclude any liability for fraud.

## **22. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE**

22.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this Agreement, the Parties shall follow the procedure set out in this clause:

(a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Retailer and the Meter Reading Manager of Pelican shall attempt in good faith to resolve the Dispute;

(b) if the [EMPLOYEE TITLE] of the Retailer and the Meter Reading Manager of Pelican are for any reason unable to resolve the Dispute within thirty [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Retailer and the Head of Meter Operations of Pelican who shall attempt in good faith to resolve it; and

(c) if the [SENIOR OFFICER TITLE] of the Retailer and the Head of Meter Operations of Pelican are for any reason unable to resolve the Dispute within thirty [30] days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than ten [10] days after the date of the ADR notice.

22.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 23.1 which clause shall apply at all times

## **23. GENERAL**

23.1 The Agreement shall be governed by the laws of England and the Parties agree to submit to the exclusive jurisdiction of the English Courts in the interpretation of this Agreement or the resolution of any dispute arising under its terms.

23.2 The failure to exercise, or the delay in exercising, any right or remedy provided by this Agreement or by law, does not constitute a waiver of the right or remedy, or a waiver of other rights or remedies.

23.3 No failure to exercise, nor any delay in exercising on the part of either Party to this Agreement, any right of termination or any other right or remedy under the Agreement or otherwise, howsoever arising, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.

- 23.4 A waiver or the breach of any of the terms of this Agreement, or of a default under this Agreement, will not prevent a Party requiring compliance with the obligation on any subsequent occasion to which the waiver does not apply.
- 23.5 The rights and remedies provided by this Agreement are cumulative and (unless otherwise provided in this Agreement) are in addition to any right or remedy provided by law.
- 23.6 If any of the provisions of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions in question shall not be affected thereby.
- 23.7 If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.
- 23.8 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 23.9 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 23.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

This Agreement has been signed on behalf of each Party by its duly authorised representatives.

1. Duly authorised for and on behalf of Bristol Wessex Billing Services Limited

|                  |  |
|------------------|--|
| <b>Signature</b> |  |
| <b>Name</b>      | <b>Graham Smith</b>                      |
| <b>Position</b>  | <b>Head of Billing and Meter Reading</b> |
| <b>Date</b>      |  |

2. Duly authorised for and on behalf of <Retailer>,

|                  |  |
|------------------|--|
| <b>Signature</b> |  |
| <b>Name</b>      |  |
| <b>Position</b>  |  |
| <b>Date</b>      |  |



## SCHEDULE 1 – SERVICES

### Meter Read Service Description

**Table 1**

| <b>Pelican Details</b>                   |   |
|--|---|
| Company Name:                            | Bristol Wessex Billing Services Limited (Pelican) |
| Company Registration No:                 | 04143955  |
| Registered Office:                       | 1 Clevedon Walk, Nailsea, Bristol, BS48 1WA       |
| <b>Authorised Representative Contact</b> |   |
| Name:                                    | Graham Smith                                      |
| Title:                                   | Head of Billing and Meter Reading                 |
| Office Address:                          | 1 Clevedon Walk, Nailsea, Bristol, BS48 1WA       |
| Office Telephone:                        | 01225 523347                                      |
| Email:                                   | Graham.Smith@Pelican.co.uk                        |

**Table 2**

| <b>Retailer Details</b>                  |  |
|--|--|
| Company Name:                            |  |
| Company Registration No:                 |  |
| Registered Office:                       |  |
| <b>Authorised Representative Contact</b> |  |
| Name:                                    |  |
| Title:                                   |  |
| Office Address:                          |  |
| Office Telephone:                        |  |
| Email:                                   |  |
| Billing Address:                         |  |

**Table 3**

| No. | Meter Serial | SPID | Location | Frequency per annum | Read cycle | Health and Safety Requirements | Security Requirements |
|-----|--------------|------|----------|---------------------|------------|--------------------------------|-----------------------|
|     |              |      |          |                     |            |                                |                       |
|     |              |      |          |                     |            |                                |                       |
|     |              |      |          |                     |            |                                |                       |
|     |              |      |          |                     |            |                                |                       |

## SCOPE

Pelican to provide the following water Meter Reading services for the Retailer within the Territory with reference to this schedule and Schedule 3:

- (a) monthly and six-monthly cyclic meter readings within pre-planned reading cycles to support clients' billing schedules
- (b) quarterly or other bespoke cyclic meter readings to a cycle specified by the Retailer
- (c) ad hoc meter readings as requested by the Retailer
- (d) detailed monthly invoices itemising numbers of meters read by cyclic and ad hoc type

### 1. Definitions and Interpretations

**“Actual Read”** means a meter reading obtained by a Pelican Meter Reader, either by a physical inspection of the meter, or obtained where Pelican has the capacity to take a meter reading remotely without the need to physically visit the premises or read the meter, for example where the meter has an AMR or “Smart” capacity;

**“Ad-hoc Read”** means a meter reading collected during a visit that was not made as a result of Pelican’s Scheduled Visits but was not a Transfer Read;

**“AMR”** means automated meter reading – a meter that is capable of transmitting meter readings and related information eg by radio frequency

**“Appointment Visit(s)”** means visits scheduled as an appointment where Pelican and the Retailer (on behalf of its Customer) have agreed to the visit time and date. Appointment Visits are classified as either (i) a Time Band Appointment being either AM or PM or (ii) a Fixed Time Appointment specifying an appointed hour;

**“Business Day(s)”** means the period of 08:00 to 16:00 hours on any day other than a Saturday or Sunday, or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;

**“Customer”** means a Non-Household Customer of the Retailer as defined by the Wholesale Retail Code (Part 1);

**“Cyclic Meter Reading”** means a Meter Reading carried out to an agreed frequency and obtained in accordance with Pelican’s Field Itinerary from time to time;

**“Cyclic Read Schedule”** means the monthly schedule submitted by Pelican to the Retailer in accordance with Clause 4.1 of this Schedule;

**“Field itinerary”** means the Walk Routes for a given time period;

**“Meter”** means a water meter measuring water consumption for which the Retailer has appointed Pelican to provide a Meter Reading;

**“Meter Data”** means the information arising from a Meter Reading to be provided to the Retailer in accordance with Schedule 1;

**“Meter Reader(s)”** means a person appointed by Pelican to carry out a Service (who may be an employee or sub-contractor of Pelican);

**“Meter Read or Reading”** means either a Cyclic or a Non-Cyclic Meter Read;

**“Meter Reading System”** means the Pelican system for managing the information regarding the Customer premises, meter asset, the schedules for data capture and Meter Reading;

**“Multiple Meter Reading”** means more than one meter’s register reading and/or meter data recorded by a Meter Reader at the same time on a single visit;

**“Non-Cyclic Meter Reading”** means a meter reading collected during a visit that was not made as a result of Pelican’s Scheduled Visits. This includes all Ad-hoc Reads and Transfer Reads except where otherwise specified;

**“No Read”** means a scheduled Cyclic Meter Reading which has not been attempted within the Read Window;

**“Read cycle”** means the planned read periods during which a meter will normally be read during a calendar year, such as ‘six monthly in March and September’;

**“Read Frequency”** means the frequency of Meter Reading that is required such as monthly, or six-monthly readings;

**“Read Report”** means a monthly summary report of: (i) No Reads; (ii) Actual Reads (iii) Ad hoc Reads and (iv) Transfer Reads;

**“Read Period”** means the calendar dates between which a Meter Reading will be collected by Pelican;

**“Read Window”** means the number of days either side of the Target Read period during which a reading is expected to take place;

**“Required Information”** information provided by the Retailer to Pelican as defined in clause 7 of this schedule;

**“Scheduled Visits”** means visits by Meter Readers to premises in accordance with the Cyclic Read Schedule;

**“Services”** means the services that the Retailer has contracted to receive as detailed in Schedule 1;

**“Service Type”** means either Cyclic Meter Reading or Non-Cyclic Meter Reading pursuant to Schedule 1 (clauses 4 and 5);

**“Target Read Period”** means the calendar month set out by Pelican upon which a reading is scheduled to take place;

**“Territory”** means:

- (a) any area in which WWSL has been appointed as the water and/or sewerage undertaker under section 6 of the Water Industry Act 1991; and
- (b) any area in which BWPLC has been appointed as the water undertaker under section 6 of the Water Industry Act 1991;

**“Transfer Read”** has the meaning given under the Wholesale-Retail Code April 2017 (under the Wholesale Contract, Schedule 1, Part 1 ‘Objectives, Principles and Definitions’);

**“Walk Routes”** mean the optimised order in which meters are read by Pelican to maximise operational efficiency from time to time;

**“Working Hours”** means for office-based staff 8:30am to 4:30pm and for field staff 8am to 4pm, Monday to Friday.

## **2. The Service**

- 2.1 In consideration of the Charges, Pelican shall provide the Services in this Schedule to the Retailer at the Customer premises within the Territory at the agreed frequency during Working Hours. All Cyclic Meter Readings shall be planned by Pelican in accordance with Pelican’s Field Itinerary and confirmed to Retailer in the monthly Cyclic Read Schedule. All Non-Cyclic Meter Readings shall be planned by Pelican to fit within the operational schedule for the period. Where the Retailer requests an Appointment Visit, this will be made on an AM/PM or fixed time basis.
- 2.2 The Retailer shall, where required by Pelican, place a request for Services in the format supplied by Pelican and Pelican shall accept, reject or respond to such order with a request for further information.
- 2.3 The Retailer will submit a request in writing for a change to the Read Period or Read Frequency in accordance with clause 16 of this Agreement.
- 2.4 The Read Period will be determined by Pelican to ensure alignment with Pelican’s Field Itinerary (from time to time) and the Retailer acknowledges that the Charges in this Agreement have been calculated based on this. In the event that Pelican requires an entire walk route to be allocated a new Read Period (subject always to the obligations of the Retailer in respect of the NHH Retail Market Requirements), the Retailer will be provided with not less than four [4] weeks prior notice.
- 2.5 Whenever a Meter Reading occurs, Pelican shall submit the Meter Data to the Retailer in accordance with this Schedule.
- 2.6 Prior to the commencement of Services in respect of each Customer, Pelican will ensure that the Retailer has provided all Required Information in clause 7 such that Pelican may upload it into its Meter Reading System.
- 2.7 The Retailer shall be promptly notified of any Required Information which does not load into the Meter Reading System. Should there be any changes to the Required Information and other relevant Customer data held by Pelican then the Retailer shall promptly provide Pelican with the revised information.
- 2.8 The Retailer shall take or shall procure that reasonable steps are taken with its Customer, to ensure that Pelican Meter Readers obtain safe and unobstructed access during Working Hours to the Meter in a suitable working environment for the purpose of complying with this Agreement.
- 2.9 Pelican will advise the Retailer if a Customer premises require a special service activity e.g. two man lift, appointment service and/or key collection service. Pelican reserves the right to make a reasonable administration charge (in addition to the Charges) subject always to receipt of written confirmation from the Retailer requesting the special service

and accepting the administration charge. For the avoidance of doubt, Pelican shall not be obliged to carry out the Services in respect of the said premises if the Retailer disagreed with the administration charge.

### 3. Meetings & Reporting

- 3.1 The Parties shall work collaboratively to discuss performance requirements and processes and shall attend not less than one phone call following any Read Window.
- 3.2 The Parties shall attend not less than one [1] meeting annually at the Pelican premises or at an alternative location at the sole discretion of Pelican.
- 3.3 Within ten [10] Business Days of the end of the Read Window, Pelican will provide a monthly Read Report to the Retailer.

### 4. Cyclic Meter Reading

- 4.1 By the end of the second week of each calendar month, Pelican shall provide the Retailer with a Cyclic Read Schedule setting out those Cyclic Meter Reads due over the next Target Read Period. If the Retailer has not notified Pelican in writing of any required changes to the Cyclic Read Schedule within five [5] Business Days of receipt, then the Cyclic Read Schedule is deemed to be accepted and Retailer shall be liable for all Charges arising from that Cyclic Read Schedule.
- 4.2 Pelican shall make the Meter Data available to the Retailer within five [5] Business Days of the Cyclic Meter Read.
- 4.3 The “**Service Type**” and “**Service Description**” for Cyclic Meter Reading are defined as follows:

| Cyclic Meter Reading<br>“Service Type” | Service Description  | Read Window   |
|--|--|---|
| Monthly Cyclic Meter Reading           | A request by the Retailer and agreement by Pelican for a Meter Reading visit to take place once per month on a continuing basis for the duration of this Agreement unless notified otherwise pursuant to clause 4.1 of this schedule.                                  | The Meter Reading visit will be scheduled to take place in accordance with Pelican’s standard Meter Reading System. The Read Window will be the first six working days of each calendar month   |
| Six-Monthly Cyclic Meter Reading.      | A request by the Retailer and by agreement with Pelican for a Scheduled Visit to take place for a Meter Reading, once every six [6] months on a continuing basis for the duration of this Agreement unless notified otherwise pursuant to clause 4.1 of this schedule. | The Meter Reading visit will be scheduled to take place in accordance with Pelican’s standard Meter Reading System. The Read Window will be -5/+5 Business Days around the calendar month in which a Meter Reading is required as dictated by the Meter Read Period assigned to that meter. |

### 5. Non-Cyclic Meter Reading

5.1 When Pelican is notified by the Retailer that it requires a Non-Cyclic Meter Reading, the Parties may agree an Appointment Visit at the relevant Customer premises otherwise a non-appointment visit will be carried out.

5.2 The “**Service Type**” and “**Service Description**” for Non-Cyclic Meter Reading are defined as:

| <b>Service Type<br/>(Non-cyclic Meter Reads)</b> | <b>Service Description</b>   | <b>Parameter of the Service</b>   |
|--|--|---|
| Transfer Read                                    | A request and the provision of the Required Information by the Retailer and agreement by Pelican for a Meter Reading visit to take place on a set day(s) as a single exercise. | Transfer Read visits will be booked by Pelican as a visit for a particular day(s) as requested by the Retailer.     |
| Ad-hoc Read                                      | A request by the Retailer for Pelican for a special visit to take place as a single exercise to collect a Meter Reading.   | The Meter Reading visit will be scheduled to take place in accordance with Pelican’s standard Meter Reading System. |

5.3 Pelican reserves the right to charge the rate in full for all Appointment Visits or Transfer Reads that cannot be completed through no fault of its own or where the appointment is cancelled by the Retailer or its Customer within 12 Working Hours of the Scheduled Visit.

5.4 Appointment Visits shall normally be undertaken during normal Working Hours as defined.

5.5 Pelican shall use reasonable endeavours to provide Ad-hoc Read Meter Data to the Retailer within five [5] Business Days of any such Non-Cyclic Meter Reading.

## **6. Transfer Reads**

6.1 The Retailer shall give Pelican not less than five [5] Working Days’ notice of a request for a Transfer Read to take place and the Parties shall arrange it as a Non-Cyclic Meter Reading.

6.2 Where less than five [5] Working Days’ notice is given, Pelican will use reasonable endeavours to undertake the Transfer Read.

6.3 Where a Transfer Read occurs, Pelican shall provide the Meter Data to the Retailer within five [5] Business Days of the visit taking place. For clarity, where a Transfer Read takes place at 2.00pm on a Friday for example, Pelican shall submit the Meter Data to the Retailer on or before 2.00pm on the following Friday or the succeeding Business Day where the Monday is a UK Bank Holiday.

## **7. Required Information**

7.1 The Retailer shall provide (or shall ensure that its Customers provide) Pelican with all the relevant information and complete documentation including in relation to

identification details (“Required Information”) which is required by Pelican in relation to the carrying out of the Services. Such information shall include (but not be limited to);

- (a) Customer premises information with full postal address including full postcode for each metering system;
- (b) the location of the meter(s);
- (c) the serial number for each meter;
- (d) any meter point reference;
- (e) any relevant access information;
- (f) any unusual opening days/times;
- (g) any relevant Customer health and safety requirements or instructions;
- (h) for radio frequency (RF) meters, the relevant RFID (unique identification number) of the RF transponder;
- (i) SPID

7.2 Pelican may retain the Required Information in accordance with clause 8 (Confidentiality) and clause 20 (Data Protection) of the Agreement.

## **8. Pelican Meter Readers ‘Code of Conduct’**

8.1 Pelican’s Meter Readers comply with Pelican’s standards and values which ensure that:

- (a) a Customer is able to confirm the identity and authority of a Meter Reader;
- (b) identity cards, displaying the holders photograph are held at all times by Meter Readers when attempting to gain access to the Customer’s premises;
- (c) Meter Readers wear a recognisable uniform whilst carrying out all Meter Reading activities at a Customer’s premises.

## **9. Key Collection or other secure access arrangements**

9.1 It is the responsibility of the Retailer to ensure that any special arrangements for access are facilitated and, where an enduring service is likely, that Pelican are provided with adequate access keys or codes. Where the service is materially impacted by complex access arrangements then Pelican reserves the right to apply an administration fee.

## **SCHEDULE 2 – THE CHARGES**

### **1. Background**

For charging purposes all water meters are allocated either to 'town' or 'country' category based on the postcode of the premises supplied by the meter. Such allocation is that the sole discretion of Pelican.

### **2. Charges - General**

2.1 All Charges will be levied at the rates below and will indexed annually in accordance with the approach described in clauses 4.9 and 4.10 of the Agreement.

2.2 The rate will apply to each Meter Reading provided to the Retailer.

2.3 An initial fee of £1000 will be payable to cover the Pelican costs of finalising contracts, establishing data protocols and setting up the Retailer on the Pelican general ledger.

- (a) In addition to the charges stated in clause 2.3, any 3<sup>rd</sup> party costs associated with on-boarding the Retailer will also be payable by the Retailer. This will include the costs of setting up the Retailer on the meter reading system which is provided via a 3<sup>rd</sup> party and configuring the required data file formats.

2.4 The on-going charges as specified in clauses 3 and 4 below are subject to an additional fixed fee of £100 per month to cover the costs of data transfer and monthly invoicing.

- (a) The fee described in clause 2.4 will be waived where the retailer meter read volumes exceed ten thousand [10000] during the billing month.

2.5 Any Pelican administration charges will be calculated based on an hourly rate of £40.00

- (a) Any 3<sup>rd</sup> party costs will be payable by the Retailer at the prevailing 3<sup>rd</sup> party rate

### **3. Town Charges**

| <b>Read Type</b>      | <b>Rate</b> |
|-----------------------|-------------|
| Monthly               | £4.81       |
| Six-Monthly           | £2.50       |
| Non-Cyclic            | £11.45      |
| Transfer Read         | £12.38      |
| Time Band Appointment | £22.31      |

### **4. Country Charges**

| <b>Read Type</b>      | <b>Rate</b> |
|-----------------------|-------------|
| Monthly               | £7.25       |
| Six-Monthly           | £5.08       |
| Non-Cyclic            | £13.40      |
| Transfer Read         | £15.84      |
| Time Band Appointment | £22.31      |



## **SCHEDULE 3 – SUPPORT PROCESSES**

### **1. Purpose of Schedule**

- 1.1 This Schedule describes the processes that will support the provision of Services under this Agreement and the responsibilities of both Parties to ensure system information remains aligned.
- 1.2 Pelican will ordinarily obtain Cyclic Meter Readings within a specified calendar month in accordance with planned Walk Routes.
- 1.3 Alterations to Read Period or Read Frequency shall be submitted by the Retailer at least one month prior to the start of the due read month for a Meter.
- 1.4 Where alterations to Read Period or Read Frequency are submitted later than one month prior to the start of the due read month, the original reading shall be deemed as the Reading for the purposes of the Charges.
- 1.5 Pelican may provide Meter Readings in the input file formats used by most UK billing systems. Upon request of a specification by the Retailer, Pelican shall use reasonable efforts to customise the output read file subject to clause 2.32.3(a).
- 1.6 Ad-hoc Read requests including Transfer Read requests shall be submitted by the Retailer (in writing) to Pelican on not less than five [5] full Business Days notice of such proposed Ad-hoc Read. Pelican shall only be obliged to accept Ad-hoc Read requests for Meters already on Pelican's Cyclic Read Schedules.

## **SCHEDULE 4 – DATA PROTECTION ADDENDUM**

This Data Protection Addendum (**Addendum**) sets out the terms that apply when Personal Data is Processed by Pelican. The purpose of this Addendum is to ensure that such Processing is conducted in accordance with Data Protection Legislation.

The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalised terms not otherwise defined herein shall have the meaning given to them in the Agreement.

If there is any conflict between the terms of the Agreement and the terms of this Addendum in relation to the Processing of Personal Data, the terms of this Addendum shall prevail.

### **1. Definitions**

In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

|                                    |  |
|------------------------------------|--|
| <b>Applicable Law</b>              | European Union or Member State laws to which Pelican is subject;   |
| <b>Claim</b>                       | 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 clause 2 (Data Processing Obligations) (whether by Pelican or by Pelican'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; |
| <b>Data Controller</b>             | has the meaning set out in the Data Protection Legislation;  |
| <b>Data Protection Legislation</b> | laws and regulations that apply in relation to the Processing of Personal Data including (without limitation) the GDPR and 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;   |
| <b>Data Subject</b>                | the living individual to whom Personal Data relates;   |
| <b>GDPR</b>                        | the General Data Protection Regulation (EU) 2016/679;  |
| <b>Permitted Purposes</b>          | processing the Personal Data for the purpose of, and to the extent required for, the provision of the Services;  |
| <b>Permitted Recipient</b>         | a director, employee or professional advisor of Pelican or an agent, temporary worker or permitted sub-contractor used by Pelican in the provision of the Services who has a legitimate need to receive and Process Personal Data for the Permitted Purposes;  |

|   |   |
|---|---|
| <b>Personal Data</b>                    | personal data (as such term is defined in the Data Protection Legislation) that is Processed by Pelican in connection with the provision of the Services;   |
| <b>Personal Data Breach</b>             | has the meaning set out in the Data Protection Legislation;   |
| <b>Process, Processed or Processing</b> | has the meaning set out in the Data Protection Legislation;   |
| <b>Regulatory Authority</b>             | any competent data protection or privacy authority by which the Retailer is regulated;  |
| <b>Services</b>                         | the services to be provided by Pelican under this Agreement;  |
| <b>Third Country/Countries</b>          | all countries outside of the scope of the data protection laws of the European Economic Area (EEA), excluding countries that have been approved by the European Commission from time to time as having adequate data protection laws. |

## 2. Data Processing Obligations

- 1.1. When Processing Personal Data, Pelican undertakes to the Retailer that it shall:
  - 1.1.1. taking into account the nature of the Processing and the information available to Pelican, 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;
  - 1.1.2. Process the Personal Data only to the extent necessary for the Permitted Purposes;
  - 1.1.3. not Process the Personal Data other than on the Retailer's documented instructions, including with regard to transfer of Personal Data to a Third Country or an international organisation, unless required to do so by Applicable Laws, in which case Pelican shall to the extent permitted by Applicable Laws inform the Retailer of that legal requirement before the relevant Processing of that Personal Data;
  - 1.1.4. keep a record of any Processing of Personal Data it carries out on behalf of the Retailer;
  - 1.1.5. 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;
  - 1.1.6. 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;
  - 1.1.7. promptly after becoming aware of any Personal Data Breach notify and provide sufficient information to the Retailer to allow the Retailer to meet any obligations to report or inform Data Subjects of such Personal Data Breach under the Data

Protection Legislation. Pelican 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;

- 1.1.8. 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;
  - 1.1.9. promptly notify the Retailer of any request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited;
  - 1.1.10. 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);
  - 1.1.11. 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;
  - 1.1.12. 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;
  - 1.1.13. 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 Pelican shall to the extent permitted by Applicable Laws inform the Retailer of that legal requirement before Pelican responds to the request; and
- 1.2. If Pelican 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 promptly notify the Retailer and it shall provide the Retailer with full co-operation and assistance in relation to any such complaint, notice or communication.
  - 1.3. Pelican shall not transfer the Personal Data to any country outside the EEA unless it has in place suitable measures to meet all requirements of the Data Protection Legislation.
  - 1.4. Pelican shall co-operate with any Regulatory Authority requests relating to the Processing of Personal Data.
  - 1.5. Subject to Pelican being required to maintain such copies by law, upon expiry or termination of the Agreement (for any reason whatsoever), Pelican 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). Pelican shall certify the deletion or destruction (as applicable) to the Retailer in writing.
  - 1.6. Pelican shall promptly notify the Retailer if, in its opinion, an instruction given by the Retailer to Pelican under this clause 2 (Data Processing Obligations) infringes the GDPR or any other relevant Data Protection Legislation.

- 1.7. Pelican shall make available to the Retailer all information necessary to demonstrate compliance with this clause 2 (Data Processing Obligations) 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 organisations measures by Pelican as referred to in these Data Processing Obligations.
- 1.8. Pelican may only authorise a third party (**sub-contractor**) to process the Personal Data:
  - 1.8.1. provided that Pelican has carried out adequate due diligence to ensure that the sub-contractor is capable of providing the level of protection required by the Agreement;
  - 1.8.2. provided that the relationship between Pelican and the sub-contractor is governed by a written contract which contains obligations required by Data Protection Legislation;
- 1.9. Any sub-contracting or transfer of Personal Data permitted by the Retailer shall not relieve Pelican from any of its liabilities, responsibilities and obligations to the Retailer under the Agreement and Pelican shall remain fully liable for the acts and omissions of its sub-contractors.