



# Financial Security Policy

## **PUBLIC CONSULTATION**

This Financial Security Policy is prepared pursuant to, and as defined in, the Connection Charging Policy and Agreements.

**PUBLIC CONSULTATION**

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1. DEFINITIONS

1.1 References herein to a “Section” are to a section of this Policy unless stated otherwise.

1.2 In this Policy:

“Account Charge” means a legal charge over a Charged Account entered into or to be entered into by the Counterparty in favour of Irish Water to secure the financial obligations of the Counterparty pursuant to the Agreements;

“Agreement(s)” means any agreement entered into between Irish Water and a Counterparty in respect of which Irish Water has conducted an assessment in accordance with Section 4 and, based on the outcome of such assessment, notified that Counterparty that it will require Security Cover;

“Approved Credit Rating” has the meaning given to it in Section 3.1;

“Business Day” means any period during which banks are normally open for business on a day (not being a Saturday or Sunday or a day on which banks are generally closed for business in the city of Dublin);

“Call Notice” means a notice from Irish Water to the Counterparty stating that it is making a Demand on the Counterparty’s Security Cover, pursuant to Section 6;

“Cash Deposit” has the meaning given to it in Section 3.2.3;

“Charged Account” has the meaning given to it in Section 3.2.2;

“Commission for Energy Regulation” or “Commission” or “CER” shall mean the body established pursuant to Section 8 of the Electricity Regulation Act 1999 (as amended);

“Communication” has the meaning given to it in Section 2.5;

“Connection Charging Policy” means the Connection Charging Policy prepared and published by Irish Water, as amended, modified or revised from time to time, and approved by the Commission;

“Counterparty” means each person who is counterparty to an agreement with Irish Water;

“Date of Demand” means the date (being a Business Day) on which Irish Water makes a Demand on a Counterparty’s Security Cover;

“Demand” means a demand or drawdown on Security Cover, made pursuant to Section 6 and the terms thereof;

“Demand Notice” means a notice from Irish Water to the issuer of a Counterparty’s Security Cover making a demand for payment under the terms of the Security Cover for the amount specified therein;

“Deposit Agreement” means an agreement between Irish Water and the Counterparty to allow Irish Water to appropriate money from the Cash Deposit to offset debts owed by the Counterparty to Irish Water;

“Due Date” has the meaning given to it in the relevant Agreement;

“Euro” or “€” means the single currency of the participating member states of the European Union (as described in any EU legislation);

“Fee” means the fee that may be imposed by Irish Water on a Counterparty in accordance with Section 5.6.2;

“Financial Security Amount” means, with respect to a Counterparty and at any particular time, the amount calculated in accordance with Section 4 or 5 in respect of which such Counterparty is then required to provide Security Cover;

“Fitch” means Fitch Ratings Limited, or any successor to the credit ratings business of Fitch Ratings Limited;

“Irish Water” means Irish Water (Uisce Éireann), a private company limited by shares with registration number 530363 established pursuant to the Water Services Act 2013 of Ireland and having its registered office at Colvill House, 24-26 Talbot Street, Dublin 1, Ireland;

“Large Non-Domestic Connection” has the meaning given to it in section 13 of the Connection Charging Policy;

“Letter of Credit” has the meaning given to it in Section 3.2.1;

“Moody’s” means Moody’s Investors Service, Inc., or any successor to the credit ratings business of Moody’s Investors Service, Inc.;

“Qualifying Guarantee” has the meaning given to it in Section 3.2.4;

“Regulator” means where applicable all present and future regulatory bodies having jurisdiction over Irish Water including, but not limited to, the Commission for Energy Regulation, the Environmental Protection Agency, the Department of the Environment, Community and Local Government, the Office of the Data Protection Commissioner, the Competition Authority and/or any other statutory body or regulatory authority which regulates on an ongoing basis or from time to time the business or operations of Irish Water;

“S&P” means Standard & Poor’s, a division of The McGraw Hill Companies, Inc., or any successor to the credit ratings business of Standard & Poor’s, a division of The McGraw Hill Companies, Inc.;

“Security Cover” means, with respect to a Counterparty, security for the payment obligations of such Counterparty to Irish Water under the Agreements entered into between such Counterparty and Irish Water in form and substance acceptable to Irish Water, and may take the form of a Letter of Credit, a Qualifying Guarantee, a Charged Account with Account Charge, and a Cash Deposit with Deposit Agreement or such other form of security as may be acceptable to Irish Water pursuant to Section 3.2;

“Security Cover Instrument” means a Letter of Credit, a Qualifying Guarantee, an Account Charge, a Deposit Agreement or such other instrument as may be acceptable to Irish Water for the purposes of providing Security Cover pursuant to Section 3.2;

“Security Cover Decrease Amount” means, with respect to a Counterparty and at any particular time, the amount by which the Financial Security Amount in respect of which such Counterparty has then provided or is then required to provide Security Cover exceeds the recalculated Financial Security Amount for such Counterparty in accordance with Section 5;

“Security Cover Decrease Notice” means a notice issued by Irish Water to the Counterparty in accordance with Section 5.4 notifying such Counterparty that its Financial Security Amount has been reduced and that the amount of its Security Cover may be decreased accordingly;

“Security Cover Increase Amount” means, with respect to a Counterparty and at any particular time, the

amount by which the Financial Security Amount in respect of which such Counterparty has then provided or is then required to provide Security Cover is less than the recalculated Financial Security Amount for such Counterparty in accordance with Section 5;

“Security Cover Increase Notice” means a notice issued by Irish Water to a Counterparty in accordance with Section 5.3 notifying such Counterparty that its Financial Security Amount has been increased and that the amount of its Security Cover must be increased accordingly; and

“Security Cover Notice” means a notice issued by Irish Water to a Counterparty indicating such Counterparty’s then applicable Financial Security Amount, which may also be a Security Cover Increase Notice or Security Cover Decrease Notice.

## 2. INTRODUCTION

### 2.1 Background & Purpose

This Policy outlines the obligations of a Counterparty to provide Security Cover with respect to its payment obligations under the Agreement(s) where none of the credit ratings of that Counterparty is an Approved Credit Rating or where the long term unguaranteed, unsecured and unsubordinated debt of such Counterparty is not rated by any of S&P, Fitch or Moodys. All Counterparties and Irish Water will be required to comply with the terms and conditions set forth herein.

This Policy is issued with the approval of the Commission for Energy Regulation on [xx/xx/xxxx].

### 2.2 Overview of Provisions

Whenever the long term unguaranteed, unsecured and unsubordinated debt of a Counterparty is not rated by any of S&P, Fitch or Moodys, or where such debt of a Counterparty is so rated but no such rating is an Approved Credit Rating, then such Counterparty must provide Security Cover to Irish Water in accordance with this Policy with respect to each Agreement to which it is party. The requisite Security Cover must be maintained by the Counterparty in accordance with this Policy throughout the term of the Agreement(s) or until the Counterparty satisfies Irish Water that it has been credit rated with an Approved Credit Rating.

The Financial Security Amount for each Counterparty shall be determined in accordance with Section 4. Irish Water will review each Counterparty’s Financial Security Amount calculated under Section 4 in accordance with Section 5. Where the recalculated Financial Security Amount is greater or less than the current Financial Security Amount, Irish Water will require the Counterparty to increase or permit the Counterparty to decrease the level of Security Cover provided by it accordingly.

### 2.3 Scope of this Policy

This Policy sets out the procedures to be followed relating to the provision of Security Cover, including calculation of the applicable Financial Security Amount, the form and approval of form of Security Cover, how Irish Water should monitor Security Cover and when Irish Water may make Demands on Security Cover.



2.4 Compliance with this Policy

Compliance with this Policy is required under the terms of the Connection Charging Policy and the Agreement(s).

In the case of any conflict between the provisions of this Policy and the Connection Charging Policy, the terms of the Connection Charging Policy shall prevail.

In the case of any conflict between the provisions of this Policy and an Agreement, the terms of the relevant Agreement shall prevail.

2.5 Communication under this Policy

Any communication or notification given or made by a party to the other party under this Policy (a "Communication") shall be:

2.5.1 in writing and may be delivered by hand to the addressee, or sent by registered post or courier delivery to the address of the addressee or sent by fax (followed up by the original hard copy, where a signature is required, within a maximum of 5 days) to the addressee's fax transmission number specified in writing by the addressee or by email (followed up by fax where expediency is required and the original hard copy, where a signature is required, within a maximum of 5 days) to the addressee's email address specified in writing by the addressee;

2.5.2 deemed to have been given or made or delivered,

(a) if delivered in person or by courier delivery, when actually delivered at the address;

(b) if sent by registered post, on the third (3<sup>rd</sup>) day following the day of or, if sent by airmail from overseas, on the fifth (5<sup>th</sup>) day following the day of posting;

(c) if sent by fax, when confirmation of its complete transmission has been recorded by the sender's fax machine, provided that in the event that there is a dispute in respect of the time when the notice sent by fax was received, the time of receipt shall be:

(i) in the case of a fax sent by a Counterparty, the time of receipt of such fax recorded by Irish Water's fax machine, save that in the event of a fault with Irish Water's fax machine the time of receipt shall be the time of actual receipt; and

(ii) in the case of a fax sent by Irish Water, the time of complete transmission of such fax recorded by Irish Water's fax machine save that in the event of a fault with Irish Water's fax machine the time of receipt shall be the time of actual receipt; and

(d) if sent by email, when confirmation of its transmission has been recorded by the sender's email provided that in the event that there is a dispute in respect of the time when the notice sent by email was received, the time of receipt shall be:

(i) in the case of an email sent by a Counterparty, the time of receipt of such email recorded by Irish Water's email account, save that in the event of a fault with Irish Water's email the time of receipt shall be the time of actual receipt; and

(ii) in the case of an email sent by Irish Water, the time of complete transmission of such email recorded by Irish Water's email save that in the event of a fault with Irish Water's email the time of receipt shall be the time of actual receipt,

provided that supplemental evidence in support of and/or demonstrating the above receipt/sending of notices may be addressed by appropriate means (such as, by way of example, telephone data records);

2.5.3 effective when deemed to have been given, made or delivered under Section 2.5.2 notwithstanding that the person by whom it is sent may be required to follow up with a fax or hard copy under Section 2.5.1;

2.5.4 in English.

### 3. COMPLIANCE PROVISIONS

#### 3.1 Approved Credit Rating

If and for so long as the long term unguaranteed, unsecured and unsubordinated debt of a Counterparty is rated BBB (S&P or equivalent) ( an "Approved Credit Rating"), then such Approved Credit Rating shall exempt the Counterparty from any requirement to provide Security Cover under this Policy.

A Counterparty shall provide Irish Water with such information as Irish Water may reasonably require in order to satisfy itself that the Counterparty has an Approved Credit Rating. Such information may include the Counterparty's company registration number, details of its jurisdiction of incorporation, certified copies of letters from any relevant credit rating agency and any other information that Irish Water may reasonably require in order to carry out an independent verification of any claim on the part of a Counterparty to have an Approved Credit Rating.

If the long term unguaranteed, unsecured and unsubordinated debt of a Counterparty is rated with an Approved Credit Rating and such credit rating is subsequently downgraded to less than the Approved Credit Rating or withdrawn, the Counterparty must immediately notify Irish Water of any such downgrade or withdrawal, including giving details of its revised credit rating (if any) and certified copies of any correspondence with any relevant credit rating agency. If a Counterparty ceases to have at least one Approved Credit Rating, then such Counterparty must, by 5pm on the tenth (10th) Business Day of it so ceasing, provide Security Cover in accordance with this Policy in respect of the applicable Financial Security Amount.

#### 3.2 Security Cover

If the long term unguaranteed, unsecured and unsubordinated debt of a Counterparty is rated with less than an Approved Credit Rating or is not rated, the Counterparty must provide for the benefit of Irish Water and maintain Security Cover in respect of the applicable Financial Security Amount in one or more of the following forms:

### 3.2.1 Letter of Credit

an irrevocable standby letter of credit in or substantially in the form attached at Appendix 1, or in such other form as may be acceptable to Irish Water (a "Letter of Credit") issued for the account of the Counterparty in favour of Irish Water which Letter of Credit shall allow for partial drawings, if necessary, and shall provide for payment to Irish Water forthwith on demand and shall be issued either by:

- (a) The issuing bank needs to have a minimum credit rating of BBB- (S&P or equivalent) for security with a value up to €2.5 million or a minimum credit rating of A- (S&P or equivalent) for security with a value exceeding €2.5m.

If the issuing bank is a subsidiary that is not independently rated or has a long term credit rating of less than BBB- (S&P or equivalent) for security with a value up to €2.5 million, or has a long term credit rating of less than A- (S&P or equivalent) for security with a value exceeding €2.5 million, then its parent company must guarantee the obligations of the subsidiary and have a long term credit rating of not less than BBB- (S&P or equivalent) for security with a value up to €2.5 million or have a long term credit rating of less than A- (S&P or equivalent) for security with a value up exceeding €2.5 million. A Letter of Credit shall be drafted under Irish law and shall be subject to Irish legislation. For the purposes of this Financial Security Policy, a "Bank" means the holder of a licence under Section 9 of the Central Bank Act 1971 (as amended) or the holder of an authorisation as a credit institution issued by a competent authority of a jurisdiction other than Ireland under EU Directive No. 2006/48/EC of 14 June 2006; or

### 3.2.2 Charged Account

a "Charged Account" means an interest bearing deposit account with a Bank acting through a headquarters or branch in Ireland that satisfies the criteria outlined in Section 3.2.1 (a) or (b) to which money has been credited and which account is charged by way of Account Charge for any amount becoming due to Irish Water and from which funds may be released to Irish Water on Demand to discharge sums due and payable from time to time to Irish Water pursuant to an Agreement (a pro-forma Account Charge which is acceptable to Irish Water has been attached as Appendix 2); or

### 3.2.3 Cash Deposit

a cash deposit in an interest bearing bank deposit account (the interest rate applied by the bank to this account may be negative, positive or zero) specified by (and in the name of) Irish Water where interest (negative, positive or zero) on the amount deposited will accrue for the benefit/charge to the Counterparty at market related rates of interest after deduction for any tax or bank charges. The money standing to the credit of such an account (a "Cash Deposit") is to be held by way of Security Cover pursuant to an agreement (a "Deposit Agreement") that will allow sums due and payable from time to time by the Counterparty pursuant to an Agreement to be released to Irish Water on demand (a pro-forma Deposit Agreement that is acceptable to Irish Water has been attached as Appendix 3); or

### 3.2.4 Qualifying Guarantee

A guarantee for the payment of all monies due to Irish Water under the Agreement and all costs reasonably incurred in order to recover such monies in accordance with the guarantee, which guarantee shall be in or substantially in the form attached at Appendix 4, or in such other form as may be acceptable to Irish Water (a "Qualifying Guarantee") and which is issued in favour of Irish Water by an entity whose long term unguaranteed,

unsecured and unsubordinated debt has an Approved Credit Rating; or

- 3.2.5 Other such other form of security as is acceptable to Irish Water and approved by the Commission.

3.3 Approval Process

Counterparties and Irish Water shall adhere to the following procedure in tendering and approving proposed Security Cover.

3.3.1 Letter of Credit

Where a Counterparty proposes to provide a Letter of Credit as Security Cover, the Counterparty shall provide the proposed form of Letter of Credit to Irish Water in advance of issue and Irish Water will review the proposed form of Letter of Credit and verify that such Letter of Credit will be issued by an entity which meets one of the criteria specified in Section 3.2.1 (a) or (b). If Irish Water is satisfied with the proposed form of Letter of Credit and has so verified the issuer thereof, Irish Water shall approve the proposed form of Letter of Credit and shall confirm such approval to the Counterparty.

The Counterparty shall thereupon immediately arrange for the issue of the Letter of Credit.

Where a Counterparty provides a Letter of Credit as Security Cover the Counterparty shall ensure that a new Letter of Credit, effective as of the expiry date of the subsisting Letter of Credit, is provided to Irish Water not less than fifteen (15) Business Days prior to the expiry date of the subsisting Letter of Credit unless the Counterparty proposes to, and provides, alternative Security Cover in accordance with this Policy.

A Letter of Credit shall be deemed to be received by Irish Water on the date that the original signed copy of the Letter of Credit is received by Irish Water from an issuer which meets the applicable criteria specified in Section 3.2.1 (a) or (b), in a form previously approved by Irish Water.

3.3.2 Charged Account

Where the Counterparty proposes to provide a Charged Account with Account Charge, the Counterparty shall provide to Irish Water the proposed form of Account Charge together with details of the Charged Account which shall be with a Bank which satisfies the criteria set out in Section 3.2.1. If Irish Water is satisfied with the proposed form of Account Charge and Charged Account (including the form of bank mandates in respect of such Charged Account) Irish Water shall approve the proposed form of Account Charge and Charged Account and shall confirm such approval to the Counterparty. The Counterparty shall deliver to Irish Water two (2) signed original hard copies of the Account Charge (including two (2) signed original hard copies of the forms of notice to the account bank and acknowledgement to Irish Water referred to therein) copies of the relevant mandates in respect of the Charged Account and evidence of the amount credited to such Charged Account).

A Counterparty shall be deemed to have provided Security Cover by way of Charged Account on the date of receipt by Irish Water of the duly executed Account Charge (in a form as previously approved by Irish Water) together with the original forms of notice and acknowledgement and acknowledgement referred to therein, and evidence of deposit of requisite moneys to the Charged Account.

### 3.3.3 Cash Deposit

Where a Counterparty proposes to provide a Cash Deposit as Security Cover, the Counterparty shall provide to Irish Water the proposed Deposit Agreement together with details of the amount of the proposed Cash Deposit. Irish Water shall review the Deposit Agreement and the amount of the proposed Cash Deposit and if Irish Water is satisfied with the proposed Cash Deposit and Deposit Agreement Irish Water shall approve the proposed form of Deposit Agreement and Cash Deposit and shall confirm such approval to the Counterparty and shall provide the Counterparty with details of the account into which the Cash Deposit is to be paid.

The Counterparty shall thereupon immediately arrange for the execution and delivery to Irish Water of the Deposit Agreement and payment of the Cash Deposit. Irish Water shall notify the Counterparty when it has received confirmation by the nominated bank as to the amount credited as a Cash Deposit.

The Counterparty will be deemed to have provided a Cash Deposit by way of Security Cover on the later of:

- (a) the date that the sum of money deposited to an acceptable account as a Cash Deposit, when aggregated with all other Security Cover that that Counterparty is providing, is at least equal to such Counterparty's then applicable Financial Security Amount ; and
- (b) the date of delivery of the executed Deposit Agreement to Irish Water in the form as previously approved by Irish Water.

### 3.3.4 Qualifying Guarantee

Where a Counterparty proposes to provide a Qualifying Guarantee as Security Cover, the Counterparty shall provide the proposed form of Qualifying Guarantee to Irish Water in advance of issue along with evidence that the entity providing such a guarantee has an Approved Credit Rating. Irish Water will review the proposed form of Qualifying Guarantee and verify that the entity providing such Qualifying Guarantee has an Approved Credit Rating. If Irish Water is satisfied with the proposed form of Qualifying Guarantee and has so verified the issuer thereof, Irish Water shall approve the proposed form of Qualifying Guarantee and shall confirm such approval to the Counterparty.

The Counterparty shall thereupon immediately arrange for the issue of two (2) signed copies of the Qualifying Guarantee and send to Irish Water the two (2) signed original copies of the Qualifying Guarantee. Irish Water shall review the documents sent to it and if satisfied sign the Qualifying Guarantee. Irish Water shall then return a copy to the applicant Counterparty.

The Counterparty will be deemed to have provided Security Cover by a Qualifying Guarantee on the date that the original signed copies of the Qualifying Guarantee are received by Irish Water from an entity which has an Approved Credit Rating in a form previously approved by Irish Water and if Irish Water is satisfied with the legal opinion or confirmation that the obligations of the issuer of the Qualifying Guarantee are enforceable ones.

### 3.3.5 Additional Requirements

Irish Water may, at its sole discretion and at the cost of the Counterparty, request a legal opinion from lawyers (other than the Counterparty's in-house lawyers) qualified in the

laws of the place of incorporation of the Counterparty and/or the entity that has issued a Qualifying Guarantee or a Letter of Credit in a form satisfactory to Irish Water.

Irish Water may, at its sole discretion, request a certificate from a director of the Counterparty and/or an entity that has issued a Qualifying Guarantee or a Letter of Credit in a form satisfactory to Irish Water and, if so requested, the Counterparty shall deliver such certificate to Irish Water within 10 days of the request.

3.3.6 Perfection of Security

The Counterparty shall, at its own cost, deliver to Irish Water any and all documents evidencing the perfection of any security created pursuant to this Policy.

3.3.7 Other

Where Irish Water with the approval of the Commission has agreed to accept some other form of Security Cover, the procedure to be followed by the Counterparty and Irish Water in approving the form of such Security Cover shall be specified by Irish Water to the Counterparty at the relevant time.

Irish Water shall notify the applicant Counterparty, when the applicant Counterparty has successfully complied with all the relevant Security Cover provisions.

3.4 Changes to forms of Security Cover

Irish Water's requirements with respect to the form and content of Letters of Credit, Account Charges, Deposit Agreements, Qualifying Guarantees and other forms of Security Cover may change over time to reflect, amongst other things, changes in applicable law and regulation and market practice. Where such changes are material Irish Water will issue the changed pro-forma document(s) to the Commission for review.

Subject to Commission approval Irish Water may require Counterparties to amend or procure the amendment of the Security Cover provided by them. Irish Water, where appropriate, will advise all relevant parties in advance of any required amendments and the time available to the Counterparty to comply therewith.

Where Irish Water's requirements with respect to the form and content of Security Documents change, Irish Water will notify the Commission of such changes and where appropriate, publish new Appendices to this Policy to reflect its changed requirements.

3.5 Compliance with Policy

A Counterparty shall be deemed to be in compliance with such Counterparty's obligations to comply with this Financial Security Policy from time to time when and for so long as such Counterparty shall have provided to Irish Water and maintains Security Cover in respect of the applicable Financial Security Amount (as same may be recalculated from time to time).

3.6 Notification of Financial Security Amount

Irish Water will notify each Counterparty of its applicable Financial Security Amount as determined in accordance with Section 4. Irish Water will also be entitled to recover all costs reasonably incurred in order to recover such monies.

The Counterparty may request Irish Water to provide an updated calculation of its applicable Financial Security Amount for which purpose the Counterparty must provide all relevant information to Irish Water.

#### 4. FINANCIAL SECURITY AMOUNT

##### 4.1 Determination of Financial Security Amount in respect of Agreements

Subject to the terms of individual Agreements, Irish Water will determine (a) whether an agreement entered into by it with a Counterparty will constitute an Agreement for the purposes of this Policy and (b) the Financial Security Amount required in respect of any Agreement based on (i) its determination of its financial exposure to such Counterparty under such agreement in the event of a payment or performance default by such Counterparty, and (ii) its assessment of the risk of payment or performance default by a Counterparty.

##### 4.2 Clause not in use

##### 4.3 Notification of Financial Security Amount

Irish Water will issue a notice (a "Security Cover Notice") to an applicant Counterparty containing the details of the applicable Financial Security Amount and the calculations used to determine this amount.

#### 5. REVIEW OF FINANCIAL SECURITY AMOUNT

##### 5.1 Review Time Scale

The Financial Security Amount in respect of which Security Cover is required to be provided by a Counterparty may be reviewed on an annual basis or in accordance with the relevant Security Cover Instrument(s) provided by such Counterparty.

##### 5.2 Changes to the Security Cover

Irish Water will issue either a Security Cover Increase Notice or Security Cover Decrease Notice to a Counterparty where the existing Financial Security Amount is not the same as the revised Financial Security Amount that is required based on a review undertaken by Irish Water in accordance with Section 5.1.

##### 5.3 Security Cover Increase Notice

If the aggregate amount secured pursuant to a Counterparty's existing Security Cover (after reducing the amount by Demands made) is less than the Financial Security Amount applicable to such Counterparty upon a recalculation of such Financial Security Amount in accordance with Section 5.2, Irish Water shall notify the Counterparty in writing (a "Security Cover Increase Notice") of the applicable recalculated Financial Security Amount and the Security Cover Increase Amount.

The Counterparty shall forthwith procure that Irish Water receives the necessary additional Security Cover in respect of the increased Financial Security Amount by 5pm on the tenth (10<sup>th</sup>) Business Day after the date of issue of a Security Cover Increase Notice, as follows:

5.3.1 Letter of Credit

The Counterparty may procure the issue of a new Letter of Credit for an amount equal to the new Financial Security Amount or an additional Letter of Credit for an amount equal to the increase in the Financial Security Amount from an entity that satisfies one of the criteria set out in Section 3.2.1 (a) or (b) and shall follow the procedures specified in Section 3.3.1 for issue of that Letter of Credit unless the Letter of Credit is in terms identical (except with respect to amount) to one being relied upon as Security Cover, when the Counterparty may arrange for issue without prior approval of Irish Water; or

5.3.2 Charged Account

The Counterparty may make a deposit of the Security Cover Increase Amount to an existing Charged Account that is being used as Security Cover and provide evidence of the account balance in such Charged Account together with such other documentation as may be necessary to ensure that the Account Charge extends to and applies to such increased balance to reflect the new amount; or

5.3.3 Cash Deposit

The Counterparty may make a Deposit of the Security Cover Increase Amount to a cash deposit account designated by Irish Water that is being used as Security Cover, provide evidence of such Deposit to Irish Water and sign an appendix to the Deposit Agreement specifying the new amount or such other documentation as may be reasonably required by Irish Water to ensure that the Deposit Agreement extends to and includes the deposit of the Security Cover Increase Amount; or

5.3.4 Qualifying Guarantee

The Counterparty may provide an acknowledgement by the issuer of a Qualifying Guarantee that the Qualifying Guarantee being relied upon as Security Cover covers any increase in liability of the Counterparty resulting from the recalculation on the Financial Security Amount; or

5.3.5 Other

The Counterparty may provide such additional cover for the Security Cover Increase Amount by such other means as shall be acceptable to Irish Water with approval from the Commission, within the timeframe allowed.

For the avoidance of doubt, the Counterparty may provide Security Cover for the Security Cover Increase Amount by a combination of options available under Sections 5.3.1 to 5.3.4.

5.4 Security Cover Decrease Notice

If the aggregate amount secured pursuant to a Counterparty's existing Security Cover (after reducing the amount by Demands made) is greater than the Financial Security Amount applicable to such Counterparty upon a recalculation of such Financial Security Amount in accordance with Section 5.2, Irish Water shall notify the Counterparty in writing (a "Security Cover Decrease Notice") of the applicable recalculated Financial Security Amount and the SecurityCoverDecreaseAmount.



The Counterparty shall be entitled to request Irish Water to review such Counterparty's existing Security Cover as follows:

5.4.1 Letter of Credit

Where a Letter of Credit has been provided as Security Cover, Irish Water shall notify the Counterparty that the maximum liability under the Letter of Credit may be reduced by the Security Cover Decrease Amount and, if requested by the Counterparty, return the original Letter of Credit to the issuer upon receipt of a new Letter of Credit from the issuer in the same terms (except reduced in amount by the Security Cover Decrease Amount) as the original; or

5.4.2 Charged Account

Where a Charged Account has been provided as Security Cover, the Counterparty shall then have five (5) Business Days, from the date of the Security Cover Decrease Notice, to notify Irish Water if it wishes to withdraw funds from the Charged Account. If such notification is made, Irish Water shall have ten (10) Business Days from the date of receipt by Irish Water of such notice from the Counterparty to notify the Bank with which the Charged Account is held to transfer the excess from the Charged Account into such other bank account as the Counterparty may advise and Irish Water will confirm its consent to such transfer to the relevant account bank; or

5.4.3 Cash Deposit

Where a Cash Deposit has been provided as Security Cover the Counterparty may, within five (5) Business Days from the date of the Security Cover Decrease Notice, notify Irish Water that it requires repayment of part of the Cash Deposit. If such notification is made, Irish Water shall have ten (10) Business Days from the date of receipt by Irish Water of such notice from the Counterparty to transfer the excesses from the Cash Deposit Account into such bank account of the Counterparty as the Counterparty shall advise; or

5.4.4 Other

Where some other form of Security Cover has been accepted further to Section 3.2.5, the Counterparty may within five (5) Business Days, from the date of the Security Cover Decrease Notice, notify Irish Water that it wishes to reduce its Security Cover.

5.5 Substitute and Replacement Security Cover

If the issuer of a Letter of Credit provided to Irish Water as Security Cover ceases to be an entity which satisfies one of the criteria set out in Section 3.2.1 (a) or (b) the Counterparty shall forthwith procure the issue of a substitute Letter of Credit by an entity that satisfies one of such criteria or provide Security Cover in one of the other forms set out in Section 3.2.

If the issuer of a Qualifying Guarantee provided to Irish Water as Security Cover has its credit rating withdrawn or downgraded to less than an Approved Credit Rating, the Counterparty shall forthwith procure a replacement Qualifying Guarantee from an entity having an Approved Credit Rating, or provide Security Cover in one of the other forms contemplated by Section 3.2.

If the Security Cover provided by the Counterparty under Section 3.2.5 ceases to satisfy Irish Water and the Commission the Counterparty shall forthwith procure a replacement form of cover in one of the other forms contemplated by Section 3.2.

5.6 Consequences of Breach of the Financial Security Policy

- 5.6.1 The consequences of breach or non compliance by a Counterparty with this Financial Security Policy at any time shall be as prescribed in the Agreement(s).
- 5.6.2 In addition and without prejudice to the rights and remedies available to Irish Water pursuant to the Agreement(s) in respect of any breach, or non-compliance, by a Counterparty with this Financial Security Policy, where the Financial Security Policy has not been complied with by the Counterparty within the time specified in this Financial Security Policy or any Agreement, a Fee of two hundred and fifty Euro (€250) per Business Day will be charged to the Counterparty until the Financial Security Policy is complied with or the date the relevant Agreement(s) terminate in accordance with the terms of the relevant Agreement(s).
- 5.6.3 At the end of each month, Irish Water shall issue an invoice for the amount of such Fees accrued by the Counterparty in the preceding month. The Counterparty shall pay Irish Water the sum set out in the invoice by the Due Date in accordance with the relevant Agreement.
- 5.6.4 Irish Water shall notify the Commission of the financial amount of these Fees collected from each Counterparty at intervals agreed between Irish Water and the Commission from time to time.

6. DEMANDSON SECURITY COVER

6.1 Overview

Subject to the terms of the relevant Security Cover, Irish Water shall be entitled to make a Demand on the Security Cover provided by a Counterparty if the Counterparty has failed to pay any amount due and payable under or pursuant to the Agreement by the fifth (5<sup>th</sup>) Business Day after the Due Date thereof.

6.2 Demand on Security Cover

Subject to the minimum Demand amount specified in Section 6.3, if by 10:00 hours on the fifth (5<sup>th</sup>) Business Day after the Due Date any such payment is outstanding (in whole or in part), Irish Water may without prejudice to any other rights of Irish Water under the Agreement(s) make a Demand on the Counterparty's Security Cover by issue of a notice (a "Demand Notice") for all or part of any amounts outstanding including any interest accruing.

6.2.1 Letter of Credit

Where a Letter of Credit has been provided as Security Cover, Irish Water shall make a Demand in accordance with the terms thereof to the issuer thereof for payment of an amount thereunder not exceeding the aggregate amount then unpaid, including interest thereon by the Counterparty.

6.2.2 Charged Account

Where a Charged Account has been provided as Security Cover, Irish Water shall be entitled to enforce the relevant Account Charge and require the relevant account bank to

pay to it from the Charged Account an amount not exceeding the aggregate amount then unpaid by the Counterparty, including interest thereon.

#### 6.2.3 Cash Deposit

Where a Cash Deposit has been provided as Security Cover, Irish Water shall appropriate from the designated cash deposit account the monies owed including interest, in accordance with the Deposit Agreement.

#### 6.2.4 Qualifying Guarantee

Where a Qualifying Guarantee has been provided as Security Cover, Irish Water shall make a Demand in accordance with the terms thereof to the issuer thereof for payment of an amount not exceeding the aggregate amount then unpaid by the Counterparty including interest thereon, and instruct the Counterparty's guarantor to transfer the outstanding amount to Irish Water's account.

#### 6.2.5 Other

In the case where Irish Water has accepted some other form of Security Cover, Irish Water shall take whatever action is required to draw down the monies owed (in whole or in part) including interest in accordance with the agreed arrangements.

### 6.3 Minimum Demand Amount

For outstanding amounts less than two thousand five hundred Euro (€2,500) in aggregate a Demand shall not be made on the Security Cover but interest shall accrue in accordance with the Agreements until paid. However, should an amount remain unpaid for more than 90 (ninety) calendar days and if the aggregate unpaid amount is greater than one thousand Euro (€1,000) at the end of such 90 (ninety) day period, then a Demand shall be made on the Security Cover. Demands thereafter in respect of amounts less than one thousand Euro (€1,000) may be made at the discretion of Irish Water.

Irish Water will calculate the interest to be charged on unpaid amounts on a monthly basis as defined under the Agreement and where the principal plus interest exceeds the minimum Demand of two thousand five hundred Euro (€2,500) then a Demand shall be made.

### 6.4 Replenishment

Following a Demand on a Counterparty's Security Cover the Counterparty shall be obliged to replenish by 5.00 pm on the fourth Business Day thereafter the Security Cover such that the Counterparty shall have provided Security Cover in respect of the applicable Financial Security Amount (after taking account of the Demand(s) made). Irish Water shall on the Date of Demand, notify the Counterparty (the "Call Notice") of:

- a) the fact that the Demand has been made; and
- b) its obligation under its Agreement(s) to replenish Security Cover up to the Financial Security Amount and that this replenishment will be required by 5pm on the fourth (4<sup>th</sup>) Business Day after the date of Demand on the Security Cover.

6.5 Immediate Drawdown

Irish Water will be entitled to and will with immediate effect make a Demand on the Counterparty's Security Cover, to the value of the Counterparty's total debt exposure pursuant to the Agreements including interest, upon the occurrence of any event as specified in the Agreement.

7. RETURN OF SECURITY COVER

Upon termination of the Agreement(s) entered into between a Counterparty and Irish Water any Security Cover remaining once all the Counterparty's payment obligations arising under or in connection with such Agreement(s) have been irrevocably and unconditionally discharged in full (and in the case of a Cash Deposit, any interest accrued, at market rates of interest, in respect of such an account, less any bank and similar charges and any taxes deducted by the bank) will be released to the Counterparty (or, in the case of a Letter of Credit or Qualifying Guarantee, to the issuer thereof) within ten (10) Business Days of Irish Water being satisfied that all such payment obligations have been irrevocably and unconditionally discharged in full.

Return of Security Cover is without prejudice to the rights of Irish Water under the Agreement(s) and does not relieve the Counterparty of any of its obligations or any liability in respect of the Agreement.

**APPENDIX 1**

**PRO FORMA LETTER OF CREDIT**

**IRISH WATER**

**POLICY NO. IW-FIN-POL-001**

**FINANCIAL SECURITY PACKAGE**

**PRO FORMA LETTER OF CREDIT**

PRO FORMA LETTER OF CREDIT

(Bank name)  
(Bank address)

To: Irish Water  
Colvill House, 24 - 26 Talbot Street, Dublin 1, Ireland

Date: [ • ]

Letter of Credit

**Letter of Credit No:**

[ • ]

**Amount:**

€[ • ]

**Beneficiary:**

Irish Water,  
Colvill House, 24 - 26 Talbot Street,  
Dublin 1, Ireland

**Applicant:**

[ • ]

**Terms and Conditions**

Dear Sirs

At the request of the Applicant, we, [*the Issuer Bank*] in our capacity as issuer bank (the "**Issuer Bank**"), hereby establish in favour of the Beneficiary with effect from [ • ]/[the date hereof] (the "**Effective Date**") this unconditional and irrevocable Standby Letter of Credit No. [ • ] (the "**Letter of Credit**") in a maximum aggregate amount of €[ • ] in connection with the Agreement[s] (as defined below).

1. In this Letter of Credit (and every Demand (as defined below)), unless the context otherwise requires:

**"Agreement[s]"**

has the meaning given to it in the Financial Security Policy;

**"Authorised Signatory"**

means an officer of the Beneficiary having general authority to execute a Demand;

**"Business Days"**

means a day (other than a Saturday or Sunday) on which banks are open for general business in Dublin;

**“Demand”**

means a written notice of demand substantially in the form set out in the Appendix to this Letter of Credit delivered by the Beneficiary in accordance with the terms of this Letter of Credit to the Issuer Bank;

**“Expiry Date”**

means the earlier of

- (a) [ • ]; and
- (b) thirty days after the date on which the Beneficiary notifies the Issuer Bank that the Agreement[s] [has]/[have] terminated and that all payment obligations thereunder or arising in connection therewith owed by the Applicant to the Beneficiary have been discharged by the Applicant to the satisfaction of the Beneficiary;

**“Financial Security Policy”**

means the Policy [IW-FIN-POL-001], Financial Security Policy published by Irish Water from time to time and approved by the Commission for Regulation of Utilities; and

**“Specified Amount”**

means in relation to any Demand the sum specified in that Demand.

2. In consideration of the Beneficiary agreeing to accept this Letter of Credit, the Issuer Bank irrevocably, absolutely and unconditionally undertakes that it will, on receipt or deemed receipt (in accordance with the terms of this Letter of Credit) of a Demand, pay to the Beneficiary the Specified Amount, unless in so doing the maximum aggregate limit set out in paragraph 3 of this Letter of Credit would be exceeded, in which case the Issuer Bank shall pay to the Beneficiary so much of the Specified Amount as may be paid without exceeding such limit. The Issuer Bank shall give the Beneficiary notice within five (5) Business Days of receipt of any document or letter from the Beneficiary which purports to be a Demand if the Issuer Bank is of the opinion that such a document or letter does not conform with the required form of Demand as set out in this Letter of Credit or if delivery of such document or letter was not effected in accordance with the provisions of this Letter of Credit relating to delivery of a Demand, stating the reasons therefor. The Beneficiary shall be at liberty to re-deliver any such Demand or purported Demand in accordance with the provisions of this Letter of Credit. The obligation of the Issuer Bank to pay under this Letter of Credit shall be discharged in accordance with the terms of this Letter of Credit notwithstanding any protest or demand by or on behalf of the Applicant.
3. The Beneficiary may make multiple Demands under this Letter of Credit provided that the aggregate of all amounts specified for payment in all Demands and the maximum aggregate liability of the Issuer Bank under this Letter of Credit shall not exceed €[ • ].
4. Any payment under this Letter of Credit shall be made by the Issuer Bank forthwith upon receipt of a Demand but in any event no later than the third (3rd) Business Day after a Demand is deemed received by it in accordance with the terms of this Letter of Credit. Such payment shall be made without set-off or counterclaim and free from any deduction or withholding of, for or on account of, any present or future taxes, duties or governmental charges of whatever nature other

than is required by any applicable law. If any such deduction or withholding shall be required by any applicable law to be made from such payment, the Issuer Bank shall pay to the Beneficiary on the due date for payment under such Demand such additional amount as shall result in the Beneficiary receiving the same net amount as the Beneficiary would have received in the absence of such deduction or withholding. Payment of amounts due under a Demand shall be made in Euro in immediately available, fully transferable, cleared funds by transfer directly to a bank account of the Beneficiary specified in such Demand.

5. A Demand shall be delivered by hand or post to the Issuer Bank at the following address:

Issuer Bank Branch: [●]

Issuer Bank Address: [●]

For the Attention of: [●]

Any Demand sent by the Beneficiary to the Issuer Bank shall be deemed to have been received by the Issuer Bank (i) in the case of delivery by hand, when it has been left at the address set forth above, (ii) in the case of delivery by post, three (3) Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at the address set forth above and (iii) in the case of transmission by facsimile, upon receipt of confirmation of delivery in full to the facsimile number set forth above by the Beneficiary's facsimile machine.

6. A Demand may be served by the Beneficiary under this Letter of Credit at any time from, and including, the Effective Date to, and including, the Expiry Date. Save in respect of any unsatisfied Demand issued hereunder on or prior to the Expiry Date, the Issuer Bank's obligation to perform and its liability hereunder shall cease on the Expiry Date.
7. If the Issuer Bank fails to pay any amount payable by it under a Demand on or by the third (3rd) Business Day after the date of deemed receipt by it of the relevant Demand, interest shall accrue on the overdue amount from such third (3rd) Business Day up to the date of actual payment of the Demand at a rate equal to 1 week EURIBOR plus 4%. Any interest accruing under this clause shall be payable immediately by the Issuer Bank on demand by the Beneficiary.
8. The obligations of the Issuer Bank hereunder constitute direct, primary, irrevocable and absolute obligations and shall not be discharged or otherwise prejudiced or adversely affected by:
- (a) any time, indulgence, waiver or concession which the Beneficiary may grant to the Applicant;
  - (b) any amendment or modification which may be made, at liberty by the Beneficiary without any further consent from the Issuer Bank, to the Agreement[s];
  - (c) any change in the constitution or organisation of the Applicant;
  - (d) any invalidity, rescission, irregularity or unenforceability (in whole or in part) of the Agreement[s];
  - (e) any incapacity or lack of powers, authority or legal personality of or dissolution of or any change in the legal status of the Applicant;
  - (f) any settlement or compromise of any obligation of the Applicant;



- (g) any other bond, letter of credit, security or guarantee held or obtained by the Beneficiary for any of the obligations of the Applicant under the Agreement[s]; or
  - (h) any act or omission of the Applicant pursuant to any other arrangement with the Beneficiary.
9. The benefit of this Letter of Credit may be assigned, transferred or charged by the Beneficiary as the Beneficiary sees fit more than once without a requirement for the consent of the Issuer Bank, the Applicant or any other person. The Beneficiary shall use reasonable endeavours to notify the Issuer Bank of any such change within five (5) Business Days of it occurring.
10. This Letter of Credit may be amended only by an instrument in writing signed on behalf of the Issuer Bank, the Applicant and the Beneficiary.
11. The Issuer Bank hereby represents and warrants to the Beneficiary as follows:-
- (a) the Issuer Bank has the corporate power and authority to execute and deliver this Letter of Credit and to perform its obligations hereunder;
  - (b) the execution and performance by the Issuer Bank of this Letter of Credit has been duly authorised by all necessary corporate action and will not violate any provision of any applicable law or regulation or any order of any court or regulatory body or any provision of its constituent documents;
  - (c) no authorisation, consent, approval or licence of, or filing or registration with, any governmental authority is required for the Issuer Bank to execute this letter of Credit and to perform its obligations hereunder; and
  - (d) this Letter of Credit has been duly executed by the Issuer Bank and constitutes its legal, valid and binding obligations, enforceable in accordance with their terms.
12. All charges and commissions hereunder are for account of the Applicant.
13. This Letter of Credit shall be interpreted and construed in accordance with, and governed by, the laws of the Ireland. The courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute regarding the existence, validity or termination of this Letter of Credit).
14. Except in so far as otherwise expressly stated herein, this unconditional and irrevocable Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce No. 600 ("UCP 600") (but so that Articles 8, 9, 12, 13, 18 up to and including 28, 30, 31, 32 and 38 thereof shall be deemed excluded for this purpose). For the purposes of this Letter of Credit, references in UCP 600 to the Issuing Bank and the Nominated Bank shall be references to the Issuer Bank and there shall be no Confirming Bank or Advising Bank and references to the Beneficiary shall be references to the Beneficiary, as defined herein. In the event of conflict, inconsistency or ambiguity between the provisions of UCP 600 and this Letter of Credit, the terms of this Letter of Credit shall prevail between the parties hereto.

LETTER OF CREDIT - EXECUTION PAGE

Signed and Delivered as a deed by [ • ]  
as duly authorised attorney for and on  
behalf of the Issuer Bank in the  
presence of:

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Name of Witness

\_\_\_\_\_

Address of Witness

\_\_\_\_\_

Occupation of Witness

\_\_\_\_\_

or

PRESENT when the COMMON SEAL  
of [*Issuer Bank*] was affixed hereto

Director

Director/Secretary

[*Issuer Bank Name and Address*]

**APPENDIX TO LETTER OF CREDIT**  
**FORM OF DEMAND**

To: [The Issuer Bank]

Address: [ • ]

Branch: [ • ]

Fax number: [ • ]

For the Attention of: [ • ]

**Irrevocable and Unconditional Letter of Credit No. [ • ] dated [ • ] (the “Letter of Credit”)**

We refer to the above Letter of Credit issued by you in our favour.

Words and expressions defined in the Letter of Credit shall, unless expressly provided herein, have the same meaning in this Demand. This is a Demand under the Letter of Credit.

In accordance with the terms of the Letter of Credit, we hereby make demand for payment of the sum of €[ • ] and request that you pay the same immediately to the account of Irish Water with [Name of Bank] at [Name and Address of Branch], having account number [ • ] and sort code [ • ].

For: Irish Water

By: \_\_\_\_\_  
Authorised Signatory

Dated this [ • ] day of [ • ] 20[ • ]

**APPENDIX 2**

**PRO FORMA ACCOUNT CHARGE**

**IRISH WATER**

**POLICY NO. IW-FIN-POL-001**

**FINANCIAL SECURITY PACKAGE**

**PRO FORMA ACCOUNT CHARGE**

## PRO FORMA ACCOUNT CHARGE

THIS ACCOUNT CHARGE is made on 20[ • ]

### BETWEEN

- (A) [ • ], a company incorporated under the laws of [Ireland] having its [registered office at [ • ] and] principal place of business at [ • ] (the “**Chargor**”); and
- (B) **IRISH WATER** having its registered office at Colvill House, 24 – 26 Talbot Street, Dublin 1, Ireland (“**Irish Water**”).

THIS ACCOUNT CHARGE WITNESSES as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### *Definitions*

- (A) In this Account Charge, unless the context otherwise requires, the following expressions shall have the following meanings:

“**Account**” means the account number [ • ] held in the name of the Chargor with the Account Bank [*insert full details of account*] as renumbered or redesignated from time to time;

“**Account Balance**” means the credit balance for the time being and from time to time on the Account together with all interest (negative or positive) accrued on, or debited from, that balance;

“**Account Bank**” means [ • ] or such replacement account bank as Irish Water may in its absolute discretion nominate from time to time;

“**Act**” means the Land and Conveyancing Law Reform Act 2009;

“**Agreement[s]**” means [*specify the agreements [and ancillary agreements and documents]*] [to be] entered into between Irish Water and the [Chargor];

“**Charged Property**” means the debt owed by the Account Bank to the Chargor represented by the Account Balance, and references to the Charged Property include references to any part thereof;

“**Enforcement Event**” means a failure by the Chargor to make payment on a due date under or in connection with the Agreement[s];

“**Financial Security Policy**” means Policy [IW-FIN-POL-001], Financial Security Policy published by Irish Water from time to time and approved by the Commission for Energy Regulation;

“**Secured Obligations**” has the meaning given to it in Clause 2;

“**Security**” means any Security Interest created, evidenced or conferred by or under this Account Charge;

**“Security Interest”** means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect; and

**“Security Period”** means the period beginning on the date of this Account Charge and ending on the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full.

*Interpretation*

(B)

(a) Unless a contrary indication appears, any reference in this Account Charge to:

- (i) **“Irish Water”**, the **“Chargor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) an **“amendment”** includes a supplement, novation, restatement or re-enactment and **“amended”** will be construed accordingly;
- (iii) a **“Clause”** or the **“Schedule”** shall be construed as a reference to a clause of or the schedule to this Account Charge;
- (iv) the Agreement[s], this **“Charge”** or any other agreement or instrument is a reference to the same as amended, restated, supplemented and/or novated from time to time;
- (v) **“encumbrance”** includes a mortgage, charge, pledge, lien, hypothecation, assignment or deposit by way of security or any other encumbrance or security interest of any kind (other than a lien arising in the ordinary course of business by operation of law) or any other type or preferential arrangement having a similar effect;
- (vi) a **“person”** includes any person, firm, company, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (vii) any statute or provision of any statute shall be deemed also to refer to any statutory modification, substitution or re-enactment thereof or any statutory instrument, order, regulation, bye-law, permission or direction made thereunder or under such modification, substitution or re-enactment; and
- (viii) a time of day is a reference to Irish time;

(b) Clause headings are for ease of reference only and shall not affect the construction;

(c) words denoting the singular number only shall include the plural number also and vice versa; and

(d) words denoting one gender only shall include the other gender.

2. **COVENANT TO PAY**

The Chargor hereby irrevocably covenants that it will on demand by Irish Water or as otherwise agreed with Irish Water discharge each and every liability which the Chargor may now or hereafter have to Irish Water pursuant to the Agreement[s] (whether as principal or as surety or in some other capacity) and pay to Irish Water every sum (of principal, interest or otherwise) now or hereafter owing, due or incurred by the Chargor to Irish Water in respect of any such liabilities together with all sums arising under Clause 14 (*Costs and Expenses*) (all such amounts and liabilities together the “**Secured Obligations**”).

3. **CHARGE**

The Chargor, as beneficial owner, and as continuing security for the payment, performance and discharge of the Secured Obligations, hereby charges by way of first fixed charge to Irish Water all of its present and future rights, title, benefit and interest in and to the Charged Property.

4. **PERFECTION OF SECURITY AND FURTHER ASSURANCE**

The Chargor shall at any time, at the request of Irish Water but at the cost of the Chargor, promptly sign, seal, execute, deliver and do all such deeds, instruments, acts and things in such form as Irish Water may reasonably require for creating, perfecting or protecting any Security intended to be created by or pursuant to this Account Charge or for facilitating the realisation thereof or the exercise of any and all powers, authorities and discretions exercisable by Irish Water or any of its delegates or sub-delegates in respect of the Charged Property. This includes, without limitation:

- (i) the execution of any transfer, conveyance, assignment or assurance of any property, whether to Irish Water or to its nominee; or
  - (ii) the giving of any notice, order or direction and the making of any registration,
- which, in any such case, Irish Water may think expedient.

5. **RESTRICTIONS ON DEALINGS**

Except with the prior written consent of Irish Water, the Chargor shall not:

- (i) create or permit to subsist any Security Interest or any third party interest on or in the Charged Property; or
- (ii) sell, transfer or otherwise dispose of the Charged Property.

6. **REPRESENTATIONS**

(A) The Chargor hereby represents and warrants to Irish Water that:

- (i) it is a [company] duly incorporated and existing under the laws of [Ireland];
- (ii) it is the sole legal and beneficial owner of the Charged Property and has and will at all times have full power to own the Charged Property and to enter into, deliver and perform its obligations under, and create the Security contemplated by, this Account Charge;

- (iii) the Charged Property is free from any Security Interest (except for those created under this Account Charge) and any other rights or interests in favour of third parties;
  - (iv) all necessary corporate and shareholder approval and other action necessary to enable it to execute and deliver this Account Charge, to perform its obligations hereunder and to create the Security contemplated hereby has been taken;
  - (v) this Account Charge constitutes its legal, valid, binding and enforceable obligations;
  - (vi) all authorisations, consents, registrations and notifications which must be obtained in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by this Account Charge have been obtained or effected (as appropriate) and are in full force and effect;
  - (vii) its entry into and performance by it of, and the transactions contemplated by, this Account Charge does not and will not:
    - (b) conflict with its memorandum and articles of association;
    - (c) conflict with any laws binding on it;
    - (d) conflict with or result in default under any document, agreement or instrument which is binding upon it or any of its assets; or
    - (e) result in the creation of any security interest over any of its assets (other than in favour of Irish Water pursuant to this Account Charge);
  - (viii) all consents and authorisations required to make this Account Charge admissible in evidence in Ireland and its jurisdiction of incorporation, have been obtained or effected and are in full force and effect;
  - (ix) the choice of Irish law as the governing law of this Account Charge will be recognised and enforced in its jurisdiction of incorporation;
  - (x) any judgment obtained in Ireland in relation to this Account Charge will be recognised and enforced in its jurisdiction of incorporation;
  - (xi) it is not necessary that this Account Charge be filed, recorded or enrolled with any court or other authority in any jurisdiction, [save for the registration of prescribed particulars hereof in the Companies Registration Office in Ireland,] or that any stamp, registration or similar tax be paid on or in relation to this Account Charge; and
  - (xii) this Account Charge creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on its liquidation, examination or administration or otherwise.
- (B) The representations set out in this Account Charge (including in this Clause) are made on the date of this Account Charge. Each representation under this Account Charge is deemed to be repeated by the Chargor on each date during the Security Period. When a representation is deemed to be repeated, it is applied to the circumstances existing at the time of repetition.



## 7. COVENANTS

- (A) The Chargor shall [open the Account and] maintain the Account until the Security created by this Account Charge has been irrevocably released and undertakes to comply with all directions given by it to Irish Water from time to time in respect of the Charged Property.
- (B) Subject to Clause 17 (*Security Cover*), the Chargor hereby covenants that the Account Balance shall at all times be equal to or greater than the aggregate of all present and future Secured Obligations.
- (C) The Chargor agrees and undertakes that, until the security created by this Account Charge has been irrevocably released, it will not:
- (i) assign, transfer or sell or otherwise dispose of all or any of its rights, title, benefit and/or interest in or to the Account or the Account Balance; or
  - (ii) deal with or withdraw or transfer the Account Balance (or any part thereof), or direct that any payment be made from the Account to any person[, except as permitted by Clause 7.4]; or
  - (iii) create (or attempt to create) or permit to arise or subsist any encumbrance or rights on or over the Charged Property (or any part thereof) or any interest in it, or permit anyone else to do so; or
  - (iv) do, or cause or permit to be done, anything which may in any way depreciate, jeopardise or otherwise prejudice the Security (or the nature or priority thereof) or the value of the Charged Property to Irish Water,
- except as expressly required or permitted under this Account Charge or permitted in writing by Irish Water.
- (D) Interest which has been credited to the Account Balance may be released to the Chargor with the prior consent in writing of Irish Water following receipt of a written request from the Chargor *provided that* Irish Water is satisfied (in its absolute discretion) that no Enforcement Event has occurred and the Account Balance is not at any time reduced below the level required under Clause 7.2.
- [(E) The Chargor undertakes to deliver to the Registrar of Companies in Ireland within 21 days of the date hereof a duly completed Form C1 containing the prescribed particulars of the security hereby created and to deliver to the Revenue Commissioners of Ireland within 21 days of the date hereof details of the Security as contemplated by section 1001 of the Taxes Consolidation Act, 1997.]
- (F) The Chargor shall promptly inform Irish Water of any event as soon as it becomes aware of the same, or of the receipt of any notice (including, without limitation, any notice issued under section 1002 of the Taxes Consolidation Act 1997), which may effect the fulfilment by the Chargor of any of its covenants or obligations hereunder or the security.
- (G) The Chargor shall forthwith upon its execution procure that this Account Charge is duly stamped in accordance with any applicable laws.

8. **NOTICES OF CHARGE**

The Chargor undertakes that immediately upon execution of this Account Charge it will give notice in writing of the Security created by this Account Charge to the Account Bank substantially in the form set out in the Schedule and will use its best endeavours to obtain promptly from the Account Bank an acknowledgement of such security substantially in the form set out in the Schedule. The Chargor will provide a copy of such notice and an original of such acknowledgement forthwith to Irish Water.

9. **PRESERVATION OF SECURITY**

- (A) The Security constituted by this Account Charge shall be a continuing security for the Secured Obligations and shall not be considered as satisfied or discharged by any intermediate payment, discharge or settlement of the whole or any part of the Secured Obligations but shall constitute and be a continuing security for the Secured Obligations notwithstanding any settlement of account or other matter whatsoever and is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, lien, pledge, bill, note, mortgage or other security (whether created by the deposit of documents or otherwise) now or hereafter held by or available to Irish Water for or in respect of the Secured Obligations or any other obligations whatsoever and is in addition to and shall not be in any way prejudiced or affected thereby or by the invalidity thereof or by Irish Water now or hereafter dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing any of the same or any rights which it may now or hereafter have or giving time for payment or indulgence or compounding with any other person liable.
- (B) Irish Water shall not be liable to the Chargor or any other person for any loss arising from any omission to take any such steps or for the manner in which Irish Water may enforce or refrain from enforcing any such security.
- (C) If any subsequent charge or other interest affects the Charged Property, Irish Water may open a new account for the Chargor. If Irish Water does not open a new account then it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of the charge or other interest and as from that time all payments made to Irish Water shall be credited or be treated as having been credited to the new account and shall not operate to reduce the Secured Obligations.

*Reinstatement*

- (D) If any discharge (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise without limitation, the liability of the Chargor under this Account Charge will continue or be reinstated as if the discharge or arrangement had not occurred. Irish Water may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

*Waiver of defences*

- (E) The obligations of the Chargor under this Account Charge will not be affected by any act, omission or thing (whether or not known to it or Irish Water) which, but for this provision, would reduce, release or prejudice any of its obligations under this Account Charge. This

includes, but is not limited to:

- (i) any time or waiver granted to, or composition with, any person;
- (ii) any release of any person under the terms of any composition or arrangement;
- (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal to neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (iv) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (v) any incapacity, lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (vi) any amendment of the Agreement[s] or any other document or security; or
- (vii) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under the Agreement[s] or any other document.

*Immediate Recourse*

- (F) The Chargor waives any right it might have of first requiring Irish Water (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim for payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any other person before claiming from the Chargor under this Account Charge.

*Appropriations*

- (G) At any time during the Security Period, Irish Water (or any trustee or agent on its behalf) may without affecting the liability of the Chargor under this Account Charge:
  - (i)
    - (b) refrain from applying or enforcing any other monies, security or rights held or received by Irish Water (or any trustee or agent on its behalf) against the Secured Obligations; or
    - (c) apply and enforce them in such manner and order as it sees fit (whether against the Secured Obligations or otherwise); and
  - (ii) hold in an interest-bearing suspense account any monies received from the Chargor or on account of the Chargor's liability under this Account Charge.

*Non-competition*

- (H) Unless the Security Period has expired or Irish Water otherwise directs, the Chargor will not, after a claim has been made under this Account Charge or by virtue of any payment or performance by it under this Account Charge:
  - (i) be subrogated to any rights, security or monies held, received or receivable by Irish Water (or any trustee or agent on its behalf);

- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or monies received on account of the Chargor's liability under this Clause;
- (iii) claim, rank, prove or vote as a creditor of any other person or its estate in competition with Irish Water (or any trustee or agent on its behalf); or
- (iv) receive, claim or have the benefit of any payment, distribution or security from or on account of any other person, or exercise any right of set-off against any other person.

The Chargor must hold on trust for and immediately pay or transfer to Irish Water any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by Irish Water under this Clause.

*Additional Security*

- (I) This Account Charge is in addition to and is not in any way prejudiced by any other security now or subsequently held by Irish Water.

No prior security held by Irish Water (in its capacity as chargee under this Account Charge or otherwise) over any Security Asset will merge into this Security.

**10. POWER AND RIGHTS OF IRISH WATER**

Notwithstanding anything contained in this Account Charge, the exercise by Irish Water of the powers and rights conferred on it by virtue of the provisions of Chapter 3 of Part 10 of the Act shall not be subject to any restriction on such exercise contained in section 96(1)(c) of the Act.

**11. POWER OF SALE**

- (A) The restrictions on the power of sale contained in section 100 of the Act shall not apply to this Account Charge. On or at any time after the occurrence of an Enforcement Event Irish Water may exercise without further notice to the Chargor and without the restrictions contained in the Act, all the powers and rights conferred on mortgagees by the common law and the Act as varied or extended by this Account Charge.
- (B) Notwithstanding anything to the contrary contained in the Act, Irish Water reserves the right to consolidate mortgage securities without restriction.
- (C) The Chargor shall not take any action under section 94 of the Act in respect of the Charged Property, this Account Charge or any monies, obligations and/or liabilities hereby covenanted to be paid or discharged.
- (D) The notification requirement contained in section 103(2) of the Act shall not apply to this Account Charge.

**12. ENFORCEMENT**

- (A) The security created by this Account Charge shall become enforceable immediately upon and at any time following the occurrence of an Enforcement Event, and thereupon and at any time thereafter, without prior notice or further demand to the Chargor or any other person Irish Water shall be entitled to exercise all its rights, powers and remedies as chargee of the Charged Property and all of the rights which the Chargor would (but for this Account Charge) have been

entitled to exercise in respect thereof, and to direct the Account Bank to pay the Account Balance or any part of the Account Balance to Irish Water or as Irish Water may direct and Irish Water may apply any or all of the Account Balance in or towards the payment or discharge of the Secured Obligations or any part thereof.

- (B) In exercising its powers of enforcement, the Charged Property or any part of or interest in it may be sold or disposed of at such times, in any manner Irish Water shall think fit. Any sale or disposal may be made for cash, shares, stock, securities or other valuable consideration, payable immediately or by such instalments as Irish Water shall think fit. Any dividends, interest or other payments received or receivable by Irish Water in respect of the Charged Property may be applied by Irish Water as though they were proceeds of sale and the provisions of the Act shall be deemed to be extended accordingly.
- (C) No purchaser from, or other person dealing with, Irish Water shall be obliged or concerned to enquire whether any of the powers which it has exercised or purported to exercise in respect of the Charged Property has arisen or become exercisable, whether the Secured Obligations remain outstanding, whether any event has happened to authorise Irish Water to act, or as to the validity of the exercise or purported exercise of any such power. The receipt of Irish Water shall be an absolute and conclusive discharge to any purchaser and shall relieve him of any obligation to see to the application of any monies paid to, or by the direction of, Irish Water.

In this Clause 12.3, "**purchaser**" includes any person acquiring, for money or money's worth, any encumbrance over, or any other interest or right whatsoever in relation to, the Charged Property or any part thereof.

- (D) Irish Water shall not be liable for any loss or damage resulting from any sale or disposal of any Charged Property (or interest therein) or from its exercise or failure to exercise of any of its powers under this Account Charge or any neglect or default to accept any offer or notify the Chargor of any such matter or for any other loss of any nature whatsoever in connection with the Charged Property or out of the exercise, or the attempted or purported exercise of, or the failure to exercise, any of its powers, unless such loss or damage is caused by its gross negligence or wilful default.

### 13. APPLICATION OF PROCEEDS

Unless otherwise determined by Irish Water, any monies received by Irish Water after this Security has become enforceable shall be applied, after the discharge of all sums, obligations and liabilities having priority thereto, in the following order of priority:

- (a) in satisfaction of or provisions for all costs, charges and expenses incurred and payments made by Irish Water and of all remuneration due hereunder with interest on such costs, charges, expenses and payments;
- (b) in or towards payment of the Secured Obligations or such part of them as is then payable and in such order as Irish Water in its absolute discretion determines (except that Irish Water may credit any such amounts to a suspense account for so long and in such manner as it thinks prudent); and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled thereto.

14. **COSTS AND EXPENSES**

- (A) The Chargor agrees and undertakes to immediately on demand pay to and indemnify Irish Water and keep Irish Water indemnified and on a full after-tax indemnity basis for and against:
- (a) all losses, costs, charges, expenses, fees (including, without limitation, legal fees), demands, liabilities, claims, actions, damages and penalties arising out of or incurred in connection with this Account Charge, including, without limitation:
    - (i) the failure of the Chargor to make due and punctual payment of any amounts under or in connection with the Agreement[s] or any other Secured Obligation;
    - (ii) the actions of Irish Water (or any agent on its behalf) in enforcing or endeavouring to enforce the payment of any Secured Obligations or the obligations of the Chargor under this Account Charge;
    - (iii) the actions of Irish Water or any agents on its behalf in preserving or endeavouring to preserve its rights under this Account Charge; and
    - (iv) failure by the Chargor to perform its obligations or discharge or satisfy its liabilities under this Account Charge; and
  - (b) all reasonable costs, charges and other out-of-pocket expenses (including, without limitation, all legal fees) from time to time incurred by Irish Water in any way in connection with this Account Charge and all stamp and other duties payable on or in respect of this Account Charge; and
  - (c) any loss or liability incurred by it in connection with any litigation, arbitration or administrative proceedings concerning the Security.
- (B) The Chargor shall pay and, within 5 days of demand, indemnify Irish Water against any cost, loss or liability that Irish Water incurs in relation to all stamp duty, registration and other similar taxes payable in respect of this Account Charge.
- (C) If any sum due from the Chargor under this Account Charge (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
- (i) making or filing a claim or proof against the Chargor;
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- the Chargor shall as an independent obligation, on demand, indemnify Irish Water against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency, and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum. The Chargor waives any right it may have in any jurisdiction to pay any amount under this Charge in a currency or currency unit other than that in which it is expressed to be payable.
- (D) The provisions of this Clause 14 shall survive any release of the security granted hereunder and

termination of this Charge.

**15. POWER OF ATTORNEY**

- (A) The Chargor, by way of security for the payment and discharge of the Secured Obligations and the performance of its obligations under this Account Charge, hereby irrevocably and severally appoints Irish Water and each and every person to whom Irish Water may from time to time have delegated the exercise of the power of attorney conferred by this Clause 15.1 to be the attorney of the Chargor (with full powers of substitution and delegation) on behalf and in its name or otherwise and as its act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things which the Chargor may or ought to do under the covenants and provisions contained in this Account Charge and generally to use the name of the Chargor in the exercise of all or any of the powers, authorities or discretions hereby or by statute or common law conferred on Irish Water.
- (B) The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatsoever any such attorney, delegate or substitute may (or purport to) execute, enter into or do by virtue of Clause 15.1, and agrees to reimburse (or put Irish Water in funds to reimburse) the attorney, delegate or substitute for any expenses incurred in connection therewith.

**16. RELEASE**

- (A) Once the Secured Obligations have been indefeasibly discharged in full, and provided that the Chargor has no further obligations to Irish Water under or in connection with the Agreement[s], Irish Water shall at the request and cost of the Chargor release the Security created by or pursuant to this Account Charge and execute such documents as the Chargor may reasonably request to effect or perfect such release, subject to the provisions of Clause 16.2.
- (B) Any discharge or release of the Security constituted by this Charge, and any waiver of any of the rights of Irish Water, will be void if any payment or security received by Irish Water in respect of the Secured Obligations is set aside or proves to be or to have become for any reason void, invalid or unenforceable or is ordered to be refunded or reduced under any applicable insolvency or other law or rule, and (without limiting Irish Water's other rights hereunder) Irish Water shall be entitled to recover from the Chargor the value which Irish Water has placed upon such security or the amount of any such payment as if such settlement or discharge had not occurred.
- (C) Irish Water shall be entitled to concede or compromise in good faith any claim that any such payment or security is liable to avoidance or repayment.

**17. SECURITY COVER**

- (A) This Charge is made [to satisfy]/[in part satisfaction of] the obligation(s) of the Chargor under the Agreement[s] to provide or procure Security Cover (as defined in the Financial Security Policy).
- (B) The Chargor shall have the right at any time, upon [30 days'] prior written notice in writing to Irish Water, to offer alternative or substitute collateral as Security Cover. Any such alternative collateral must be in form and substance satisfactory to Irish Water (at its discretion but consistent with the provisions relating to Security Cover as set out in the Financial Security Policy).

18. **NOTICES AND COMMUNICATION**

Any communication or notification given or made by a party under this Account Charge shall be in accordance with the Financial Security Policy.

19. **ASSIGNMENT**

- (A) The Chargor may not assign, transfer, declare trusts over or otherwise deal with any of its rights or obligations under this Account Charge without Irish Water's prior written consent.
- (B) Irish Water may at any time assign, transfer and/or declare trusts over its rights and obligations under this Account Charge without the consent of the Chargor.
- (C) This Account Charge shall be binding upon and inure to the benefit of the Chargor and Irish Water and their respective successors and permitted assigns and references to any of them shall be construed accordingly.

20. **MISCELLANEOUS**

*Rights cumulative, no waiver*

- (A) Failure by Irish Water to exercise any of its rights under this Account Charge, or delay in doing so, will not operate as a waiver of that right; and a failure or delay in exercising, or a single or partial exercise of any right, power, privilege or remedy does not preclude any exercise of further exercise of that (or any other) right, powers and remedies provided by law.

*Certificate conclusive*

- (B) In any action, proceedings or claim relating to this Charge or the Security, a certificate as to any amount due to Irish Water signed by an officer of Irish Water shall, except in the case of manifest error, be conclusive and binding on the Chargor.

*Partial invalidity*

- (C) If, at any time, any provision of this Charge is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

*Currencies*

- (D) For the purposes of exercising any right to apply the Account Balance to the Secured Obligations, if all or any part of the Account Balance and the Secured Obligations are in different currencies, Irish Water may convert either amount at a market rate of exchange in its usual course of business for the purpose of exercising that right.

21. **GOVERNING LAW**

- (A) This Account Charge, and all non-contractual disputes arising from or connected with this Account Charge, shall be governed by and construed in accordance with Irish law.
- (B) The Chargor hereby agrees for the exclusive benefit of Irish Water that any legal action or



proceeding (“**Proceedings**”) brought against it with respect to this Account Charge may be brought in the High Court in Ireland or such other competent Court of Ireland as the Bank may elect and the Chargor waives any objection to Proceedings in such courts whether on the grounds of venue or on the ground that Proceedings have been brought in an inconvenient forum. The Chargor undertakes to enter an unconditional appearance within 14 days after the completion of any service or process in any Proceedings. The Chargor hereby consents to the service by post of any process issued in that jurisdiction. Nothing herein shall affect the right to serve process in any other manner permitted by law.

22. **SUBMISSION TO JURISDICTION**

The courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Account Charge (including a dispute regarding the existence, validity or termination of this Account Charge) (a “**Dispute**”). The Chargor agrees that the courts of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.

23. **SERVICE OF PROCESS**

[Without prejudice to any other mode of service permitted under any relevant law, the Chargor irrevocably appoints [ • ] of [ • ] as its agent for service of process in relation to any proceedings before the Irish courts in connection with this Charge, and agrees that failure by the process agent to notify the Chargor of the process will not invalidate the proceedings concerned.]

24. **COUNTERPARTS**

This Account Charge may be executed in any number of counterparts and by the different parties to this Account Charge on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all counterparts shall together constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Chargor has caused this Account Charge to be duly executed as a deed [under its Common Seal] and delivered on the date first set forth above.

EXECUTION PAGE - ACCOUNT CHARGE

[Present when the Common Seal  
of [*Chargor*]  
was affixed hereto:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary ]

[*or*]

[Executed as a Deed

By: \_\_\_\_\_

[*name & position*]

for and on behalf of

[*Chargor*]

Address: [ • ]

Attention: [ • ]

Fax no.: [ • ]

**IRISH WATER**

By: \_\_\_\_\_

[ • ]

Address: Colvill House, 24 - 26 Talbot Street, Dublin 1

Attention: [ • ]

Fax no.: +353 xxxxxx

**SCHEDULE**  
**FORM OF NOTICE AND ACKNOWLEDGEMENT**

**Notice to Account Bank**

From: [*Chargor*] (the "**Chargor**")

To: [*Bank*] (the "**Account Bank**")

[Date]

Dear Sirs

We, the *Chargor*, refer to our account with you numbered [ • ] (the "**Account**"). We hereby give you notice that by an account charge dated [ • ] we have charged by way of first fixed charge to Irish Water ("**Irish Water**") all our present and future rights, title, interest and benefit in and to the Account and the balance for the time being and from time to time standing to the credit of the Account together with all interest thereon and the debt represented thereby (the "**Account Balance**").

The *Chargor* irrevocably instructs and authorises you from time to time and at any time without reference to or further authority from us and without any enquiry by you as to the justification for any such matter:-

- (a) to disclose to Irish Water any information relating to the Account and the Account Balance as Irish Water may request you to disclose to it;
- (b) to provide Irish Water with copies of all statements relating to the Account and the Account Balance;
- (c) to hold the Account Balance and all sums of money (whether representing principal or interest) standing to the credit of the Account to the order of Irish Water;
- (d) to pay or release all or any part of the Account Balance and the sums (whether representing principal or interest) standing to the credit of the Account in accordance with the written instructions of Irish Water;
- (e) to comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the Account, the Account Balance or the sums (whether representing principal or interest) standing to the credit of the Account or the debt represented thereby which you may receive from Irish Water.

The *Chargor* is not permitted to withdraw any amount from the Account without the prior written consent of Irish Water.

The *Chargor* acknowledges that the Account Bank may comply with the instructions in this letter without any further permission from the *Chargor* or enquiry by the Account Bank.

These instructions are not to be revoked, varied or amended without the prior written consent of Irish Water.

This notice and any non-contractual obligations arising out of or in connection with it are governed by Irish law.

Please confirm the agreement of the Account Bank to the above by sending the attached acknowledgement to Irish Water at Colvill House, 24 - 26 Talbot Street, Dublin 1, Ireland with a copy to ourselves.

Yours faithfully

---

[Chargor]

## Acknowledgement to Irish Water

From: [Account Bank] (the "Account Bank")

To: Irish Water, Colvill House, 24 – 26 Talbot Street, Dublin 1, Ireland ("Irish Water")

Copy: [Chargee] (the "Chargee")

[Date]

Dear Sirs

Re: [ • ] (the "Chargor")

We, the Account Bank, acknowledge receipt of a notice dated [ • ] of an account charge in your favour dated [ • ] (the "Notice") of all the Chargor's present and future rights, title, benefit and interest in and to its account number [•] with us (the "Account") and the balance for the time being and from time to time standing to the credit of the Account together with all interest thereon and the debt represented thereby (the "Account Balance").

The Account Bank confirms that:

- (f) it accepts the instructions and authorisations contained in the Notice and we undertake to act in accordance and comply with the terms of the Notice;
- (g) it shall disclose to Irish Water such information relating to the Account and the Account Balance as Irish Water may request and provide you with copies of all statements relating to the Account and the Account Balance;
- (h) it shall not permit the whole or any part of the Account Balance to be withdrawn except on written instructions from Irish Water or with Irish Water's prior written consent;
- (i) it has not received notice of any right or interest of any third party in the Account or the Account Balance and it shall forthwith give Irish Water notice of any such actual or potential right or interest of which it becomes aware;
- (j) it has neither claimed or exercised nor will claim or exercise any security interest, set-off, counterclaim or other rights in respect of the Account or the Account Balance.

The Account Bank confirms that the sum of €[ • ] stands to the credit of the Account as at the date of this letter;

We are aware that you are relying on this letter in connection with your rights under the above-mentioned account charge.

This acknowledgment and any non-contractual obligations arising out of or in connection with it are governed by Irish law.

Yours faithfully

---

[*Account Bank*]

**APPENDIX 3**

**PRO FORMA DEPOSIT AGREEMENT**

**IRISH WATER**

**POLICY NO. IW-FIN-POL-001**

**FINANCIAL SECURITY PACKAGE**

**PRO FORMA DEPOSIT AGREEMENT**

## PRO FORMA DEPOSIT AGREEMENT

THIS DEPOSIT AGREEMENT is made on 20[ • ]

### BETWEEN

- (1) [ • ], a company incorporated under the laws of [Ireland] having its [registered office at [ • ] and] principal place of business at [•] (the “**Depositor**”); and
- (2) **IRISH WATER** having its registered office at Colvill House, 24 – 26 Talbot Street, Dublin 1, Ireland (“**Irish Water**”).

### RECITALS

- (A) Irish Water and the Depositor [have entered]/[wish to enter] into the Agreement[s].
- (B) In compliance with Irish Water’s Financial Security Policy, the Depositor has agreed to provide cash to Irish Water as security for the Depositor’s obligations under the Agreement(s) upon the terms and conditions of this Deposit Agreement.

**IT IS AGREED** as follows:

#### 1. DEFINITIONS AND INTERPRETATION

##### *Definitions*

- 1.1 In this Deposit Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

“**Account**” means the account number [ • ] held in the name of Irish Water with the Account Bank [*insert full details of account*] (as renumbered or redesignated from time to time), as notified by Irish Water to the Depositor and into which the Depositor will pay or transfer (or procure the payment or transfer of) the Deposit Monies;

“**Account Balance**” means the balance for the time being and from time to time standing to the credit of the Account together with all interest (negative or positive) accrued on, or debited from, that balance;

“**Account Bank**” means [ • ] or such replacement account bank as Irish Water may in its absolute discretion nominate from time to time;

“**Agreement[s]**” means [*specify the agreements [and ancillary agreements and documents]*] [to be] entered into between Irish Water and the [the Depositor];

“**Deposit Monies**” means the initial cash sum of €[ • ] to be paid or transferred by the Depositor into the Account pursuant to Clause 3.1 together with all other cash sums paid or transferred into the Account pursuant to Clause 3.2;



“**Enforcement Event**” means a failure by the Depositor to make payment on a due date under or in connection with the Agreement[s];

“**Financial Security Policy**” means the Policy [IW-FIN-POL-001], Financial Security Policy published by Irish Water from time to time and approved by the Commission for Energy Regulation; and

“**Secured Obligations**” has the meaning given to it in Clause 2.

#### *Interpretation*

### 1.2

- (a) Unless a contrary indication appears, any reference in this Deposit Agreement to:
- (i) “**Irish Water**”, the “**Depositor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) an “**amendment**” includes a supplement, novation, restatement or re-enactment and “**amended**” will be construed accordingly;
  - (iii) a “**Clause**” shall be construed as a reference to a clause of this Deposit Agreement;
  - (iv) the “**Agreement[s]**”, this “**Deposit Agreement**” or any other agreement or instrument is a reference to the same as amended, restated, supplemented and/or novated from time to time;
  - (v) “**encumbrance**” includes a mortgage, charge, pledge, lien, hypothecation, assignment or deposit by way of security or any other encumbrance or security interest of any kind (other than a lien arising in the ordinary course of business by operation of law) or any other type or preferential arrangement having a similar effect;
  - (vi) a “**person**” includes any person, firm, company, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing; and
  - (vii) a time of day is a reference to Irish time;
- (b) Clause headings are for ease of reference only and shall not affect the construction;
- (c) words denoting the singular number only shall include the plural number also and vice versa; and
- (d) words denoting one gender only shall include the other gender.

### 2. COVENANT TO PAY

The Depositor hereby irrevocably covenants to pay and discharge, as and when due and payable, all amounts and liabilities which are now or hereafter become due, owing or payable by it to Irish Water, whether actually or contingently, as principal or as surety, solely or jointly and/or

severally with others, whether in respect of principal, interest, fees, expenses or otherwise, under or in connection with the Agreement[s] (all such amounts and liabilities together the “**Secured Obligations**”).

3. **DEPOSIT**

- 3.1 The Depositor hereby undertakes before the close of business on [ • ] to pay or transfer €[ • ] into the Account.
- 3.2 The Depositor further undertakes that, so long as any Secured Obligation remains outstanding or to be discharged, it shall from time to time and as required under the Financial Security Policy pay or transfer further cash sums into the Account. Without prejudice to the Depositor’s obligation to make such further payments or transfers, Irish Water may notify the Depositor in writing of further sums required to be paid into the Account and the Depositor agrees and undertakes to make payment or have transferred the relevant sum(s) to the Account within 7 days of receipt by it of any such notice.
- 3.3 The Depositor hereby covenants that the aggregate of Deposit Monies paid or transferred by it into the Account shall at all times be equal to or greater than the aggregate of all present and future Secured Obligations.
- 3.4 All payments by the Depositor under this Clause 3 shall be:
- (a) free and clear of any withholding or deduction;
  - (b) for value on the date of payment;
  - (c) made without set-off or counterclaim; and
  - (d) made by way of electronic funds transfer to the Account.
- 3.5 The Depositor shall promptly provide Irish Water with evidence of its irrevocable payment of all Deposit Monies paid or transferred by it into the Account.
- 3.6 Each payment or transfer by the Depositor under this Clause 3 shall constitute an irrevocable payment by the Depositor to Irish Water for application by it in accordance with this Deposit Agreement.
- 3.7 The Depositor acknowledges and agrees that (a) all Deposit Monies paid or transferred into the Account will upon payment constitute monies belonging absolutely to Irish Water and will be commingled with other deposit monies paid by other counterparties of Irish Water under or in connection with similar arrangements with Irish Water, and (b) the Account Bank will be entitled to and will charge or levy bank costs, charges, expenses, etc. (as referred to in Clause 4.3) relating to the Account by deducting the same from the Account Balance.
- 3.8 Irish Water shall require the Account Bank to provide it with regular statements setting out the Account Balance, details of all payments made into and out of the Account (including, but not limited to, payments by or to the Depositor) and all bank costs, charges, etc. (as referred to in Clause 4.3) deducted from or charged to the Account from time to time. Irish Water shall be entitled to keep confidential all such statements and all other details and information relating to the Account and the Account Balance.

3.9 In any litigation or arbitration proceedings arising out of or in connection with this Deposit Agreement and/or the Agreement[s], the entries made in or in respect of the Account maintained by the Account Bank are conclusive evidence of the matters to which they relate.

3.10 Any certification or determination by Irish Water of an amount or rate under or in connection with the Account, the Account Balance, the Deposit Monies, this Deposit Agreement and/or the Agreement[s] is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### **4. APPLICATION OF DEPOSIT MONIES**

4.1 Subject to Clauses 4.2, 4.3 and 10 (Set-off), Irish Water shall, and may only, apply the Deposit Monies in and towards payment and satisfaction of the Secured Obligations as and when they fall due. Any such application of the Deposit Monies, whether in whole or in part, shall operate to discharge, pro tanto, the relevant Secured Obligations.

4.2 If, at any time, in its absolute discretion, it is satisfied that the Deposit Monies paid by the Depositor into the Account exceed the then present and future Secured Obligations, then as soon as practicable after receipt of a written request from the Depositor Irish Water shall pay or procure the payment of an amount equal to the excess to the Depositor from the Account or from such other sources as it may decide. The Depositor acknowledges and agrees that any such payment shall be without prejudice to its own continuing obligations under Clause 3.2.

4.3 The Depositor acknowledges and agrees that the Account and the Account Balance shall be operated in accordance with the usual terms and conditions operated by the Account Bank from time to time and that Irish Water shall have no liability whatsoever in respect of any reduction in value or application of the Account Balance and the Deposit Monies as a result of and/or in or towards bank costs, charges, expenses, fees, commissions, set-off or counterclaim by the Account Bank in any circumstance whatsoever save where the same results from Irish Water's negligence or wilful misconduct.

#### **5. IRISH WATER COVENANTS**

Irish Water shall:

(a) operate the Account in good faith and in a proper commercial and business like manner in accordance with the Financial Security Policy unless and until an Enforcement Event occurs; and

(b) use its reasonable endeavours to procure a market related rate of interest applicable to the Account Balance from time to time.

#### **6. DEPOSITOR ACKNOWLEDGEMENTS AND COVENANTS**

6.1 The Depositor acknowledges, agrees and undertakes that it will not, and will not be entitled to:

(a) seek, or assert any right to seek, payment or release of any part of the Account Balance to it or support anyone else seeking to do any of the same; or

(b) claim or assert any right, title, interest and/or benefit in or to the Account and/or the Account Balance (or any part thereof) or support anyone else seeking to do so; or

- (c) do, or cause or permit to be done, anything which may in any way depreciate, jeopardise or otherwise prejudice the Account, the Account Balance or Irish Water's right and title thereto.

6.2 The Depositor acknowledges and agrees that (a) its right to payment under Clause 4.2 is a separate stand-alone right against Irish Water itself and not in respect of the Account and/or the Account Balance, and (b) it has no right, title, interest and/or benefit in or to the Account and/or the Account Balance.

## 7. SECURITY COVER

7.1 This Deposit Agreement and the payments and transfers made by the Depositor pursuant to Clause 3 (*Deposit*) is made [to satisfy]/[in part satisfaction of] the obligation(s) of the Depositor under the Agreement[s] to provide or procure Security Cover (as defined in the Financial Security Policy).

7.2 The Depositor shall have the right at any time, upon [30 days'] prior written notice in writing to Irish Water, to offer alternative or substitute collateral as Security Cover. Any such alternative collateral must be in form and substance satisfactory to Irish Water (at its discretion but consistent with the provisions relating to Security Cover as set out in the Financial Security Policy).

## 8. REPRESENTATIONS

8.1 The Depositor hereby represents and warrants to Irish Water that:

- (a) it is a [company] duly incorporated and existing under the laws of [Ireland];
- (b) it has full power to enter into, deliver and perform its obligations under this Deposit Agreement;
- (c) all necessary corporate, shareholder and other action needed to permit it to execute and deliver this Deposit Agreement, to perform its obligations hereunder has been taken;
- (d) the obligations on its part are legal, valid, binding and enforceable;
- (e) all authorisations, consents, registrations and notifications which must be obtained in connection with its execution and performance of this Deposit Agreement have been obtained or made and are in full force and effect;
- (f) its execution of, compliance with its obligations under this Deposit Agreement do not and will not conflict with:
  - (i) its constitutional documents; or
  - (ii) any law or regulation binding on it;
- (g) immediately prior to payment thereof into the Account, it is the beneficial owner, free and clear of any encumbrance, of the Deposit Monies;
- (h) it is not required to make any deduction or withholding from any payment into the Account;

- (i) the choice of Irish law as the governing law of this Deposit Agreement will be recognised and enforced in its jurisdiction of incorporation; and
- (j) any judgment obtained in Ireland in relation to this Deposit Agreement will be recognised and enforced in its jurisdiction of incorporation.

8.2 The representations and warranties set out in Clause 8.1 shall be deemed to be made by the Depositor by reference to the facts and circumstances then existing on the date of each further payment or transfer pursuant to Clause 3.2.

## 9. FURTHER ASSURANCE

Each party hereto undertakes, from time to time and at all times to execute and do all such deeds, assurances, agreements, instruments, acts and things as the other may reasonably require in furtherance of the intent and purpose of this Deposit Agreement.

## 10. SET-OFF AND RIGHT OF APPROPRIATION

Without limiting any other right of set-off or of combining accounts or any similar right to which Irish Water may be entitled (including rights under the Agreement[s] or any other contract between Irish Water and the Depositor), Irish Water shall be entitled at any time following an Enforcement Event and without notice to the Depositor to:

- (a) set-off all or any part of the Secured Obligations (whether or not then due and payable by the Depositor) against the obligations and liabilities of Irish Water under or in respect of the Agreement[s]; and/or
- (b) apply or appropriate such proportion of the Account Balance as represents the Deposit Monies in or towards the payment or discharge of the Secured Obligations.

## 11. RELEASE

11.1 Irish Water shall pay or procure the payment to the Depositor of an amount equal to the balance of the Deposit Monies (following their application in accordance with Clause 4 and after deduction of any actual or contingent tax loss, cost, charge or liability imposed, arising, levied or assessed thereon or in respect thereof) together with a sum representing a good faith and fair apportionment of interest applicable to the Deposit Monies (by reference to the time(s) and amounts paid by the Depositor into the Account) upon receipt of the written request of the Depositor:

- (a) once the Secured Obligations have been indefeasibly discharged in full and provided that the Depositor has no further obligations to Irish Water under or in respect of the Agreement[s]; and
- (b) subject to no Enforcement Event subsisting at such time, upon receipt by it of alternative or substitute collateral as Security Cover (as defined in the Financial Security Policy) in form and substance satisfactory to Irish Water together with a legal opinion from Irish Water's legal counsel confirming that the provision of such alternative or substitute collateral and the payment of such amount to the Depositor (or to its order) will not expose Irish Water to the risk of the alternative or substitute collateral being avoided, set aside or reduced as a result of insolvency or any similar event.

- 11.2 The Depositor acknowledges and agrees that its right to payment under Clause 11.1 is a separate stand-alone right against Irish Water itself and not in respect of the Account and/or the Account Balance.

## 12 TAX INDEMNITY

If Irish Water is required to make any payment of or on account of tax on or in relation to this Deposit Agreement, the Account, the Account Balance and/or the Deposit Monies or if any liability in respect of any of the same is imposed, levied or assessed against Irish Water, the Depositor shall, upon demand by Irish Water, indemnify Irish Water if it suffers a loss, liability or cost (directly or indirectly) as a result against such payment or liability. Irish Water shall be entitled to apply the Account Balance to pay and discharge any such tax or liability at any time without notice to the Depositor.

## 13 NOTICES AND COMMUNICATION

Any communication or notification given or made by a party under this Deposit Agreement shall be in accordance with the Financial Security Policy.

## 14 ASSIGNMENT

- 14.1 The Depositor may not assign, transfer, declare trusts over or otherwise deal with any of its rights or obligations under this Deposit Agreement without Irish Water's prior written consent.
- 14.2 Irish Water may at any time assign, transfer and/or declare trusts over its rights and obligations under this Deposit Agreement without the consent of the Depositor.
- 14.3 This Deposit Agreement shall be binding upon and inure to the benefit of the Depositor and Irish Water and their respective successors and permitted assigns.

## 15 MISCELLANEOUS

*Rights cumulative, no waiver*

- 15.1 Failure by Irish Water to exercise any right, or delay in doing so, will not operate as a waiver of that right; and a failure or delay in exercising, or a single or partial exercise of any right, power, privilege or remedy does not preclude any exercise of further exercise of that (or any other) right, powers and remedies provided by law.

*Certificate conclusive*

- 15.2 In any action, proceedings or claim relating to this Deposit Agreement, a certificate as to any amount due to Irish Water or any Secured Obligation amount(s) signed by an officer of Irish Water shall, except in the case of manifest error, be conclusive and binding on the Depositor.

*Partial invalidity*

- 15.3 If, at any time, any provision of this Deposit Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

## 16 GOVERNING LAW

This Deposit Agreement is governed by, and shall be construed in accordance with, Irish law.

## 17 ENFORCEMENT

### *Jurisdiction of Irish courts*

17.1 The courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deposit Agreement (including a dispute regarding the existence, validity or termination of this Deposit Agreement) (a “**Dispute**”). The Depositor agrees that the courts of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.

### *[Service of process*

17.2 Without prejudice to any other mode of service permitted under any relevant law, the Depositor irrevocably appoints [ • ] of [ • ] as its agent for service of process in relation to any proceedings before the Irish courts in connection with this Deposit Agreement, and agrees that failure by the process agent to notify the Depositor of the process will not invalidate the proceedings concerned.]

## 18 COUNTERPARTS

This Deposit Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Deposit Agreement to be duly executed as a deed and delivered on the date first set forth above.

**DEPOSIT AGREEMENT - EXECUTION PAGE**

[Present when the Common Seal  
of [*Depositor*]  
was affixed hereto:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary ]

[*or*]

[Executed as a Deed

By: \_\_\_\_\_

[*name & position*]

for and on behalf of

[*Depositor*]

Address: [ • ]

Attention: [ • ]

Fax no.: [ • ]

**IRISH WATER**

By: \_\_\_\_\_

[ • ]

Address: Colvill House, 24 - 26 Talbot Street, Dublin 1, Ireland

Attention: [ • ]

Fax no.: +353 [ • ]



**APPENDIX 4**

**PRO FORMA QUALIFYING GUARANTEE**

**IRISH WATER**

**POLICY NO. IW-FIN-POL-001**

**FINANCIAL SECURITY PACKAGE**

**PRO FORMA QUALIFYING GUARANTEE**

## PRO FORMA QUALIFYING GUARANTEE

To: **Irish Water (“Irish Water”)**

### 1. **Guarantee**

#### 1.1 Guarantee

In consideration of Irish Water agreeing to execute and enter into [*specify agreement(s)*] to be made between [Counterparty’s name] having its registered office at [address] (the “**Company**”) and Irish Water (the “**Agreement[s]**”), we, the undersigned, [*Guarantor’s name*], [a]/[an] [*jurisdiction of incorporation/establishment*] [company]/[corporation] (the “**Guarantor**”), hereby irrevocably and unconditionally:

- (a) guarantee to you punctual performance by the Company of all and any payment and other monetary obligations arising under or in connection with the Agreements (the “**Guaranteed Obligations**”);
- (b) undertake to you that whenever the Company does not pay any amount when due under or in connection with the Guaranteed Obligations, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) indemnify you immediately on demand against any cost, loss or liability suffered by you if any obligation guaranteed by us is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount that you would otherwise have been entitled to recover.

#### 1.2 Default Interest

If any sum due and payable by the Guarantor hereunder is not paid on the due date therefore in accordance with the provisions hereof or if any sum due and payable by the Guarantor under any judgment of any court in connection herewith is not paid on the due date in accordance with such judgment, during the period beginning on such due date or, as the case may be, the date of such judgment and ending on the date upon which the obligation of the Guarantor to pay such sum is discharged the Guarantor shall (as a separate and independent obligation) pay interest at the default rate equal to EURIBOR for such period as Irish Water shall select (or, if EURIBOR is no longer published, such other benchmark rate of interest as Irish Water may specify (acting in a commercially reasonable manner)) plus 4%.

#### 1.3 Definitions

In this Guarantee:

- (a) “Approved Credit Rating” has the meaning given to it in Section 3.1 of the Financial Security Policy; and
- (b) “Counterparty” means each person who is counterparty to an Agreement with Irish Water; and
- (c) “Financial Security Policy” means the Policy [IW-FIN-POL-001], Financial Security Policy published by Irish Water from time to time approved by the Commission for

Energy Regulation;

#### 1.4 Construction

- (a) Unless a contrary indication appears, any reference in this Guarantee to:
  - i. the “**Company**”, the “**Guarantor**”, “**Irish Water**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - ii. an “**amendment**” includes a supplement, novation, restatement or re-enactment and “amended” will be construed accordingly;
  - iii. a “**Clause**” shall be construed as a reference to a clause of this Guarantee;
  - iv. the “**Agreement[s]**”, the “**Financial Security Policy**” or any other agreement, instrument or policy document is a reference to the same as amended from time to time;
  - v. a “**person**” includes any person, firm, company, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing; and
  - vi. a time of day is a reference to Irish time;
- (b) Clause headings are for ease of reference only and shall not affect the construction;
- (c) words denoting the singular number only shall include the plural number also and vice versa; and
- (d) words denoting one gender only shall include the other gender.

#### 1.5 Security Cover

This Guarantee is given by the Guarantor [to satisfy]/[in part satisfaction of] the obligation(s) of the Company under the Agreement[s] to provide or procure Security Cover (as defined in the Financial Security Policy).

#### 2. **Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Company under or in connection with the Agreement[s] in respect of the Guaranteed Obligations, regardless of any intermediate payment or discharge in whole or in part.

#### 3. **Reinstatement**

If any payment by the Company or the Guarantor or any discharge given by Irish Water (whether in respect of the obligations of the Company, the Guarantor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of the Company and the Guarantor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

- (b) Irish Water shall be entitled to recover the value or amount of that security or payment from the Company and the Guarantor, as if the payment, discharge, avoidance or reduction had not occurred.

#### 4. **Waivers**

##### 4.1 Waivers of defences

The obligations of the Guarantor under this Guarantee will not be affected by an act, omission, matter or thing which, but for this Clause 4, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or Irish Water) including:

- (a) any time, waiver, indulgence or consent granted to, or composition with, the Company or other person;
- (b) the release of the Company or any other person under the terms of any composition or arrangement with any creditor of the Company or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Company or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Company or any other person;
- (e) any amendment (however fundamental) or replacement of the Agreement[s] or any other document or security or the Guaranteed Obligations;
- (f) any unenforceability, illegality or invalidity of any obligation of the Company or any other person under the Agreement[s] or any other document or security; or
- (g) any change in financial condition of the Guarantor, the Company or Irish Water, or any insolvency or similar proceedings.

##### 4.2 Waivers re actions in respect of the Company

The Guarantor waives any right to have the Company joined with the Guarantor in any suit brought against the Guarantor on, pursuant to or in connection with this Guarantee, and waives any right to have a judgment rendered on, pursuant to or in connection with the Agreement[s] or this Guarantee against the Company before a judgment may be rendered against the Guarantor.

#### 5. **Immediate recourse**

The Guarantor waives any right it may have of first requiring Irish Water to proceed against or enforce any other rights or security or claim payment from any person (including, without limitation, the Company) before claiming from the Guarantor under this Guarantee. This waiver applies irrespective of any law or any provision of the Agreement[s] to the contrary.

**6. Appropriations**

Until all amounts which may be or become payable by the Company under or in connection with the Guaranteed Obligations have been irrevocably paid in full, Irish Water may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Guarantee.

**7. Deferral of Guarantor's rights**

Until all amounts which may be or become payable by the Company under or in connection with the Guaranteed Obligations have been unconditionally and irrevocably paid, discharged and satisfied in full and unless Irish Water otherwise directs, the Guarantor will not take or receive the benefit of any security from the Company or any other person or exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee:

- (a) to apply any credit balance (whether or not due) to which it is entitled, to combine or consolidate all or any accounts, to counterclaim or to transfer any sum;
- (b) to set-off any obligation or sum (contingent or actual);
- (c) to be indemnified by, or to claim payment from, the Company;
- (d) to claim any contribution from any other guarantor or obligor of the Guaranteed Obligations;
- (e) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of Irish Water under the Agreement[s] or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Obligations; and/or
- (f) to prove in a liquidation, receivership, examinership, administration or other insolvency proceedings or procedure of or relating to the Company.

If any of the same is taken or exercised or the Guarantor receives the benefit of the same, the Guarantor agrees to deposit the same (or an amount equal to the value of the same) with Irish Water and, pending such deposit, the same shall be held on trust for Irish Water as a continuing security for the Guaranteed Obligations.

**8. Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by Irish Water.

## 9. **Payments**

### 9.1 No Tax Deduction

The Guarantor shall make all payments to be made by it under this Guarantee without any Tax Deduction, unless a Tax Deduction is required by law. The Guarantor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), notify Irish Water accordingly.

### 9.2 Gross-up

If a Tax Deduction is required by law to be made by the Guarantor, the amount of the payment due from the Guarantor will be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required. If the Guarantor is required to make a Tax Deduction, it must make the minimum Tax Deduction and must make any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

### 9.3 No set-off

All payments made by the Guarantor under this Guarantee must be made without set-off or counter claim.

### 9.4 Payment definitions

For the purposes of this Guarantee:

- (a) "Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same); and
- (b) "Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under this Guarantee.

## 10. **Representations**

The Guarantor hereby represents and warrants to Irish Water as follows:

- (a) it is [a]/[an] limited liability [company]/[corporation], duly incorporated and validly existing [and in good standing] under the laws of [ • ];
- (b) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Guarantee;
- (c) the obligations expressed to be assumed by it in this Guarantee are, subject to any general principles of law limiting its obligations, legal, valid, binding and enforceable obligations;
- (d) it has an Approved Credit Rating; and it shall notify Irish Water promptly upon becoming aware that:
  - i. it has (or its long term debt obligations have) been placed on negative credit watch by any of the credit rating agencies;

- ii. its long term debt obligations have been downgraded by a credit rating agency;
  - iii. it has ceased to have an Approved Credit Rating; or
  - iv. its long term debt obligations no longer have a credit rating;
- (e) the entry into and performance by it of this Guarantee do not conflict with any law or regulation applicable to it or its constitutional documents;
  - (f) all consents and authorisations required to enable it lawfully to enter into and comply with its obligations in this Guarantee and to make this Guarantee admissible in evidence in Ireland and its jurisdiction of incorporation, have been obtained or effected and are in full force and effect;
  - (g) the choice of Irish law as the governing law of this Guarantee will be recognised and enforced in its jurisdiction of incorporation;
  - (h) any judgment obtained in Ireland in relation to this Guarantee will be recognised and enforced in its jurisdiction of incorporation;
  - (i) it is not required under the law of its jurisdiction of incorporation to make any deduction for or on account of tax from any payment it may make under this Guarantee;
  - (j) under the law of its jurisdiction of incorporation it is not necessary that this Guarantee be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Guarantee; and
  - (k) the Company is, and will remain, a wholly owned subsidiary of the Guarantor].

11. **Set-off**

The Guarantor agrees that Irish Water may, and authorises Irish Water to, at any time that a payment falls due under this Guarantee without notice (and notwithstanding any settlement of account or other matter whatsoever) set-off any obligation due from the Guarantor to Irish Water against any obligation owed by Irish Water to the Guarantor regardless of the place of payment or currency of either obligation.

12. **Loss of Approved Credit Rating – Replacement of Guarantee**

If at any time the Guarantor ceases to have an Approved Credit Rating, the Counterparty shall procure forthwith the issue to Irish Water of a replacement form of Security Cover in accordance with the Financial Security Policy.

13. **Enforcement costs**

The Guarantor shall pay, on demand, to Irish Water the amount of all costs and expenses (including legal fees) incurred by Irish Water in connection with the enforcement of, or the preservation of any rights under, this Guarantee.

14. **Currency indemnity**

- (a) If any sum due from the Guarantor under this Guarantee (a “Sum”), or any order,

judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

- i. making or filing a claim or proof against the Guarantor;
- ii. obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Guarantor shall as an independent obligation, on demand, indemnify Irish Water against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency, and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Guarantor waives any right it may have in any jurisdiction to pay any amount under this Guarantee in a currency or currency unit other than that in which it is expressed to be payable.

15. **Notices**

Any communication or notification given or made in connection with this Guarantee shall be in accordance with the Financial Security Policy.

16. **Assignment or Transfer**

16.1 Guarantor

The Guarantor may not assign any of its rights or transfer by novation any of its rights or obligations under or in connection with this Guarantee without the prior written consent of Irish Water.

16.2 Irish Water

Irish Water may assign any of its rights or transfer by novation any of its rights or obligations under or in connection with this Guarantee without the consent of the Guarantor or the Company.

17. **Partial Invalidity**

If, at any time, any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.



18. **Termination**

Subject to Clause 3 (*Reinstatement*), this Guarantee shall remain in full force and effect until receipt by the Guarantor of written notice of termination sent from Irish Water by notice in writing to the Guarantor. No such termination shall release the Guarantor from liability for indebtedness actually or contingently subject to this Guarantee at the time of such termination.

19. **Governing Law**

This Guarantee is governed by, and shall be construed in accordance with, Irish law.

20. **Enforcement**

20.1 Jurisdiction of Irish courts

The courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Guarantee) (a "**Dispute**"). The Guarantor agrees that the courts of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.

20.2 Service of process

Without prejudice to any other mode of service permitted under any relevant law, the Guarantor irrevocably appoints [the Company] / [[ • ] of [ • ]] as its agent for service of process in relation to any proceedings before the Irish courts in connection with this Guarantee, and agrees that failure by the process agent to notify the Guarantor of the process will not invalidate the proceedings concerned.

21. **Counterparts**

This Guarantee may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Guarantee.

**IN WITNESS WHEREOF**, the Guarantor has caused this Guarantee to be duly executed and delivered by its [authorised representative]/[attorney], to be effective as of the date set forth below.

[Executed as a Deed

By: \_\_\_\_\_

[*name & position*]

for and on behalf of

[*Guarantor*]

or

[Present when the Common Seal

of [*Guarantor*]

was affixed hereto:

\_\_\_\_\_  
Director

\_\_\_\_\_  
[Director/Secretary]

Address: [ • ]

Attention: [ • ]

Fax no.: [ • ]

## **IRISH WATER**

By: \_\_\_\_\_

[ • ]

Address: Colvill House, 24 - 26 Talbot Street, Dublin 1, Ireland

Attention: [ • ]

Fax no.: +353 [ • ]