

**ALTERNATIVE ELIGIBLE CREDIT SUPPORT
(PAYMENT PERFORMANCE UNSECURED CREDIT ALLOWANCE) AGREEMENT**

THIS AGREEMENT is made the 7th day of February, 2019

PARTIES

- (1) **SOUTHERN WATER SERVICES LIMITED**, incorporated in England with company number 02366670, whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex BN13 3NX (the “**Contracting Wholesaler**”); and
- (2) **THE WATER RETAIL COMPANY LIMITED**, incorporated in England with company number 10277311, whose registered office is at N105 Vox Studios, 1-45 Durham Street, London, SE11 5JH (the “**Contracting Retailer**”)

Each a “**Party**” and together the “**Parties**”.

BACKGROUND

- (A) Under and in accordance with the Business Terms of the Wholesale Contract dated 10th March 2017, which was made and entered into under section 66D or section 117E of the Water Industry Act 1991 (the “**Contract**”), the Contracting Retailer is required to provide monthly Eligible Credit Support in the sum of the Credit Support Amount and in relation to that month’s Primary Charges;
- (B) The Contracting Wholesaler and the Contracting Retailer may agree an Alternative Eligible Credit Support arrangement under Schedule 3 of the Business Terms of the Contract;
- (C) The Contracting Wholesaler and the Contracting Retailer have agreed to enter into this Alternative Eligible Credit Support Agreement (the “**Agreement**”) to enable reduction of the amount of Eligible Credit Support required of the Contracting Retailer by making arrangements for a payment performance based unsecured credit discount (distinct and separate from the Unsecured Credit Allowance (Schedule 2E of the Business Terms)) (a “**Payment Performance Unsecured Credit Discount**” or “**Unsecured Credit Discount**”).

OPERATIVE PROVISIONS

The parties have agreed as follow:

- 1 Unless defined differently in this Agreement, all defined terms used shall have the meaning given to them in the Contract.
- 2 This Agreement shall take effect on the 7th day of February, 2019 (the “**Commencement Date**”) and subject to clauses 10 and 11 shall continue until 7th February 2020 when it shall automatically expire unless otherwise agreed in writing by the Parties.
- 3 Notwithstanding anything to the contrary in the Contract, with effect from the first Credit Support Notice issued by the Contracting Wholesaler to the Contracting Retailer during the term of this Agreement, the Contracting Retailer will be required to provide Eligible Credit Support each month only on the Credit Support Requirement as discounted by the Unsecured Credit Discount in accordance with this Agreement (the “**Discounted Credit Support Requirement**”) provided that the Credit Support Requirement for that Month is never less than £0 (zero).
- 4 The Unsecured Credit Discount applicable to the Contracting Retailer in each relevant Month will be determined as follows:
 - 4.1 a ten percent (10%) discount (equivalent to 5 days of Wholesale Charges) if the Contracting Retailer has, in accordance with Section 9 of the Business Terms, paid to

the Contracting Wholesaler all Monthly Primary Charges (including Reconciliation Balances) due in each Month for a period of at least six (6) but less than twelve (12) consecutive Months immediately prior to the relevant Month in which the Unsecured Credit Discount will be applied;

4.2 a twenty percent (20%) discount (equivalent to 10 days of Wholesale Charges) if the Contracting Retailer has, in accordance with Section 9 of the Business Terms, paid to the Contracting Wholesaler all Monthly Primary Charges (including Reconciliation Balances) due in each Month for a period of twelve (12) consecutive Months or more immediately prior to the relevant Month in which the Unsecured Credit Discount will be applied.

5 Nothing in this Agreement affects:

5.1 any Unsecured Credit Allowance to which the Contracting Retailer is entitled under Schedule 2E of the Business Terms and the Contracting Retailer's access to such Unsecured Credit Allowance, and/or

5.2 any choice the Contracting Retailer has under the Contract of the manner in which it meets the Credit Support Requirement,

- accordingly, the Contracting Retailer may in addition to the Unsecured Credit Discount, have access to and use any further discounts available to it as an Unsecured Credit Allowance.

6 The Credit Support Notice issued by the Contracting Wholesaler shall, to the extent applicable, show as separate columns in respect of the Contracting Retailer:

6.1 the Unsecured Credit Allowance, if any, applicable to the Contracting Retailer as appropriate in accordance with Schedule 2E of the Business Terms;

6.2 the Unsecured Credit Discount, if any, applicable to the Contracting Retailer as appropriate in accordance with the terms of this Agreement,

- and the Contracting Wholesaler shall in addition provide to the Contracting Retailer a report of the Contracting Retailer's payment performance on which the applicable Unsecured Credit Discount, if any, has been calculated.

7 If during the term of this Agreement the Contracting Retailer having been granted a ten percent (10%) Unsecured Credit Discount in accordance with clause 4.1 above fails or neglects to pay to the Contracting Wholesaler all Monthly Primary Charges (including Reconciliation Balances) due in each Month in accordance with Section 9 of the Business Terms then the Unsecured Credit Discount will be automatically suspended and will no longer apply in the calculation of any Discounted Credit Support Requirement. Provide, however, that:

7.1 if the Contracting Retailer is able to fulfil anew the conditions set out in clause 4.1 above to requalify for the grant of the ten percent (10%) Unsecured Credit Discount;

7.2 then the Contracting Wholesaler may in such circumstances at its sole absolute discretion elect to renew the grant of the Unsecured Credit Discount to the Contracting Retailer when the Contracting Retailer has fulfilled the clause 4.1 conditions or to terminate the Agreement in its entirety (in accordance with clause 11.3 below) at any time before the Contracting Retailer so requalifies.

8 If during the term of this Agreement the Contracting Retailer having been granted a twenty percent (20%) Unsecured Credit Discount in accordance with clause 4.2 above fails or

neglects to pay to the Contracting Wholesaler all Monthly Primary Charges (including Reconciliation Balances) due in each Month in accordance with Section 9 of the Business Terms then:

- 8.1 if the failure or neglect to pay has occurred only in one (1) Month, the Contracting Wholesaler may, notwithstanding the failure or neglect, elect to continue to apply the lower ten percent (10%) Unsecured Credit Discount in the calculation of a Discounted Credit Support Requirement with regard to the Contracting Retailer;
- 8.2 if the failure or neglect occurs in two (2) Months consecutively or in more than one (1) Month in any period of six (6) Months, the Unsecured Credit Discount will be automatically suspended and will no longer apply in the calculation of any Discounted Credit Support Requirement;

Provided, however, that:

- 8.3 with regard to clause 8.1 above (if the failure or neglect to pay has occurred only in one (1) Month), if the Contracting Retailer, in accordance with Section 9 of the Business Terms, pays to the Contracting Wholesaler all Monthly Primary Charges (including Reconciliation Balances) due in each Month following such failure or neglect to pay for a period of at least six (6) consecutive Months, then the Contracting Wholesaler may in such circumstances at its absolute sole discretion elect to renew the grant of the twenty percent (20%) Unsecured Credit Discount to the Contracting Retailer; and
 - 8.4 with regard to clause 8.2 above (if the failure or neglect occurs in two (2) Months consecutively or in more than one (1) Month in any period of six (6) Months), if the Contracting Retailer is able to fulfil anew the conditions set out in clause 4.1 above to requalify for the grant of the ten percent (10%) Unsecured Credit Discount, then the Contracting Wholesaler may in such circumstances at its absolute sole discretion elect to renew the grant of the ten percent (10%) Unsecured Credit Discount to the Contracting Retailer or to terminate the Agreement in its entirety (in accordance with clause 11.3 below) at any time before the Contracting Retailer so requalifies.
- 9 The Contracting Wholesaler may at its absolute sole discretion elect to suspend the application of any Unsecured Credit Discount in the calculation of any Discounted Credit Support Requirement if:
- 9.1 the Contracting Retailer becomes a Defaulting Trading Party under the Contract, or is otherwise in breach of the Contract; and/or
 - 9.2 the Contracting Wholesaler (acting reasonably) believes that the Contracting Retailer will default on its payment obligations under the Contract, for example (but without any limitations as to relevant circumstances or grounds, following the publication of legal notices such as a winding-up petition or other insolvency proceeding; commencement of court action to recover amounts owed to others; making of an adverse court judgement; writ's for possession of property or garnishee notices; etc.)
- 10 This Agreement will automatically terminate on the termination for any reason of the Contract.
- 11 This Agreement may be terminated:
- 11.1 by the Contracting Retailer at any time on written notice to the Contracting Wholesaler; or
 - 11.2 by the Contracting Wholesaler on 60 days written notice to the Contracting Retailer; or

- 11.3 by the Contracting Wholesaler with immediate effect on written notice to the Contracting Retailer if any of the circumstances set out in clauses 7.2 and/or 8.4 above occur;
- 11.4 by the Contracting Wholesaler on written notice in accordance with clause 13(b) in the event of any payment of any sums due under the Contract being two (2) days or more late.
- 12 On expiry or earlier termination of this Agreement the arrangements set out herein shall end and the provision of credit support by the Contracting Retailer shall be governed exclusively by the Contract and the parties agree to co-operate with each other to the extent necessary to ensure compliance with the Contract.
- 13 The Contracting Retailer acknowledges and agrees:
- 13.1 that it is entering into this Agreement as a means of obtaining Alternative Eligible Credit Support within the meaning of Schedule 3 of the Contract;
- 13.2 that in the event of any late payment of any sum due (regardless of the amount) under the Contract the Contracting Wholesaler may issue notice under Section 11.2.1 of the Business Terms two (2) days after the payment due date; and
- 13.3 that in order to comply with Schedule 3, this Agreement shall be published in full on the Contracting Wholesaler's website.
- 14 No variation of this Agreement shall be effective unless it is in writing and signed by or by duly authorised representatives on behalf of each Party.
- 15 Except as and only to the extent provided in this Agreement, the Contract remains in full force and effect.
- 16 In the event of a conflict between this Agreement and the Contract, the terms of the Contract shall take precedence.
- 17 The parties do not intend any third party to have the right to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 18 Any notices under this Agreement shall be served in accordance with the provisions of the Contract.
- 19 This Agreement is the entire agreement between the parties, and replaces all previous agreements, representations, and understandings between them, relating to its subject matter whether written or oral.
- 20 This Agreement and any non-contractual obligations arising in connection with it (and, unless provided otherwise, any document entered into in connection with it) are governed by and construed in accordance with English law. Without prejudice to the rights of the Authority, the English courts have exclusive jurisdiction to determine any dispute arising in connection with this Agreement (and, unless provided otherwise, any document entered into in connection with it), including disputes relating to any non-contractual obligations.

Signed by [*name of duly authorised person*] for and on behalf of **THE WATER RETAIL COMPANY**:

Authorised Signatory

Name: _____

Signed by [*name of duly authorised person*] for and on behalf of **SOUTHERN WATER SERVICES LIMITED**:

Authorised Signatory