

DATED: 1st Day of April, 2019

**AGREEMENT
FOR
ALTERNATIVE ELIGIBLE CREDIT SUPPORT
(INVESTMENT GRADE CREDIT STATUS)
IN RELATION TO A WHOLESALE CONTRACT**

BETWEEN

SOUTHERN WATER SERVICES LIMITED

and

SCOTTISH WATER BUSINESS STREAM LIMITED

THIS AGREEMENT is made the 1st day of April, 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) **SCOTTISH WATER BUSINESS STREAM LIMITED**, incorporated in Scotland with company number SC294924, whose registered office is at 7 Lochside View, Edinburgh EH12 9DH (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 03 March 2017, which was made and entered into under section 66D or section 117E of the Water Industry Act 1991 (the “**Wholesale 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;
- (C) The Parties entered into an Alternative Eligible Credit Support agreement dated 10 March 2017 (the “**Old Agreement**”) prior to the Effective Date of the Wholesale Contract based on a bespoke, negotiated arrangement which arrangement is now no longer available with the Contracting Wholesaler;
- (D) The Contracting Wholesaler and the Contracting Retailer have accordingly agreed in replacement to enter into this Alternative Eligible Credit Support agreement (“**Agreement**”) to eliminate the need for the provision of Eligible Credit Support by the Contracting Retailer by making arrangements for unsecured credit based on the Contracting Retailer’s investment grade status.

OPERATIVE PROVISIONS

The Parties have agreed as follow:

1 Definitions and interpretation

- 1.1 Unless defined differently in this Agreement, words and expressions used in this Agreement shall have the meaning given to them in the Wholesale Contract.
- 1.2 “**Eligible Retailer**” for the purposes of this Agreement means the Contracting Retailer, for so long as:
 - A. it holds and maintains an Investment Grade Status;and
 - B. no Negative Credit Event has occurred or is continuing in respect of the Contracting Retailer.

1.3 “Investment Grade Status” for the purposes of this Agreement means:

- A. a credit rating by one of the following credit rating agencies: Standard & Poor’s, Fitch, or Moody’s within the following listed credit grades –

Standard & Poor’s	Fitch	Moody’s
AAA	AAA	AAA
AA+	AA+	Aa1
AA	AA	Aa2
AA-	AA-	Aa3
A+	A+	A1
A	A	A2
A-	A-	A3
BBB+	BBB+	Baa1
BBB	BBB	Baa2
BBB-	BBB-	Baa3

and/or

- B. direct or indirect majority ownership or control by the government of an EU member state, the government of a member state of the European Economic Area, the UK Government (or any devolved administration of the foregoing including the devolved Scottish, Welsh and Northern Ireland administrations);

For the purposes of this clause 1.3B only, **ownership or control** of the Contracting Retailer means:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency, or otherwise) to:
- (i) cast, or control the casting of, more than fifty percent (50 %) of the maximum number of votes that might be cast at a general meeting of the Contracting Retailer; and/or
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Contracting Retailer;

and/or

- (b) the holding beneficially of more than fifty percent (50%) of the issued share capital of the Contracting Retailer or any holding company of the Contracting Retailer (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in distribution of either profits or capital).

1.4 “Negative Credit Event” for the purposes of this Agreement means any of the following occurring:

- A. failure by the Contracting Retailer to pay within 10 days of the due date any amount payable by it pursuant to any debt due to any lender and in the currency in which such amount is payable; or
 - B. the Contracting Retailer:
 - (a) is unable or admits inability to pay its debts as they fall due; or
 - (b) suspends making payments on any of its debts; or
 - (c) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; or
 - C. failure by the Contracting Retailer to pay within 10 days of the due date any amount payable to the Contracting Wholesaler or any other Wholesaler under any Wholesale Contract, under the Wholesale-Retail Code, the Market Arrangements Code, or otherwise, and in the currency in which such amount is payable; or
 - D. the Contracting Retailer fails to maintain Investment Grade Status; or
 - E. the Contracting Retailer ceases to be the counterparty of the Contracting Wholesaler in relation to the Wholesale Contract.
- 1.5 Clause, paragraph and schedule headings do not affect the interpretation of this Agreement.
- 1.6 A reference to a particular statute, statutory provision, or subordinate legislation is a reference to it as it is in force at the date of this Agreement, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it; provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability, or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.7 Any obligation in this Agreement on a person not to do something includes an obligation not to agree for or allow that thing to be done.
- 1.8 References to any English legal terms, for any action, remedy, method of judicial proceeding, legal document, legal status, court, official, or any other legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term or concept in that jurisdiction.

2 Commencement

- 2.1 This Agreement shall take effect on the **1st day of April, 2019** (the “**Commencement Date**”) and subject to clause 5 shall be formally reviewed by the parties on or before the 1st day of April, 2021 and on or before every 1st day of April after.
- 2.2 The Parties have mutually agreed to terminate the Old Agreement on execution of this Agreement and the Old Agreement shall terminate effective the Commencement Date of this Agreement without more.

3 Credit Support

3.1 For as long as:

3.1.1 the Contracting Retailer is an Eligible Retailer;

and

3.1.2 the Wholesale Contract has not expired or been terminated,

the Contracting Retailer shall not be required to provide any credit support to the Contracting Wholesaler in respect of its payment obligations under the Wholesale Contract.

3.2 In the event the Contracting Retailer ceases to be an Eligible Retailer and/or this Agreement expires or is terminated, but where the Wholesale Contract has not expired or been terminated and the Contracting Retailer has not elected for Pre-payment (as set out in paragraph 9.2.2 (*Pre-payment of the Primary Charges*) of the Business Terms), the Contracting Retailer shall provide Eligible Credit Support to the Contracting Wholesaler in respect of the Credit Support Amount in a manner which is in accordance with the provisions of the Wholesale Contract.

4 Disclosure obligations and further assurance

4.1 The Contracting Retailer acknowledges that the Contracting Retailer's Investment Grade Status and knowledge of the occurrence of a Negative Credit Event are both fundamental conditions upon which the Contracting Wholesaler relies for the entering into and continuation of the Alternative Credit Support arrangement agreed by the Parties under this Agreement, accordingly the Contracting Retailer:

4.1.1 warrants that it does not know and does not have reason to believe that it no longer holds Investment Grade Status and/or that a Negative Credit Event has occurred as at the date of this Agreement;

4.1.2 undertakes and agrees to immediately disclose to the Contracting Wholesaler fact that it no longer holds Investment Grade Status or that a Negative Credit Event has occurred; and

4.1.3 acknowledges and agrees that the Contracting Wholesaler may obtain information about the maintenance of an Investment Grade Status and/or the occurrence of a Negative Credit Event from sources other than the Contracting Retailer and may, acting reasonably, rely upon knowledge obtained from such information.

4.2 The Contracting Retailer acknowledges and agrees:

4.2.1 that it is entering into this Agreement as a means of obtaining Alternative Eligible Credit Support within the meaning of Schedule 3 of the Business Terms;

4.2.2 that in the event of any late payment of any sum due (regardless of the amount) under the Wholesale 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

4.2.3 that the Contracting Wholesaler shall be entitled to fully publish on its website and disclose as necessary an executed copy/ies of this Agreement (including the identity of the Contracting Retailer) in order to comply with Schedule 3 of the Business Terms.

4.3 Each Party shall promptly execute and deliver all such documents and do all such things as the other Party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

5 Termination

5.1 This Agreement will automatically terminate on the termination for any reason of the Wholesale Contract.

5.2 This Agreement may be terminated:

5.2.1 by the Contracting Wholesaler with immediate effect on written notice to the Contracting Retailer if for any reason the Contracting Retailer ceases to be an Eligible Retailer; or

5.2.2 by the Contracting Retailer at any time on written notice to the Contracting Wholesaler; or

5.2.3 by the Contracting Wholesaler on 60 days written notice to the Contracting Retailer if the Contracting Retailer commits a material breach of the Wholesale Contract, which, if remediable, is not remedied in accordance with the terms of that contract; or

5.2.4 by the Contracting Wholesaler on written notice in accordance with clause 4.2.2 (above) in the event of any payment of any sums due under the Wholesale Contract being two (2) days or more late; or

5.2.5 by 30 days written notice, where (1) either Party, acting reasonably and in good faith, determines that any of the arrangements made under this Agreement are not compliant with the Wholesale Contract or the Wholesale-Retail Code; or (2) there is a written decision or direction of the Authority and/or the Competition and Markets Authority (or any other competent regulatory, governmental or judicial authority) which renders this Agreement unenforceable or non-compliant with the Wholesale Contract or the Wholesale-Retail Code or otherwise subject to a successful competition challenge, or which imposes a sanction on either party in relation to this Agreement.

5.3 On expiry or earlier termination of this Agreement the arrangements set out in this Agreement shall end and the provision of credit support by the Contracting Retailer shall be governed exclusively by the Wholesale Contract and the Parties agree to cooperate with each other to the fullest extent necessary to ensure compliance with the Wholesale Contract.

6 Notices, waiver, assignment, variation, etc.

6.1 No variation of this Agreement shall be effective unless it is in writing and signed by duly authorised representatives on behalf of each Party.

6.2 In the event of a conflict between this Agreement and the Wholesale Contract, the terms of the Wholesale Contract shall take precedence.

6.3 Any notices under this Agreement shall be served in accordance with the provisions of the Wholesale Contract.

- 6.4 No Party may assign, subcontract, grant or otherwise encumber any of its rights or obligations under this Agreement. Notwithstanding, the rights and obligations of the Parties shall continue for the benefit of and shall be binding on their respective successors in business.
- 6.5 Subject at all times to the provisions of the Wholesale-Retail Code:
- 6.5.1 waiver by a Party of any right under this Agreement is only effective if it is in writing and signed by a duly authorised representative of the waiving or consenting Party and it applies only in the circumstances for which it is given and shall not prevent that Party from subsequently relying upon or seeking to enforce the provision previously waived;
 - 6.5.2 no failure to exercise or delay in exercising any right or remedy under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or part of such right or remedy; and
 - 6.5.3 no single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the future exercise of any such right or remedy.
- 6.6 Unless specifically provided otherwise, rights or remedies arising under this Agreement are cumulative and do not exclude rights provide by law.
- 6.7 If any provision or part of a provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions of the Agreement shall remain in force and effect. If any such provision would be valid, enforceable, or legal if some part of it were deleted, that provision shall continue to be in force and effect with whatever such modification is necessary to give effect to the clear commercial intention of the Parties.

7 Entire agreement

- 7.1 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 provided, however, that nothing in this Agreement is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.
- 7.2 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.
- 7.3 Except as and only to the extent provided in this Agreement, the Wholesale Contract remains in full force and effect.

8 Governing law and jurisdiction

- 8.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 8.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter (including non-contractual disputes or claims).

9 Counterparts

9.1 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

This Agreement has been entered into and delivered as a deed on the date first stated at the beginning of it.

Executed as a deed by affixing the Common Seal of **SOUTHERN WATER SERVICES LIMITED**

in the presence of

.....

Name:
Authorised Signatory

Executed as a deed by and on behalf of **SCOTTISH WATER BUSINESS STREAM LIMITED** acting by a director:

.....

Director [Print Name]

.....

[Signature of Director]

In the presence of:

.....
[Name of Witness in BLOCK CAPITALS]

.....
[Signature of Witness]

.....
[Home Address of Witness]
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