

Dated 10 March 2017

SOUTHERN WATER SERVICES LIMITED

and

SCOTTISH WATER BUSINESS STREAM LIMITED

**ALTERNATIVE ELIGIBLE CREDIT SUPPORT AGREEMENT IN
RELATION TO A WHOLESALE CONTRACT**

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THIS AGREEMENT is made as a Deed on 10 March 2017

BETWEEN

- (1) **SOUTHERN WATER SERVICES LIMITED** incorporated and registered in England and Wales with company number 02366670 whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex BN13 3NX (the "**Wholesaler**"); and
- (2) **SCOTTISH WATER BUSINESS STREAM LIMITED** incorporated and registered in Scotland with company number SC294924 whose registered office is at 7 Lochside View, Edinburgh EH12 9DH (the "**Retailer**");

each a "**party**" and together the "**parties**".

BACKGROUND

- (A) Pursuant to the Wholesale Contract, the Wholesaler has agreed to provide Wholesale Services (as defined in the Wholesale Contract) to the Retailer.
- (B) As part of implementation of a competitive retail market for non-household water and sewerage retailers, Ofwat requires market participants to adhere to certain requirements as set out in the WRC.
- (C) Pursuant to the WRC, the Retailer is required to provide Eligible Credit Support to the Wholesaler, in accordance with the provisions of the WRC.
- (D) The Retailer and the Wholesaler have decided to enter into a bespoke, negotiated arrangement in relation to the provision of Alternative Eligible Credit Support and this Agreement sets out the terms of such arrangement as provided for in Section 9.11.5 and Schedule 3 of the Business Terms of the WRC.
- (E) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

1 Definitions and Interpretation

1.1 Capitalised terms used but not defined herein shall have the meanings given to them in the WRC.

"**Eligible Retailer**" means the Retailer, for so long as:

- (a) it is directly or indirectly majority owned or controlled by the government of an EU member state, the government of a member of the European Economic Area, the UK Government (or any devolved administration of the foregoing including the devolved Scottish, Welsh and Northern Ireland administrations); and
- (b) no Negative Credit Event has occurred or is continuing.

For the purposes of this definition, **control** of the 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 50% of the maximum number of votes that might be cast at a general meeting of the Retailer;
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Retailer; and/or

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

"Negative Credit Event" means any of the following arising:

- (a) the failure by the Retailer to pay, on 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;
- (b) the Retailer:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on any of its debts; or
 - (iii) 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;
- (c) the failure by the Retailer to pay on the due date any amount payable to the Wholesaler or any wholesaler, under any the Wholesale Contract under the Code, the Market Arrangements Code or otherwise, and in the currency in which such amount is payable; or
- (d) the Retailer ceases to be the counterparty of the Wholesaler in relation to the wholesale contract.

"Ofwat" means the Water Services Regulation Authority, also known as Ofwat, established by section 1A of the Water Industry Act 1991.

"Wholesale Contract" means the wholesale contract dated [•] 2017 between the Wholesaler and the Retailer.

"WRC" means the code named for the Wholesale-Retail Code issued by Ofwat under sections 66DA and 117F of the Water Industry Act 1991 including, without limitation, the Business Terms, the Operational Terms and the Market Terms and any Approved Change from time to time.

- 1.2** Clause, schedule and paragraph headings do not affect the interpretation of this agreement.
- 1.3** A reference to a clause is a reference to a clause of this agreement.
- 1.4** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.5** A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated.
- 1.6** Unless the context otherwise requires words in the singular include the plural and in the plural include the singular.
- 1.7** Unless the context otherwise requires a reference to one gender includes a reference to the other genders.

- 1.8** 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.
- 1.9** A reference to **writing** or **written** includes e-mail.
- 1.10** Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "**without limitation**" following them.
- 1.11** Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12** Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.13** 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 in that jurisdiction.
- 1.14** The contents list, headings and any descriptive notes are for ease of reference only and shall not affect the construction or interpretation of this agreement.

2 Credit Support

2.1 For so long as:

2.1.1 the Retailer is an Eligible Retailer; and

2.1.2 the Wholesale Contract has not been terminated,

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

- 2.2** In the event that the Retailer ceases to be an Eligible Retailer, where the Wholesale Contract has not been terminated and the Retailer has not selected Pre-Payment (as set out in paragraph 9.2.2 (*Pre-Payment of the Primary Charges*) of the Business Terms), the Retailer shall provide Eligible Credit Support to the Wholesaler in respect of the Credit Support Amount, in a manner which is in accordance with the provisions of the WRC.

3 Disclosure

- 3.1** The parties agree that the Wholesaler shall be entitled to fully disclose an executed copy of this agreement on its website, in compliance with the provisions of Paragraph 3, of Schedule 3 to the Business Terms of the WRC.
- 3.2** The Wholesaler undertakes to the Retailer that it shall publish an executed copy of this Agreement (including the identity of the Retailer) on its website within 5 Business Days of the date hereof.

4 Further Assurance

Each Party shall (at the expense of the other Party) 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

This Agreement shall terminate:

- 5.1** simultaneously with the termination of the Wholesale Contract, unless otherwise agreed between the parties; or
- 5.2** upon three months' written notice, where either party, acting reasonably and in good faith, determines that any of the arrangements pursuant to this Agreement are not in compliance with the WRC (and, for the avoidance of doubt, in such circumstance, the Wholesale Contract shall continue in full force and effect).

6 Assignment

- 6.1** No party may assign, or grant any encumbrance over or deal in any way with any of its rights under this agreement or any document referred to in it.
- 6.2** Each person that has rights under this agreement is acting on its own behalf.

7 Whole Agreement

- 7.1** This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 7.2** Nothing in this agreement is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.
- 7.3** Each of the Retailer and the Wholesaler agree and acknowledge that, in entering into this agreement, it is not relying on any representation, warranty or undertaking not expressly incorporated into it or any other agreement entered into pursuant to this agreement.

8 Variation and Waiver

- 8.1** Subject at all times to the provisions of the WRC,
 - 8.1.1** a variation of this agreement shall be in writing and signed by or on behalf of each party;
 - 8.1.2** any waiver of any right under this agreement is only effective if it is in writing and signed by the waiving or consenting party and it applies only in the circumstances for which it is given and shall not prevent the party who has given the waiver or consent from subsequently relying on the provision it has waived;
 - 8.1.3** no failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof;
 - 8.1.4** no single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy and

8.1.5 unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

9 Costs

Unless otherwise provided, all costs and expenses in connection with the negotiation, preparation, execution and performance of this agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

10 Notice

10.1 A notice given under this agreement:

10.1.1 shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

10.1.2 shall be sent for the attention of the person, and to the address given in this clause 8 (or such other address or person as the relevant party may notify to the other party); and

10.1.3 shall be:

- (i) delivered personally; or
- (ii) delivered by commercial courier; or
- (iii) sent by pre-paid first-class post or recorded delivery; or
- (iv) (if the notice is to be served by post outside the country from which it is sent) sent by airmail.

10.2 The addresses for service of notice are:

Wholesaler:

Address: its registered office address

For the attention of: The Chief Executive with a copy to the Director of Strategy

Retailer:

Address: its registered office address

For the attention of: The Finance Director

10.3 A notice is deemed to have been received:

10.3.1 if delivered personally, at the time of delivery; or

10.3.2 if delivered by commercial courier, at the time of signature of the courier's receipt; or

10.3.3 if sent by pre-paid first class post or recorded delivery, 48 hours from the date of posting; or

10.3.4 if sent by airmail, five days from the date of posting; or

10.3.5 if deemed receipt under the previous paragraphs of this clause 8.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a Business Day), when business next starts in the place of deemed receipt.

11 Severance

- 11.1** If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 11.2** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

12 Third Party Rights

This agreement and the documents referred to in it are made for the benefit of the parties to them and their successors and permitted assigns, and are not intended to benefit, or be enforceable by, anyone else and a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, this Agreement.

13 Successors

The rights and obligations of the parties shall continue for the benefit of and shall be binding on their respective successors and assigns.

14 Counterparts

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.

15 Language

If this agreement is translated into any language other than English, the English language text shall prevail.

16 Governing Law and Jurisdiction

- 16.1** This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 16.2** The parties irrevocably agree that the courts of England 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).

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

Signatories

Executed as a deed by **Southern Water Services Limited** as follows:

S.E. Oates (Director/Authorised Signatory)
SIMON OATES (Full name of Director/Authorised Signatory)
Jo Flinders (Director/Authorised Signatory/Witness)
Jo Flinders (Full name of Director/Authorised Signatory/Witness)
[Redacted] (Address of witness, if applicable)
[Redacted]

Executed as a deed by **Scottish Water Business Stream Limited** as follows:

Johnnie Dow (Director/Authorised Signatory)
JOHNNIE DOW (Full name of Director/Authorised Signatory)
14/3/17 (Director/Authorised Signatory/Witness)
R Fleming (Full name of Director/Authorised Signatory/Witness)
7 LOUSIOE VIEW (Address of witness, if applicable)
EDINBURGH