

# Alternative Eligible Credit Support Agreement

This Agreement is made on 2<sup>nd</sup> November 2018 between

- (1) United Utilities Water Limited, a company incorporated in England and Wales (No.02366678) whose registered office is at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP (the “**Contracting Wholesaler**”); and
- (2) Smarta Water Limited, a company incorporated in England and Wales (No.09896052) whose registered office is at Morton House, Fencehouses, Houghton-le-Spring, DH4 6QA (the “**Contracting Retailer**”).

## Whereas

- A. The Contracting Wholesaler has entered into a Wholesale Contract dated 26<sup>th</sup> June 2018 with the Contracting Retailer (such contract and its schedules together with confirmations exchanged between the Contracting Wholesaler and the Contracting Retailer pursuant thereto, in each case as amended from time to time, the “**Contract**”). The Contract is entered into pursuant to the Wholesale Retail Code issued by MOSL (being the market operator of England’s non-household water market) (the “**Wholesale Code**”). The Contract incorporates the Business Terms mandated by the Wholesale Code.
- B. The Contract requires the Contracting Retailer to satisfy a Credit Support Requirement to limit the financial exposure of the Contracting Wholesaler in the event that the Contracting Retailer is unable to meet its payment obligations under the Contract.
- C. The Business Terms state that: (i) depending on the credit worthiness of the Contracting Retailer, such Credit Support Requirement may be subject to an Unsecured Credit Allowance calculated in accordance with the Business Terms; and (ii) the balance of the Credit Support Requirement must be met by the Contracting Retailer making available to the Contracting Wholesaler Eligible Credit Support (being forms of permitted collateral or other security as permitted by the Wholesale Code).
- D. However, the Business Terms further state that the Parties may agree to reduce the amount of Eligible Credit Support that is required (such reduction being as a consequence of the Contracting Wholesaler making available to the Contracting Retailer Alternative Eligible Credit Support).
- E. Accordingly, the Contracting Wholesaler and the Contracting Retailer have agreed to enter into this Alternative Eligible Credit Support Agreement (the “**Agreement**”) to supplement the Contract by enabling the Contracting Wholesaler to reduce the amount of Eligible Credit Support required of the Contracting Retailer, subject to and on the terms of this Agreement.

## 1. Definitions and Interpretation

- 1.1. In this Agreement:

- 1.1.1. **Agreed Allowance** means the monetary value calculated from time to time using the following calculation:

$$\text{Agreed Allowance} = \text{Relevant Amount} - \text{Allowable Value},$$

save that where the above calculation would result in a negative value, the Agreed Allowance shall be zero.

- 1.1.2. **Allowable Value** has the meaning given in clause 3;
- 1.1.3. **Relevant Amount** means £200,000 (two hundred thousand pounds Sterling).
- 1.2. All other terms used as defined terms in this Agreement shall have the meaning ascribed to them in the Contract.
- 1.2. **Interpretation:** Headings and titles are for convenience only and do not affect the interpretation of this Agreement. Unless otherwise described, references in this Agreement to sections are to sections of this Agreement.

## 2. Consideration

- 2.1 In consideration of the Contracting Wholesaler's agreement set out in clause 3 below, the Contracting Retailer agrees to pay to the Contracting Wholesaler on demand the sum of £1 (one pound Sterling).

## 3. Alternative Eligible Credit Support offering within the Contracting Wholesaler's Area of Appointment

- 3.1 The Contracting Wholesaler hereby agrees that (subject to the provisions of this Agreement) for the duration of this Agreement, if from time to time the value of the Unsecured Credit Allowance to which the Contracting Retailer is entitled in accordance with the Contract (the **Allowable Value**) is less than the Relevant Amount, the Contracting Wholesaler shall allow the Contracting Retailer by way of Alternative Eligible Credit Support an amount equal to the Agreed Allowance.
- 3.2 For the avoidance of doubt no Alternative Eligible Credit Support shall be allowed to the Contracting Retailer at any time where the Allowable Value is more than the Relevant Amount. Accordingly, the Agreed Allowance in such circumstances shall be zero.
- 3.3 So, for example:
- (a) if the Allowable Value is £150,000 at a given time, the Agreed Allowance at that time would be £50,000 (i.e. £200,000 - £150,000 = £50,000). Accordingly £50,000 would be allowed as Alternative Eligible Credit Support (and the amount of Eligible Credit Support required to meet the Credit Support Amount would be reduced accordingly); and
  - (b) if the Allowable Value is £250,000 at a given time, no Alternative Eligible Credit Support would be allowed at that time (because the Relevant Amount minus the Allowable Value is a negative value, and so the Agreed Allowance would

be zero). The amount of Eligible Credit Support required to meet the Credit Support Amount at that time would therefore be unchanged.

- 3.4 The Contracting Wholesaler reserves the right to review, temporarily suspend, or remove the entitlement of the Contracting Retailer to Alternative Eligible Credit Support under this Agreement, if:
- (a) the Contracting Retailer becomes a Defaulting Trading Party under the Contract, or is otherwise in breach of the Contract; and/or
  - (b) the Contracting Retailer in any event fails to make payment due under the Contract on or before the due date, in accordance with Business Terms Section 9.2.3 and Section 9.3.9, on three or more occasions in any rolling 12 month period; and/or
  - (c) the Contracting Wholesaler otherwise has reasonable grounds to believe that the Contracting Retailer will default on its payment obligations under the Contract,

and in such circumstances the requirements of the Contract relating to the provision of Eligible Credit Support shall continue as though this Agreement was not in force and effect.

- 3.5 The Parties agree that nothing in this Agreement shall prejudice or otherwise undermine the obligation or other liability of the Contracting Retailer to pay any amount to the Contracting Wholesaler under the Contract, and the rights and remedies of the Contracting Wholesaler in respect of such obligations and liabilities shall be unaffected.
- 3.6 For the avoidance of doubt, the entitlement (or otherwise) of the Contracting Retailer to Alternative Eligible Credit Support shall be reviewed by the Contracting Wholesaler and may change from time to time. Accordingly, if at any time the Agreed Allowance is zero, the Contracting Retailer shall not be entitled to Alternative Eligible Credit Support, irrespective of whether the Contracting Retailer has previously been entitled to Alternative Eligible Credit Support as a consequence of the calculation prescribed in this Agreement.

#### **4. Termination of the Agreement**

- 4.1 The Contracting Wholesaler may at its sole discretion terminate this Agreement at any time:
- (a) on providing three (3) months' notice to the Contracting Retailer; or

- (b) with immediate effect, if any of the circumstances set out in clause 3.4 apply.
- 4.2 The Contracting Retailer may at its sole discretion terminate this Agreement on written notice to the Contracting Wholesaler.
- 4.3 This Agreement shall automatically terminate on the earlier of: (i) termination or expiry for any reason of the Contract; or (ii) 31 March 2020.
- 4.4 On termination of this Agreement for any reason:
- (a) the arrangements set out herein shall terminate and the availability of Alternative Eligible Credit Support to the Contracting Retailer shall cease with immediate effect; and
- (b) provided the Contract remains in force and effect, arrangements relating to Eligible Credit Support, the Credit Support Amount and the Credit Support Requirement shall thereafter be governed exclusively by the Contract. The Parties shall co-operate with each other to the extent necessary to ensure compliance with the Contract.
- 4.5 Notwithstanding the foregoing, the calculation of the Agreed Allowance and the associated provisions of this Agreement shall be amended by the Contracting Wholesaler to satisfy the requirements of any Relevant Legislation (including, for the avoidance of doubt, any order, decision, determination, code change, or direction of Ofwat or any other competent regulatory authority).

## **5. Expenses**

- 5.1 Each Party will pay its own costs and expenses in connection with performing its obligations under this Agreement, and the negotiation of it.

## **6. General**

- 6.1 Subject to clause 4.5, no variation to this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each Party.
- 6.2 This Agreement supplements the Contract. In the event of a conflict between this Agreement and the Contract, the terms of the Contract shall take precedence.
- 6.3 The Parties do not intend any third party to have the right to enforce any provision of this Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).
- 6.4 All notices served under this Agreement shall be served in accordance with the requirements of the Contract relating to the provision of notices on that Party. For the avoidance of doubt, all notices served on the Contracting Wholesaler shall also be served on the Company Secretary of the Contracting Wholesaler at the registered office of the Contracting Wholesaler.
- 6.5 Save to the extent varied or amended by the arrangements set out in this Agreement, the Contract (and all provisions of it) shall remain in full force and effect without amendment and shall continue to govern the relationship between the Parties as

Contracting Wholesaler and Contracting Retailer (including, for the avoidance of doubt, the liabilities and obligations of the respective parties). No greater liability shall be assumed by the Contracting Wholesaler to the Contracting Retailer as a consequence of entering into this Agreement.

## 7. Entire Agreement

- 7.1 This Agreement, together with the Contract, sets out the entire agreement and understanding between the Parties, and supersedes all proposals and prior agreements, arrangements, course of dealings and understandings between the Parties, whether written or oral, relating to its subject matter.
- 7.2 Each Party acknowledges that in entering into this Agreement it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to this Agreement or not) that is not set out in this Agreement.

## 8. Cumulative Rights

- 8.1 Save as expressly indicated otherwise, all rights, powers and remedies granted to either of the Parties shall be cumulative and without prejudice to any other right, power or remedy of that Party and no single or partial exercise of any right, power or remedy shall restrict or prejudice any other or further exercise of it or the exercise of any other right, power or remedy available to it.

## 9. Law and Jurisdiction

- 9.1 This Agreement and all matters arising from or connected with it are governed by, and shall be construed in accordance with, the law of England and Wales.
- 9.2 The courts of England and Wales have exclusive jurisdiction to settle any dispute (including any non-contractual dispute) arising from or connected with this Agreement. The Parties agree that the courts of England and Wales are appropriate and convenient courts to settle any such dispute and, accordingly, that they will not argue to the contrary.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties and takes effect from the date specified at the head of it.

**Signed by:**

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Duly authorised for and on behalf of United Utilities Water Limited.

**Signed by:**

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Duly authorised for and on behalf of Smarta Water Limited.