

DATED 5th November 2018

THAMES WATER UTILITIES LIMITED

as Contracting Wholesaler

and

SMARTA WATER LIMITED

as Contracting Retailer

**AGREEMENT FOR ALTERNATIVE ELIGIBLE CREDIT SUPPORT
UNDER SCHEDULE 3 OF THE WHOLESALE CONTRACT**



Berwin Leighton Paisner LLP

Adelaide House London Bridge London EC4R 9HA

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DATED 5TH NOVEMBER 2018

PARTIES

- (1) **THAMES WATER UTILITIES LIMITED** (company no 2366661) whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB (the "**Contracting Wholesaler**"); and
- (2) **SMARTA WATER LTD** (company no 09896052) whose registered office is at North House Elland Road, Morley, Leeds, West Yorkshire, LS27 7QZ (the "**Contracting Retailer**")

BACKGROUND

- A. This is an agreement for Alternative Eligible Credit Support under Schedule 3 of the Business Terms of the Wholesale Contract dated 15 June 2018 which itself is made pursuant to Section 66D or Section 117E of the Water Industry Act 1991 (the "**Contract**") and this Agreement is to be read in conjunction with the Contract.
- B. Under 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;
- C. The Contracting Wholesaler has agreed to enter into this Alternative Eligible Credit Support Agreement to enable it to reduce the amount of Eligible Credit Support required of the Contracting Retailer.

It is now agreed as follows:

1. Unless defined in this Agreement, all defined terms herein shall have the meaning given to them in the Contract
2. This Agreement shall take effect on the date hereof and subject to clauses 10 and 11 shall continue until 31 March 2019 when it shall automatically terminate 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 shall be required to provide Eligible Credit Support each month only on the Discounted Credit Support Requirement.
4. The Discounted Credit Support Requirement shall be calculated by the Contracting Wholesaler by deducting £83,000 from the amount specified in the P1 Aggregated Settlement Report issued to the Contracting Retailer and the Contracting Wholesaler or such lesser sum such that the Discounted Credit Support Requirement for that month is never less than £0 (zero) (which sum shall be called the '**Discount**')
5. Nothing in this Agreement shall affect the Credit Support Requirement as calculated under the Contract. The Discounted Credit Support Requirement and the Discount taken together shall at all times equal or exceed the relevant Credit Support Requirement for that month.

6. Subject to clause 5, if in any month the Primary Charges falling to be paid by the Contracting Retailer are less than the Discount then the Contracting Wholesaler shall treat the Credit Support Requirement for that month as zero.
7. Nothing in this Agreement affects:
 - (a) any Unsecured Credit Allowance to which the Contracting Retailer is entitled; or
 - (b) any choice the Contracting Retailer has of the manner in which it meets the Credit Support Requirement.
8. The Contracting Wholesaler shall show the Discount as a separate column in the relevant Credit Support Notice.
9. If as a result of this Agreement the Contracting Retailer's Credit Support Amount for any month falls to below the Discount then:
 - (a) the Contracting Wholesaler agrees that the Contracting Retailer may withdraw any existing credit support with immediate effect; and
 - (b) where requested the Contracting Wholesaler will return any cash posted as part of any cash deposit agreement between the parties within 7 working days of this Agreement being signed.
10. This Agreement will automatically terminate on the termination for any reason of the Contract.
11. This Agreement may be terminated:
 - (a) by the Contracting Retailer on written notice to the Contracting Wholesaler; or
 - (b) by the Contracting Wholesaler on 60 days written notice to the Contracting Retailer.
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:
 - (a) 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; and
 - (b) 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 on behalf of each party.
15. In the event of a conflict between this Agreement and the Contract, the terms of the Contract shall take precedence.

- 16. 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.
- 17. Any notices under this Agreement shall be served in accordance with the provisions of the Contract.
- 18. 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.
- 19. 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 [<i>name of duly authorised person</i>])	
)	
for and on behalf of Thames Water Utilities Limited:)	
		Duly Authorised Person
Signed by [<i>name of duly authorised person</i>])	
)	
for and on behalf of Smarta Water Ltd:)	
		Duly Authorised Person