

Date: [•]

(1) Sutton and East Surrey Water PLC

(2) [•] (Retailer Name)

AGREEMENT FOR ALTERNATIVE ELIGIBLE CREDIT SUPPORT (PAYMENT PERFORMANCE)

THIS AGREEMENT is made the [Date]

PARTIES

- (1) SUTTON AND EAST SURREY WATER PLC, incorporated in England with company number 02447875, whose registered office is at 66-74 London Road, Redhill, Surrey, RH1 1LJ (the “Contracting Wholesaler”); and
- (2) [redacted], incorporated in England and Wales with company number [redacted], whose registered office is at [redacted] (the “Contracting Retailer”)

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

BACKGROUND

- (A) The Contracting Wholesaler and the Contracting Retailer entered into a wholesale contract dated [Date], (as amended from time to time, the “Wholesale Contract”). The Wholesale Contract is entered into pursuant to the Wholesale Retail Code (the “Wholesale Code”) issued by the Market Operator. The Wholesale Contract incorporates the Business Terms mandated by the Wholesale Code.
- (B) Under and in accordance with the Business Terms of the Wholesale Contract, which was made and entered into under section 66D or section 117E of the Water Industry Act 1991, 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 and the Contracting Retailer are entitled to agree an Alternative Eligible Credit Support arrangement under Schedule 3 of the Business Terms of the Wholesaler Contract.
- (D) The Contracting Retailer has demonstrated good payment performance the Parties have accordingly agreed to enter into this Alternative Eligible Credit Support Agreement (“Agreement”) to enable the Contracting Wholesaler 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.

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. The following terms shall apply to the terms used in this Agreement:

Credit Support Adjustment	has the meaning set out in clause 3.2;
Discounted Credit Support Amount	has the meaning set out in clause 3.1;
Eligible Retailer	the Contracting Retailer, provided that: (i) unless waived by the Contracting Wholesaler in writing, the Contracting Retailer achieves and

	<p>maintains a Creditsafe score of no less than 60; and</p> <p>(i) no Trigger Event has occurred or is continuing in respect of the Contracting Retailer;</p>
Trigger Event	<p>means any one or more of the following occurring:</p> <p>(i) failure by the Contracting Retailer to pay within 10 days of the due date any amount payable (and which is not disputed in accordance with the relevant contract) by it pursuant to any borrowing or cash advances owed by the Contracting Retailer to a financial lender pursuant to the lender's terms;</p> <p>(ii) the Contracting Retailer:</p> <p style="padding-left: 40px;">(a) is unable or admits inability to pay its debts (as defined by Section 123 of the Insolvency Act 1986) as they fall due;</p> <p style="padding-left: 40px;">(b) suspends making payments on any or all of its debts other than in the normal course of business as a going concern; or</p> <p style="padding-left: 40px;">(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;</p> <p>(iii) 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 in accordance with its terms, under the Wholesale Code, the Market Arrangements Code, or otherwise (and which amount is not disputed in accordance with the relevant terms of that contract);</p> <p>(iv) the Contracting Retailer ceases to be the counterparty of the Contracting Wholesaler in relation to the Wholesale Contract.</p>

1.2 Reference to this Agreement or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied from time to time.

1.3 Reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.5 Clause headings are to aid the reader and in no way affect the interpretation of this Agreement.
- 1.6 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, either Party.
- 1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8 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.
- 1.9 A reference to writing or written includes email.

2 COMMENCEMENT

- 2.1 This Agreement commences on the Effective Date of the Wholesale Contract (the “**Commencement Date**”) and shall, subject to clause 5, continue until the date which falls twenty-four (24) months after the Commencement Date, at which time it shall automatically terminate.
- 2.2 The Alternative Credit Support arrangement provided by this Agreement is not renewable in any circumstances.

3 CREDIT SUPPORT

- 3.1 The Discounted Credit Support Amount shall be calculated by the Contracting Wholesaler by deducting the Credit Support Adjustment from the Credit Support Amount or such lesser sum such that the Discounted Credit Support Amount for that Month is never less than £0 (zero).
- 3.2 The Credit Support Adjustment applicable to the Contracting Retailer in each relevant Month will be determined as follows:
- 3.2.1 0% of the Credit Support Amount if the Contracting Retailer has failed to pay to the Contracting Wholesaler (on or before the due date) an amount properly due by it under the Wholesale Contract (excluding amounts relating to Non-Primary Charges and amounts disputed under Section 9.7.2 of the Business Terms) on one (1) or more occasions within the six (6) Months directly preceding the date of the Credit Support Notice; or
- 3.2.2 10% of the Credit Support Amount if the Contracting Retailer has at least six (6) or fewer but less than twelve (12) Months' payment history with the Contracting Wholesaler and during that period has not failed to pay to the Contracting Wholesaler (on or before the due date) an amount properly due by it under the Contract (excluding amounts relating to Non-Primary Charges and amounts disputed under Section 9.7.2); or

3.2.3 20% of the Credit Support Amount if the Contracting Retailer has twelve (12) or more Months' payment history with the Contracting Wholesaler and during that period has not failed to pay to the Contracting Wholesaler (on or before the due date) an amount properly due by it under the Contract (excluding amounts relating to Non-Primary Charges and amounts disputed under Section 9.7.2).

3.3 Nothing in this Agreement affects 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.

3.4 For as long as:

3.4.1 the Contracting Retailer is an Eligible Retailer;

and

3.4.2 the Wholesale Contract has not expired or been terminated earlier,

the Contracting Retailer shall not be required to provide any [Eligible Credit Support] to the Contracting Wholesaler in respect of its payment obligations under the Wholesale Contract up to the Credit Limit. For the avoidance of doubt the credit support under this clause 3.1 is restricted to the Credit Limit and if, at any time during the term of this Agreement, the Credit Support Amount exceeds the Credit Limit the Contracting Retailer shall be required, in accordance with the requirements of the Wholesale Contract, to provide Eligible Credit Support each month on any such excess amount.

3.5 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 Section 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.

3.6 The Contracting Wholesaler may at any time reduce the Credit Limit on 30 days written notice to the Contracting Retailer.

4 DISCLOSURE OBLIGATIONS AND FURTHER ASSURANCE

4.1 The Contracting Retailer acknowledges that the Contracting Retailer's knowledge of the occurrence of a Trigger Event is a fundamental condition upon which the Contracting Wholesaler relies for the entry 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 a Trigger Event has occurred as at the date of this Agreement;

4.1.2 undertakes and agrees to immediately disclose to the Contracting Wholesaler where a negative Credit Score is or is likely to occur that a Trigger Event has occurred or is likely to occur; and

4.1.3 acknowledges and agrees that the Contracting Wholesaler may obtain information about the occurrence of a Trigger Event from sources other than the Contracting Retailer and may, acting reasonably, rely upon knowledge obtained from such information. For the avoidance of doubt, if the Credit Safe Credit Score falls below 6, or a comparable rating from a recognised credit-rating agency, as the client in its discretion may determine, this shall be a Trigger Event.

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 30 days written notice to the Contracting Retailer;

5.2.4 by the Contracting Wholesaler on 30 days written notice to the Contracting Retailer if the Contracting Retailer commits or is believed, on reasonable grounds by the Contracting Wholesaler as likely to commit a material breach of the Wholesale Contract, which, if remediable, is not remedied in accordance with the terms of that contract; or

5.2.5 by the Contracting Wholesaler on written notice in the event the Contracting Retailer becomes a Defaulting Trading Party under the Wholesale Contract; or

5.2.6 subject, so far as possible, to clause 6.7 below, by 30 days written notice, where:

(a) 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 Code

Provided that prior to giving such notice, the Party doing so has given due consideration to: (a) the balance of the respective interests of both Parties; (b) the potential consequences to each Party; and (c) whether the provision(s) relating to the relevant arrangement could be made compliant if some part of it were deleted or modified such as to give effect to the clear intentions of both Parties in entering into this Agreement. In the event that there is a dispute between the Parties as to the reasonableness of a Party's actions under this clause, the Parties shall use their reasonable endeavours to resolve the dispute between them within the 30 days written notice period;

or

- (b) 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 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 termination in any manner 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 co-operate 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 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 COUNTERPARTS AND ELECTRONIC SIGNATURE

8.1 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.

8.2 The Parties agree to sign this Agreement by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the Parties' intention to be bound by this Agreement as if signed by each Party's manuscript signature.

9 GOVERNING LAW AND JURISDICTION

9.1 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.

9.2 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).

This Agreement has been entered into on the date first stated at the beginning of it.

Signed by [NAME]

for and on behalf of Sutton and East Surrey Water
PLC

Director/Authorised Signatory

Date:

in the presence of:

Witness Signature:

Print Name:

Address:

Date:

Signed by [NAME]

for and on behalf of

[INSERT NAME OF CONTRACTING RETAILER]

Director/Authorised Signatory

Date:

in the presence of:

Witness Signature:

Print Name:

Address:

Date: