

DATED: 31 December 2020

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

BETWEEN

SOUTHERN WATER SERVICES LIMITED

and

DAVID LLOYD LEISURE LTD

THIS AGREEMENT is made the 31st day of December 2020

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) **DAVID LLOYD LEISURE LTD**, incorporated in England and Wales with company number 01516226, whose registered office is at The Hangar, Mosquito Way, Hatfield Business Park, Hatfield, Hertfordshire, AL10 9AX (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 27th November 2020, 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 Contracting Wholesaler and the Contracting Retailer have agreed 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 credit worthiness grade.

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 “**Credit Worthiness Grade**” for the purposes of this Agreement means the Contracting Retailer holds a Top Tier Credit Rating from at least two of the three Nominated Credit Reference Agencies and no less than a Second Tier Credit Rating from the one remaining agency of the three Nominated Credit Reference Agencies.
- 1.3 “**Eligible Retailer**” for the purposes of this Agreement means the Contracting Retailer, for so long as:
 - A. it holds and maintains an appropriate Credit Worthiness Grade;
 - and
 - B. no Negative Credit Event has occurred or is continuing in respect of the Contracting Retailer.

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 (and which is not disputed in accordance with the relevant contract) by it pursuant to any borrowing or cash advances owed to a financial 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 defined by Section 123 of the Insolvency Act 1986) as they fall due; or
 - (b) suspends making payments on any of its debts other than in the normal course of business as a going concern; 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 which amount is not disputed in accordance with the relevant terms of that contract), and in the currency in which such amount is payable; or
- D. the Contracting Retailer fails to maintain Credit Worthiness Grade; or
- E. the Contracting Retailer ceases to be the counterparty of the Contracting Wholesaler in relation to the Wholesale Contract.

1.5 **“Nominated Credit Reference Agencies”** for the purposes of this Agreement means Experian, Equifax and Dun & Bradstreet.

1.6 **“Second Tier Credit Rating”** for the purposes of this Agreement means:

Experian	Equifax	Dun & Bradstreet
70 - 89	C – B+	4A3 / 3A2 / 2A1 / 5A3 / 4A2 / 3A1

1.7 **“Top Tier Credit Rating”** for the purposes of this Agreement means:

Experian	Equifax	Dun & Bradstreet
90 - 100	A / A- / A+	4A1 / 5A2 / 5A1

1.8 Clause, paragraph and schedule headings do not affect the interpretation of this Agreement.

1.9 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.

- 1.10 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.
- 1.11 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 and duration

- 2.1 This Agreement shall take effect on the 27th day of November 2020 (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 On each and every such review date, the Contracting Retailer shall affirm to the Contracting Wholesaler that it is an Eligible Retailer in accordance with the terms of this Agreement. This Agreement will automatically terminate if the Contracting Retailer fails to so affirm its eligibility.

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 The Contracting Wholesaler will be responsible for determining the Contracting Retailers Credit Worthiness Grade including validating and monitoring the relevant credit ratings.
- 3.3 If at any time during the term of this Agreement the Contracting Retailer ceases to be an Eligible Retailer by reason only that it ceases to hold an appropriate Credit Worthiness Grade the operation of clause 3.1 of this Agreement shall be suspended temporarily by notice in writing given by the Contracting Wholesaler to the Contracting Retailer, and:
 - 3.3.1 the Contracting Retailer, unless it elects for Pre-payment (as set out in Section 9.2.2 (*Pre-payment of the Primary Charges*) of the Business Terms), shall promptly and without undue delay 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;
 - 3.3.2 unless and until the Contracting Retailer regains its Credit Worthiness Grade the suspension shall remain in place for a period not exceeding 45 days from the date of the suspension notice after which period clause 5.1.2 shall apply.

- 3.4 In the event the Contracting Retailer ceases to be an Eligible Retailer, other than in the circumstances set out in clause 3.3 above, but subject to clause 3.3.2, and/or this Agreement 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 promptly and without undue delay 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 Credit Worthiness Grade 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 as at the date of this Agreement:

4.1.1.1 it does not know and does not have reason to believe that it does not hold Credit Worthiness Grade; and/or

4.1.1.2 it is not aware that a Negative Credit Event is occurring;

4.1.2 undertakes and agrees to promptly disclose to the Contracting Wholesaler the fact that it no longer holds Credit Worthiness Grade or that a Negative Credit Event has occurred if and when that event occurs; and

4.1.3 acknowledges and agrees that the Contracting Wholesaler may obtain information about the maintenance of the Contracting Retailer's Credit Worthiness Grade 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 is not by reason of this Agreement in any way constrained from exercising any and all such rights as are available to it under the Wholesale Contract and/or in accordance with the Wholesale Code; 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:

- 5.1.1 on the termination for any reason of the Wholesale Contract; or
 - 5.1.2 on the expiry of the period of 45 days, as described in clause 3.3.2, after the date of a suspension notice if the suspension remains in place.
- 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:
 - 5.2.1.1 for any reason other than in the circumstances set out in clause 3.3 above the Contracting Retailer ceases to be an Eligible Retailer; or
 - 5.2.1.2 the Agreement has been suspended in accordance with clause 3.3 above on more than two (2) occasions in any twelve (12) month period or on five (5) or more occasions during its term; 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 (as provided for in that 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 the event the Contracting Retailer becomes a Defaulting Trading Party under the Wholesale Contract; or
 - 5.2.5 subject, so far as possible, to clause 6.7 below, by 30 days written notice, where:
 - 5.2.5.1 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 –

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
- 5.2.5.2 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 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-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 on the date first stated at the beginning of it.

SIGNED for and on behalf of
SOUTHERN WATER SERVICES LIMITED

by:
Name:
Authorised Signatory

SIGNED for and on behalf of
DAVID LLOYD LEISURE LTD

by:
Name:
Director / Authorised Signatory