



Alternative Eligible Credit Support Agreement

Heineken UK Limited
and
United Utilities Water Limited

Alternative Eligible Credit Support Agreement

This Agreement is made on 30th September 2019 between

(1) Heineken UK Limited, a company incorporated in Scotland (No.**SC065527**) whose registered office is at is at 3-4 Broadway Park, South Gyle Broadway, Edinburgh, EH12 9JZ ("**Contracting Retailer**"); and

(2) 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 ("**Contracting Wholesaler**")

WHEREAS:

A. The Contracting Wholesaler and the Contracting Retailer entered into a Wholesale Contract for Wholesale Services on 5 June 2019 (the "**Wholesale Contract**"). The Wholesale Contract is entered into pursuant to the Wholesale Retail Code ("the **Code**") issued by the Market Operator, being (alongside with the Market Arrangements Code), the statutory code governing the non-household retail market within the Water Industry. The Wholesale Contract incorporates the Business Terms mandated by the Code.

B. The Wholesale 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 Post Payment, Primary Charges obligations under the Wholesale Contract.

C. The Business Terms require that an Unsecured Credit Allowance shall be available to the Contracting Retailer, where a Contracting Retailer holds a Current Credit Rating (as defined by the Code) or Current Credit Score (as defined by the Code). In addition, the Contracting Retailer is required to ensure the remainder of the Credit Support Amount is met through additional Eligible Credit Support and/or Alternative Eligible Credit Support (as defined by the Code).

D. The Business Terms further state that the parties may agree Alternative Eligible Credit Support for all or part of the Credit Support Amount.

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 Wholesale Contract by enabling the Contracting Wholesaler to provide an Alternative Unsecured Allowance linked to the Maximum Credit Recommendation as recommended by Credit Scoring Agencies.

1. Definitions and Interpretation

1.1. In this Agreement:

- 1.1.1. **Alternative Unsecured Allowance** means an amount equal to 2% (two per cent) of the Maximum Credit Recommendation (save that the Alternative Unsecured Allowance shall not exceed £1 million pounds).
- 1.1.2. **Credit Scoring Agency** has the same meaning as defined in the Code.
- 1.1.3. **Maximum Credit Recommendation** means the Credit Scoring Agency's recommendation as to the maximum amount of credit that should be made available to the Contracting Retailer (calculated by reference to the Current Credit Score of the Contracting Retailer).
- 1.1.4. **Nominated Credit Scoring Agency** means [Dun and Bradstreet] or such other Credit Scoring Agency as may be nominated by the parties by written agreement from time to time.
- 1.1.5. **Other Unsecured Arrangement** means any other arrangement for unsecured credit that the Contracting Wholesaler makes available to retailers and for which the Contracting Retailer may meet the applicable eligibility criteria.

1.2. Unless the context requires otherwise, terms not otherwise defined in this Agreement shall have the meaning ascribed to them in the Wholesale Contract or the Code.

1.2.1 **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 Agreement

3.1 The Contracting Wholesaler and the Contracting Retailer agree that for such period as this Agreement is in effect, the Contracting Retailer shall (as an alternative to the Unsecured Credit Allowance to which the Contracting Retailer is entitled to under the Business Terms and any Other Unsecured Arrangement from time to time) be entitled to elect to benefit from the Alternative Unsecured Allowance, subject to and on the conditions of this Agreement.

3.2 For the avoidance of doubt, the Alternative Unsecured Allowance shall at all times be an alternative to the Unsecured Credit Allowance and any Other Unsecured Arrangement and may only be used independently of the Unsecured Credit Allowance and any Other Unsecured Arrangement from time to time. In no circumstances shall the Contracting Retailer be entitled to combine the Alternative Unsecured Allowance with the Unsecured Credit Allowance and/or any Other Unsecured Arrangement.

3.3 The entitlement of the Contracting Retailer to the Alternative Unsecured Allowance is subject to the following conditions (which shall at all times be a pre-condition of the Contracting Retailer having any entitlement to any unsecured credit in excess of the existing Unsecured Credit Allowance):

3.3 (a) the Contracting Retailer shall at all times hold and maintain a Current Credit Score that translates to a Credit Assessment Score of 9 or 10 (such terms and scores being as set out in Schedule 2F of the Business Terms); and

3.3 (b) The Contracting Retailer shall, at least once in any three (3) month rolling period and at its own cost, provide evidence of its Current Credit Score to the Contracting Wholesaler.

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 Wholesale Contract, and/or is otherwise in breach of the Wholesale Contract; and/or

(b) without prejudice to 3.4(a) above, the Contracting Retailer in any event fails to make payment due under the Wholesale Contract on or before the due date, in accordance with Business Terms, on three occasions in any rolling 12 month period; and/or

(c) the Conditions in clause 3.3 are not met; and/or

(d) the Contracting Wholesaler otherwise has reasonable grounds to believe that the Contracting Retailer will default on its payment obligations under the Wholesale Contract, and in such circumstances the Contracting Wholesaler shall notify the Contracting Retailer in writing and the requirements of the Wholesale Contract relating to the provision of Eligible Credit Support shall continue as though this Agreement was not in force and effect from the date of the written notice.

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 Wholesale Contract, and the rights and remedies of the Contracting Wholesaler in respect of such obligations and liabilities shall be unaffected.

4. Termination of this Agreement

4.1 The Contracting Wholesaler may at its sole discretion terminate this Agreement at any time:

(a) on providing 90 days' notice to the Contracting Retailer, for any reason; 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 not less than 14 days' written notice to the Contracting Wholesaler and such termination shall not be effective until such time as the Contracting Retailer has put alternative arrangements in place to meet its obligations with regard to the payment terms under the Wholesale Contract.

4.3 This Agreement shall automatically terminate on the earlier of: (i) termination or expiry for any reason of the Wholesale 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 under this Agreement to the Contracting Retailer shall cease with immediate effect; and

(b) provided the Wholesale 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 Wholesale Contract. The parties shall co-operate with each other to the extent necessary to ensure compliance with the Wholesale Contract.

4.5 Notwithstanding any other provisions of this Agreement, the provisions of this Agreement shall be amended by the either party from time to time where such amendment is required to satisfy the requirements of any Relevant Legislation (including, for the avoidance of doubt, any order, decision, determination, any change to the Code (or any other statutory code governing the non-household retail market within the Water Industry), or direction of Ofwat or any other competent regulatory authority).

5. General

5.1 Nothing in this Agreement affects:

5.1.1 any choice the Contracting Retailer has of the manner in which it meets the Credit Support Requirement.

5.2 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.

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

5.4 This Agreement supplements the Wholesale Contract. In the event of a conflict between this Agreement and the Wholesale Contract, the terms of the Wholesale Contract shall take precedence.

5.5 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).

5.6 All notices served under this Agreement shall be served in accordance with the requirements of the Wholesale Contract relating to the provision of notices on that party.

5.7 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 Wholesale Contract; and

(b) that in order to comply with Schedule 3, this Agreement shall be published in full on the

Contracting Wholesaler's website; and

(c) that in order to comply with any future changes to the Code (or any other statutory code governing the non-household retail market within the Water Industry), the parties agree that the full terms of this Agreement may be shared with the Market Operator and/or the Authority and may be published in full on the Market Operator's website.

5.8 Save to the extent varied or amended by the arrangements set out in this Agreement, the Wholesale 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.

5.9 Subject to clause 4.5 each party shall only assign, novate or transfer its rights and/or obligations under this Agreement strictly in accordance with the restrictions imposed under the Wholesale Contract.

5.9.1 in the event that the Wholesale Contract is assigned, novated or transferred to another party, this Agreement shall be simultaneously assigned, novated or transferred to the same party so far as they hold and maintains a Credit Assessment Scores of 9 or 10 and in the event that such assignment or novation is not completed, this Agreement shall be deemed to automatically terminate on the date that the Wholesale Contract is assigned or novated.

6. Entire Agreement

6.1 This Agreement, together with the Wholesale 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.

6.2 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.

7. Cumulative Rights

7.1 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.

8. Law and Jurisdiction

8.1 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.

8.2 Without prejudice to the rights of the Authority, 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.

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

Signed and duly authorised by:

For and on behalf of Heineken UK Limited. ("**the Contracting Retailer**")

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For and on behalf of United Utilities Water Limited. ("**the Contracting Wholesaler**")

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