

Schedule 3 of the Business Terms: Alternative Eligible Credit Support Agreement

Affinity Water Limited and
HEINEKEN UK LIMITED

Contract No. WRC0034.1 – 3

This Agreement is made on __/__/____ 11-Dec-2020

PARTIES

- (1) **Affinity Water Limited**, a company incorporated in **England and Wales** (No. **2546950**) whose registered office is at **Tamblin Way, Hatfield, Hertfordshire, AL10 9EZ** (the “**Contracting Wholesaler**”); and
- (2) **Heineken UK Limited**, a company incorporated in **Scotland** (No. **SC065527**) whose registered office is at **3-4 Broadway Park, South Gyle Broadway, Edinburgh, EH12 9JZ** (the Contracting Retailer).

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

BACKGROUND

- (A) This is an agreement for Alternative Eligible Credit Support made pursuant to Schedule 3 of the Business Terms of the Wholesale Contract between the Contracting Retailer and the Contracting Wholesaler dated **03/06/2020** which itself is made pursuant to Section 66D of the Water Industry Act 1991 (the “**Contract**”), and is to be read in conjunction with the Contract.
- (B) Under the Contract, the Contracting Retailer is required to provide and maintain monthly Eligible Credit Support and/or (with the agreement of the Contracting Wholesaler) Alternative Eligible Credit Support for the Credit Support Amount.
- (C) The Parties have agreed to enter into this Alternative Eligible Credit Support agreement (the “**Agreement**”) to enable the Contracting Retailer to, in certain circumstances, reduce the amount of Eligible Credit Support that it provides and maintains.

IT IS AGREED AS FOLLOWS:

1. Under this Agreement:
 - (a) “**Credit Support Adjustment**” shall have the meaning set out in clause 5;
 - (b) “**Discounted Credit Support Amount**” shall have the meaning set in clause 4; and
 - (c) unless defined in this Agreement, all other 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 clause 9 and clause 10 shall continue until 31 March 2022 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 Amount.
4. 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).

5. The Credit Support Adjustment applicable to the Contracting Retailer in each relevant Month will be determined as follows:
- (a) £0 (zero) 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 Contract (excluding amounts relating to Non-Primary Charges and amounts disputed under Section 9.7.2) on two (2) or more occasions within the three (3) Months directly preceding the date of the Credit Support Notice; or
 - (b) £20,000 (twenty thousand pounds sterling) if the Contracting Retailer has either:
 - i. Five (5) or fewer 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
 - ii. Six (6) or more Months payment history with the Contracting Wholesaler and has 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) on one (1) occasion within the three (3) Months directly preceding the date of the Credit Support Notice; or
 - (c) £40,000 (forty thousand pounds sterling) if the Contracting Retailer has six (6) or more Months payment history with the Contracting Wholesaler and 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) within the three (3) Months directly preceding the date of the Credit Support Notice.
6. Nothing in this Agreement affects:
- (a) 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, and/or
 - (b) any choice the Contracting Retailer has under the Contract of the manner in which it meets the Credit Support Requirement,
- and accordingly, the Contracting Retailer may in addition to the Credit Support Adjustment, have access to and use any further discounts available to it as an Unsecured Credit Allowance.
7. The Credit Support Notice issued by the Contracting Wholesaler shall, to the extent applicable, make clear in respect of the Contracting Retailer:
- (a) the Unsecured Credit Allowance, if any, applicable to the Contracting Retailer as appropriate in accordance with Schedule 2E of the Business Terms;
 - (b) the Credit Support Adjustment, if any, applicable to the Contracting Retailer as appropriate in accordance with the terms of this Agreement,
- and upon written request from the Contracting Retailer the Contracting Wholesaler shall provide to the Contracting Retailer a report of the Contracting Retailer's payment performance on which the applicable Credit Support Adjustment, if any, has been calculated.
8. Nothing in this Agreement shall affect the Credit Support Requirement as calculated under the Contract.
9. This Agreement will automatically terminate on the termination, for any reason, of the Contract.
10. This Agreement may be terminated:
- (a) by the Contracting Retailer on written notice to the Contracting Wholesaler; or

- (b) by the Contracting Wholesaler on 30 days written notice to the Contracting Retailer; or
- (c) if the Contracting Retailer becomes a Defaulting Trading Party under the Contract, or is otherwise in breach of the Contract; or
- (d) the Contracting Wholesaler otherwise has reasonable grounds to believe that the Contracting Retailer will default on its payment obligations under the Contract; or
- (e) by either Party in the event that replacement Alternative Eligible Credit Support arrangements take effect between the Parties.

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.

11. The Contracting Retailer acknowledges and agrees:
 - (a) that it is entering into this Agreement as a means of providing Alternative Eligible Credit Support within the meaning of the Contract and pursuant to Schedule 3 of the Contract; and
 - (b) that in order to comply with Schedule 3 of the Contract, the Contracting Wholesaler will notify the Authority and the Market Operator in full, all the terms of this Agreement including the identity of the Contracting Retailer within five (5) Business Days of entering into the Agreement; and
 - (c) that in order to comply with Schedule 3 of the Contract, this Agreement shall be published in full on the Contracting Wholesaler's website.
12. No variation of this Agreement shall be effective unless it is in writing and signed by or by duly authorised representatives on behalf of each Party.
13. Except as and only to the extent provided in this Agreement, the Contract remains in full force and effect.
14. In the event of a conflict between this Agreement and the Contract, the terms of the Contract shall take precedence.
15. 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.
16. Any notices under this Agreement shall be served in accordance with the provisions of the Contract.
17. 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.
18. 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.

