

THIS DEED OF GUARANTEE is made on

2022

BY

[RETAILER COMPANY NAME] a company incorporated under the laws of England & Wales whose registered office is at [Enter Address] (the "Guarantor").

IN FAVOUR OF

South West Water Limited, a company incorporated under the laws of England & Wales whose registered office is at Peninsula House, Rydon Lane, Exeter EX2 7HR (the "Counterparty").

WHEREAS

- (A) The Counterparty, as Contracting Wholesaler, has entered into a Wholesale Contract with a Contracting Retailer [RETAILER COMPANY NAME] ("Obligor") (such agreement and its schedules, (which for the avoidance of doubt incorporate the Business Terms) together with confirmations exchanged between the Obligor and the Counterparty pursuant thereto, in each case as amended from time to time, the ("Contract");
- (B) the credit support requirements contained within the Business Terms of the Wholesale Retail Code require the Obligor to provide any means, or combination of means of Eligible Credit Support and/or Alternative Eligible Credit Support as defined within the Business Terms for an aggregated sum at least equal to the Credit Support Amount;
- (C) the Guarantor does not maintain an investment grade credit rating and cannot therefore enter into a guarantee on the basis described in the Wholesale-Retail Code but wishes to provide a form of alternative eligible credit support, and with that being the case;
- (D) the Guarantor and the Counterparty have negotiated the terms of this Guarantee and the Guarantor has agreed to provide a guarantee in favour of the Counterparty at the request and on behalf of the Obligor, and the Counterparty and the Guarantor have agreed to the following terms on the basis that the Guarantor has shadow metrics applicable to their sector such as gearing, interest cover, FFO:net debt and debt: EBITDA where such metrics may equate to a shadow investment grade rating (the standard accepted shadow rating) equivalent to BBB- or higher from S&P or Fitch, Baa3 or higher by Moody's and having regards to:
  - i the scale and size of the Guarantor;
  - ii the business profile, competitive profile and reputation of the Guarantor; and
  - iii the stability/predictability of any regulatory regime relating to the Guarantor.
- (E) The Counterparty agrees that in the case of the Guarantor, that while Guarantor does not meet the shadow metrics set out in D, the Counterparty shall accept the Guarantor's investment rating so long as it remains within one (1) point below the standard accepted shadow rating subject to the terms of this agreement.

NOW THIS DEED OF GUARANTEE WITNESSES as follows:

**1 Guarantee**

1.1 The Guarantor hereby irrevocably and unconditionally guarantees to the Counterparty the due and punctual immediate payment of a sum equal to the Credit

Support Amount which represents a proportion of the all Primary Charge amounts from time to time payable by the Obligor under the Contract when the same become due and payable, whether on invoice, in accordance with a Settlement Report, upon demand, upon declaration of termination or otherwise, in accordance with the terms of the Contract and giving effect to any applicable grace period ("**Guaranteed Obligations**") and agrees that, upon failure of the Obligor punctually to pay any such Guaranteed Obligations, the Guarantor shall pay or cause to be paid such Guaranteed Obligations to the Counterparty, provided that the Guarantor shall have no liability under this clause 1 in respect of any such Guaranteed Obligations unless and until it has received written demand from the Counterparty in respect thereof (but a delay by the Counterparty in giving such demand shall in no event affect the Guarantor's obligations under this Guarantee).

- 1.2 The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 1.1 agrees to indemnify and keep indemnified the Counterparty in full and on demand against the Guaranteed Obligations not being recoverable for any reason or any failure of the Obligor to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations. Provided however, that this indemnity shall be limited to the amount that the Guarantor would have been liable for (subject to the cap in clause 2.6) had the Guaranteed Obligations not been void or unenforceable.
- 1.3 Each payment made by the Guarantor under this Guarantee shall be made in full in pounds sterling, without set-off, and free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Counterparty receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 1.4 If demand for payment is made by the Counterparty hereunder and the Counterparty's written demand conforms to the terms and conditions hereof, payment shall be made to the Counterparty no later than five (5) Business Days after the date the demand is received by the Guarantor.
- 1.5 If the Guarantor fails to make any payment due to the Counterparty under this Guarantee by the due date for payment, in accordance with the terms of clause 1.3 above, the Guarantor shall pay interest on the overdue amount at the rate of four (4) per cent per annum above the Bank Base Rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 1.6 The Guarantor agrees to be bound by any decision made in accordance with the dispute resolution procedure contained within the Business Terms as to the amount payable to the Counterparty by the Obligor under the Contract and that such decision shall be conclusive evidence for the purposes of this Guarantee that such amount is due and payable.
- 1.7 For the avoidance of doubt, in respect of any Guarantee issued before the Go Live Date, the Contracting party shall not be entitled to make any demand or claim under this Guarantee until on or after the Go Live Date.

## 2 **Preservation of Rights**

- 2.1** The obligations of the Guarantor contained in this Guarantee shall:
- 2.1.1 be deemed to be undertaken as principal obligor and not merely as surety; and
  - 2.1.2 constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever and shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the Obligor's obligations to pay Primary Charges under or in respect of the Contract and shall continue in full force and effect for so long as the Contract remains in effect and thereafter until all amounts due from the Obligor under or in respect of the Contract have been paid and all other actual or contingent obligations of the Obligor to pay any amounts thereunder or in respect thereof have been satisfied in full.
- 2.2** Neither the obligations of the Guarantor contained in this Guarantee nor the rights, powers and remedies conferred upon the Counterparty by this Guarantee or by law shall be discharged, impaired or otherwise affected by:
- 2.2.1 the winding-up, dissolution, administration, reorganisation or moratorium of the Obligor or any other person or any change in its status, function, control or ownership;
  - 2.2.2 any of the obligations of the Obligor under or in respect of the Contract becoming illegal, invalid, unenforceable or ineffective in any respect;
  - 2.2.3 any time or other indulgence (including for the avoidance of doubt, any composition) being granted or agreed to be granted to the Obligor or any other person in respect of any of such obligations;
  - 2.2.4 any amendment to, or any variation, waiver or release of the Contract however fundamental; or
  - 2.2.5 any other act, event or omission which, but for this sub-clause, might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this Guarantee or any of the rights, powers or remedies conferred upon the Counterparty by this Guarantee or by law.
- 2.3** Any settlement or discharge between the Guarantor and the Counterparty shall be conditional upon no payment to the Counterparty by the Obligor or any other person on the Guarantor's behalf being avoided or reduced by virtue of any laws relating to bankruptcy, insolvency, liquidation or similar laws of general application for the time being in force and, in the event of any such payment being so avoided or reduced, the Counterparty shall be entitled to recover the amount by which such payment is so avoided or reduced from the Guarantor subsequently as if such settlement or discharge had not occurred.
- 2.4** Except as required under the Contract, the Counterparty shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by law to make any demand of the Obligor, to take any action or obtain judgment in any court against the Obligor or to make or file any claim or proof in a winding-up or dissolution of the Obligor.
- 2.5** Until all Primary Charge amounts which may be or become payable by the Obligor under the Contract have been irrevocably paid in full to the Counterparty, the Guarantor shall not exercise any security or other rights or pursue any claims it has

against the Obligor whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise. Nothing under this Guarantee will prevent the Guarantor from exercising its rights, in whole or in part, to take distributions from the Obligor.

- 2.6** The Guarantor shall on a full indemnity basis pay to the Counterparty on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any value added tax on those costs and expenses) which the Counterparty incurs in connection with the preservation, or exercise and enforcement, of any rights under or in connection with this Guarantee or any attempt so to do.

### **3 Representations and Warranties**

- 3.1** The Guarantor represents to the Counterparty as at the date of this Guarantee (which representations shall be deemed to be repeated by the Guarantor on each date on which a Primary Charge under the Contract is due) that:

3.1.1 it is duly organised and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

3.1.2 its execution, delivery and performance of this Guarantee have been and remain duly authorised by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

3.1.3 all consents, authorisations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

3.1.4 this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganisation or other similar laws affecting the enforcement of creditors' rights or by general equity principles; and

3.1.5 that it has and maintains at all time for the duration of this Guarantee, a minimum credit rating or within one (1) point below such ratings as set out in Whereas (D) i, ii, iii:

### **4 General**

- 4.1** The Guarantee shall commence on 1 April 2022 and shall expire on 31 March 2023 (the "**Expiry Date**").

- 4.2** Any demand by the Counterparty under this Guarantee must be received by the Guarantor on or before the Expiry Date and any demand received by the Guarantor after the Expiry Date shall be ineffective.

**4.3** Unless the context otherwise requires, terms not otherwise defined in this Guarantee shall have the meaning ascribed to them in the Wholesale Retail Code in force as at the date of this Guarantee. Any demand or other notice to the Guarantor hereunder shall be given to its address stated above (or such other address as it may from time to time specify).

**4.4** The Counterparty may not assign or transfer any of its rights or obligations under this Guarantee without the prior written consent of the Guarantor such consent not to be unreasonably withheld, delayed or caveated and any such assignment shall not release the Guarantor from liability under this Guarantee.

**5 Law and Jurisdiction**

**5.1** This Deed of Guarantee 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.

**5.2** The courts of England and Wales have exclusive jurisdiction to settle any dispute (including any non-contractual dispute) arising from or connected with this Deed of Guarantee (including a dispute regarding the existence, validity or termination of this Deed of Guarantee) or the consequences of its nullity. The Guarantor agrees that the courts of England and Wales are appropriate and convenient courts to settle any such dispute and, accordingly, that it will not argue to the contrary.

This Guarantee has been executed as a deed by the Guarantor and is intended to be and is hereby delivered by it as a deed on the date specified above.

**EXECUTED and DELIVERED**

as a **DEED** by **[RETAILER COMPANY NAME]**

acting by a Director and its Company Secretary or two Directors:

.....

Director

.....

Director/ Company Secretary

