

**DATED 15<sup>th</sup> April 2025**

**SOUTH STAFFORDSHIRE WATER PLC**

- and -

**SMARTA WATER LIMITED**

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**Alternative Payment Terms Agreement**

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**South Staffs Water**

Green Lane, Walsall, West Midlands WS2 7PD

**THIS AGREEMENT** is made on **15<sup>th</sup> April** 2025

**Between**

- (1) SOUTH STAFFORDSHIRE WATER PLC** (Company no. 2662742) whose registered office is at Green Lane, Walsall, West Midlands, WS2 7PD ("**the Contracting Wholesaler**"); and
- (2) SMARTA WATER LIMITED** whose registered office is at **North House Elland Road, Morley, Leeds, West Yorkshire, LS27 8QZ** (Company number 09896052 ("**the Contracting Retailer**").

each a "**party**" and together the "**parties**".

**BACKGROUND**

- A.** Pursuant to the Wholesale Contract, the Contracting Wholesaler has agreed to provide Wholesale Services (as defined in the Wholesale Contract) to the Contracting Retailer.
- B.** As part of the implementation of a competitive retail market for non- household water and sewerage retailers, Ofwat requires market participants to adhere to certain requirements as set out in the WRC.
- C.** Pursuant to the WRC, the Contracting Retailer is required to pay the Primary Charges to the Contracting Wholesaler, in accordance with the provisions of the WRC.
- D.** The Contracting Wholesaler and the Contracting Retailer have agreed Alternative Payment Terms as provided for in Section 9.2.4 and Schedule 3A of the Business Terms of the WRC, and this Agreement sets out those terms.
- E.** This Agreement shall take effect on the date hereof and unless terminated earlier in accordance with its terms shall continue in full force and effect for the Applicable Period.

**1 Definitions and Interpretation**

Capitalised terms used but not defined herein shall have the meanings given to them in the Wholesale-Retail Code ("**WRC**").

- 1.1 "**Applicable Period**" means 1 April 2025 to 30 June 2025.
- 1.2 "**Business Day**" means a day (other than a Saturday, Sunday, or public holiday) when banks in London are open for business.
- 1.3 "**Business Terms**" means the Business Terms contained at Schedule 1 Part 2 of the Wholesale Contract.
- 1.4 "**Credit Support**" means the forms of credit support available to the Contracting Retailer in relation to the Alternate Payment Terms as specified in Section 9.11.4 and 9.11.5, and Schedule 2A Key Terms, Schedule 2B Key Terms, Schedule 2C Key Terms, Schedule 2D Key Terms and the Schedule 3 Key Terms of the Business Terms.
- 1.5 "**Eligible Payment Retailer**" means the Retailer, for so long as:

- 1.5.1 no Negative Credit Event has occurred or is continuing;
- 1.5.2 Credit Support has been lodged in full through one of the forms referenced in section 9.11.4 and 9.11.5 of the Business Terms to cover the 40 days additional liability; and
- 1.5.3 all conditions precedent under the Wholesale Contract for Wholesale Services are always maintained.
- 1.6 **"Negative Credit Event"** means any of the following arising:
  - 1.6.1 the failure by the Retailer to pay, within 10 Business Days of the due date, any amount payable by it pursuant to any debt due to any lender and in the currency in which such amount is payable;
  - 1.6.2 The Retailer:
    - 1.6.2.1 is unable or admits inability to pay its debts as they fall due; or
    - 1.6.2.2 suspends making payments on any of its debts; or
    - 1.6.2.3 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
    - 1.6.2.4 the failure by the Retailer to pay any amount payable to the Wholesaler or any other wholesaler, under the Wholesale Contract, the WRC, the Market Arrangements Code or otherwise, and in the currency in which such amount is payable within 10 Business Days of the due date on more than three occasions in any calendar year; or
    - 1.6.2.5 the failure by the Retailer to pay any amount payable to the Wholesaler or any other wholesaler, under the Wholesale Contract, the WRC, the Market Arrangements Code or otherwise, and in the currency in which such amount is payable for more than 10 Business Days of the due date; or
    - 1.6.2.6 the Retailer ceases to be the counterparty of the Wholesaler in relation to the Wholesale Contract.
- 1.7 **"Ofwat"** means the Water Services Regulation Authority, also known as Ofwat, established by section 1A of the Water Industry Act 1991.
- 1.8 **"Wholesale Contract"** means the wholesale contract dated 30TH March 2017 between the Wholesaler and the Retailer.
- 1.9 **"WRC"** means the Wholesale-Retail Code issued by Ofwat under sections 66DA and 117F of the Water Industry Act 1991 including, without limitation, the Business Terms, the Operational Terms and the Market Terms and any Approved Change from time to time.
- 1.10 Clause and paragraph headings do not affect the interpretation of this Agreement.
- 1.11 A reference to a clause is a reference to a clause of this Agreement.
- 1.12 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

- 1.13 A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated.
- 1.14 Unless the context otherwise requires words in the singular include the plural and, in the plural, include the singular.
- 1.15 Unless the context otherwise requires a reference to one gender includes a reference to the other genders.
- 1.16 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.
- 1.17 A reference to writing or written includes e-mail.
- 1.18 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.19 Where the context permits, other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.20 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 in that jurisdiction.
- 1.21 The contents list, headings and any descriptive notes are for ease of reference only and shall not affect the construction or interpretation of this Agreement.

## **2 Payment Terms**

- 2.1 Where the Pre-Payment option has been selected by the Contracting Retailer pursuant to Section 9.2.1 of the Business Terms for the Applicable Period:
  - 2.1.1 This Agreement will only apply to the P1 Settlement Run
  - 2.1.2 Where the Contracting Retailer receives an invoice for the P1 Settlement Run, payment must be a minimum of 75% of the P1 value to be paid no later than 10 Business Days prior to the start of Month X.
  - 2.1.3 The remaining balance of an invoice for the P1 Settlement Run following receipt of a payment pursuant to clause 2.1.2 will be classed as a Deferred Payment and subject to clause 2.3.
- 2.2 Where the Post-Payment option has been selected by the Contracting Retailer pursuant to Section 9.2.1 of the Business Terms for the Applicable Period:
  - 2.2.1 This Agreement will only apply to the R1 Settlement Run, with no adjustment to:

- 2.2.1.1 the P1 Credit Support Notice for the Applicable Period
  - 2.2.1.2 any discounts already applied through UCA
  - 2.2.1.3 any discounts already applied through the Contracting Wholesaler's Alternative Eligible Credit Support Agreement
- 2.2.2 Where the Contracting Retailer receives a consolidated invoice for the R1-RF Settlement Runs, payment must be a minimum of 75% of the R1 net value plus 100% of the displayed R2, R3, RF & VAT values to be paid no later than the original due date of 30 days after the end of Month X.
- 2.2.3 The remaining balance of an invoice for the R1-RF Settlement Runs following receipt of a payment pursuant to clause 2.2.2 will be classed as a Deferred Payment and subject to clause 2.3.
- 2.3 All Deferred Payments are to be paid in full by the due date of the R2 invoice for the month (Month X of the Applicable Period).
- 2.4 Any late or reduced payments below the minimum percentages set out in clauses 2.1, 2.2 and 2.3 will result in the outstanding balance being classed as late and will be subject to late payment processes as per the Business Terms and may impact any held Alternative Eligible Credit Agreement.
- 2.5 Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed as amending the calculation of the Credit Support Amount as between the Parties in accordance with the WRC.

### **3 Disclosure**

- 3.1 The parties agree that the Contracting Wholesaler shall be entitled to fully disclose an executed copy of this Agreement on its website, in compliance with the provisions of Paragraph 8 of Schedule 3A to the Business Terms of the WRC.
- 3.2 The Contracting Wholesaler undertakes to the Contracting Retailer that it shall publish an executed copy of this Agreement (including the identity of the Contracting Retailer) on its website within 5 Business Days of the date hereof.

### **4 Termination**

- 4.1 This Agreement shall terminate:
  - 4.1.1 simultaneously with the termination of the Wholesale Contract, unless otherwise agreed between the parties; or
  - 4.1.2 upon the Contracting Retailer ceasing to be an Eligible Payment Retailer; or
  - 4.1.3 if 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.

## **5 Assignment**

- 5.1 No party may assign or grant any encumbrance over or deal in any way with any of its rights under this Agreement or any document referred to in it.
- 5.2 Each person that has rights under this Agreement is acting on its own behalf.

## **6 Whole Agreement**

- 6.1 Save for the Wholesale Contract, this Agreement is the entire agreement between the Parties and replaces all previous written or oral agreements, representations, and understandings between them, relating to its subject matter.

## **7 Variation and Waiver**

- 7.1 Subject at all times to the provisions of the WRC:
  - 7.1.2 a variation of this Agreement shall be in writing and signed by or on behalf of each party;
  - 7.1.3 any waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving or consenting party and it applies only in the circumstances for which it is given and shall not prevent the party who has given the waiver or consent from subsequently relying on the provision it has waived;
  - 7.1.3 no failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof;
  - 7.1.4 no single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy; and
  - 7.1.5 unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

## **8 Costs**

- 8.1 Unless otherwise provided, all costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

## **9 Notice**

- 9.1 Any notices under this Agreement shall be served in accordance with the provisions of the Wholesale Contract.

## **10 Severance**

- 10.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 10.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **11 Third Party Rights**

- 11.1 This Agreement and the documents referred to in it are made for the benefit of the parties to them and their successors and permitted assigns, and are not intended to benefit, or be enforceable by, anyone else and a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, this Agreement.

## **12 Successors**

- 12.1 The rights and obligations of the parties shall continue for the benefit of and shall be binding on their respective successors and assigns.

## **13 Counterparts**

- 13.1 This Agreement may be executed and delivered 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.
- 13.2 Any party may enter into this Agreement by executing a counterpart and this Agreement shall not take effect until it has been executed and delivered by all parties.

## **14 Governing Law and Jurisdiction**

- 14.1 This Agreement shall be governed by and construed in accordance with English law, and the English courts shall have exclusive jurisdiction to determine any dispute arising in connection with it.

### **SIGNATORIES**

This Agreement has been entered into as a deed and delivered on the date stated at the beginning of it.

SIGNED on behalf of the Contracting Wholesaler

By	  .....	"Name"
	  .....	"Position"

SIGNED on behalf of the Contracting Retailer

By	  .....	"Name"
	  .....	"Position"