# Schedule 3A – Alternative Payment Terms Agreement (APT 90)

**between**

**Yorkshire Water Services Limited**

**and**

**Water 2 Business Limited**

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**THIS AGREEMENT** is made as a Deed on .....

**BETWEEN**

(1) **YORKSHIRE WATER SERVICES LIMITED** incorporated and registered in England and Wales with company number 02366682 whose registered office is at Western House, Halifax Road Bradford, West Yorkshire, BD6 2SZ (the **"Wholesaler");** and

(2) **WATER 2 BUSINESS LIMITED** incorporated and registered in England with company number 08518831 whose registered office is at 21e Somerset Square, Nailsea, Bristol, BS48 1RQ (the **"Retailer");**

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

**BACKGROUND**

(A) Pursuant to the Wholesale Contract, the Wholesaler has agreed to provide Wholesale Services (as defined in the Wholesale Contract) to the 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 Retailer is required to pay the Primary Charges to the Wholesaler, in accordance with the provisions of the WRC.

(D) The Retailer and the Wholesaler have agreed Alternative Payment Terms as provided for in Section 9.2.4 and Schedule 3.1 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 provided the Retailer is an Eligible Payment this agreement shall continue until 31st March 2026 when it shall automatically terminate unless otherwise agreed in writing by the parties.

# 1 Definitions and Interpretation

Capitalised terms used but not defined herein shall have the meanings given to them in the WRC.

1.1 **"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

1.2 **"Eligible Payment Retailer"** means the Retailer, for so long as:

1.1.1 no Negative Credit Event has occurred or is continuing;

1.1.2 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

1.1.3 all conditions precedent under the Wholesale Contract for Wholesale Services are always maintained

1.3 **"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.

1.4 **"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary.

1.5 **"Negative Credit Event"** means any of the following arising:

1.1.4 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;

1.1.5 the Retailer:

1.1.5.1 is unable or admits inability to pay its debts as they fall due;

1.1.5.2 suspends making payments on any of its debts; or

1.1.5.3 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;

1.1.6 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

1.1.7 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

1.1.8 the Retailer ceases to be the counterparty of the Wholesaler in relation to the Wholesale Contract.

1.6 **"Ofwat"** means the Water Services Regulation Authority, also known as Ofwat, established by section 1A of the Water Industry Act 1991.

1.7 **"Subsidiary"** means a subsidiary within the meaning of section 1159 of the Companies Act 2006 or a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 but for the purposes of section 1159(1) or 1162(2) of the Companies Act 2006 a company shall be treated as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or **in** connection with the taking of security or (b) its nominee.

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 **"WRC Compliant"** means that Ofwat has not issued any statement or made any other announcement that or to the effect, or the Wholesaler has not provided reasonable evidence that Ofwat has otherwise indicated that this Agreement does not meet the criteria to qualify as Alternative Payment Terms in accordance with the WRC.

1.11 Clause and paragraph headings do not affect the interpretation of this Agreement.

1.12 A reference to a clause is a reference to a clause of this Agreement.

1.13 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.

1.14 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated.

1.15 Unless the context otherwise requires words in the singular include the plural and, in the plural, include the singular.

1.16 Unless the context otherwise requires a reference to one gender includes a reference to the other genders.

1.17 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.

1.18 A reference to **writing or written** includes e-mail.

1.19 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.

1.20 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.21 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.

1.22 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 Provided the Retailer is an Eligible Payment Retailer, then during the term of this Agreement and with reference to:

2.1.1 Section 9.2.3(c) of the Business Terms of the WRC, the R1 Monthly Charge in respect of Month X shall be paid by the Contracting Retailer to the Contracting Wholesaler in accordance with Section 9.6; and

2.1.2 Section 9.3.8 of the Business Terms of the WRC, the Balances in respect of Month X shall be paid by the Contracting Retailer to the Contracting Wholesaler in accordance with Section 9.3.9 of the Business Terms of the WRC by the later of:

(i) Y days after day Z of Month X;
(ii) or (ii) fifteen (15) days after the date that the invoice from the Contracting Wholesaler is received.

For the purposes of this clause:

Y days is equal to 90 days or such other number of days as may be agreed or is deemed to have been agreed between (1) the Wholesaler, any Holding Company of the Wholesaler or any Subsidiary of such Holding Company and (2) the Retailer; and

Z means the last day of Month X unless and until Z is agreed or deemed to be agreed by such persons to be a different specific day in a calendar month.

2.2 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 Wholesaler shall be entitled to fully disclose an executed copy of this Agreement on its website, in compliance with the provisions of Paragraph 5 of Schedule 3.1 to the Business Terms of the WRC.

3.2 The Wholesaler undertakes to the Retailer that it shall publish an executed copy of this Agreement (including the identity of the Retailer) on its website within 5 Business Days of the date hereof.

# 4 Further Assurance

4.1 Each Party shall (at their own expense) 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 shall terminate:

5.1.1 simultaneously with the termination of the Wholesale Contract, unless otherwise agreed between the parties; or

5.1.2 upon three months' written notice, where either party, acting reasonably and in good faith, determines that any of the arrangements pursuant to this Agreement are not WRC compliant (and, for the avoidance of doubt, in such circumstance, the Wholesale Contract shall continue in full force and effect); or

5.1.3 Upon the Retailer ceasing to be an Eligible Payment Retailer; or

5.1.4 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.

# 6 Assignment

6.1 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.

6.2 Each person that has rights under this Agreement is acting on its own behalf.

# 7 Whole Agreement

7.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

7.2 Nothing in this Agreement is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.

7.3 Each of the Retailer and the Wholesaler agree and acknowledge that, in entering into this Agreement, it is not relying on any representation, warranty or undertaking not expressly incorporated into it or any other agreement entered into pursuant to this Agreement,

# 8 Variation and Waiver

8.1 Subject at all times to the provisions of the WRC:

8.1.1 a variation of this Agreement shall be in writing and signed by or on behalf of each party;

8.1.2 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;

8.1.3 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;

8.1.4 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

8.1.5 unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

# 9 Costs

9.1 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.

# 10 Notice

10.1 A notice given under this Agreement:

10.1.1 shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

10.1.2 shall be sent for the attention of the person, and to the address given in clause 10.3 (or such other address or person as the relevant party may notify to the other party); and

10.1.3 shall be:

10.1.3.1 delivered personally; or

10.1.3.2 delivered by commercial courier; or

10.1.3.3 sent by pre-paid first-class post or recorded delivery; or

10.1.3.4 (if the notice is to be served by post outside the country from which it is sent) sent by airmail.

10.2 The addresses for service of notice are:

**Wholesaler**:

Address: its registered office address

For the attention of: Wholesale Market Services Manager

**Retailer**:

Address: its registered office address

For the attention of: Managing Director

10.3 A notice is deemed to have been received:

10.3.1 if delivered personally, at the time of delivery; or

10.3.2 if delivered by commercial courier, at the time of signature of the courier's receipt; or

10.3.3 if sent by pre-paid first class post or recorded delivery, 48 hours from the date of posting; or

10.3.4 if sent by airmail, five days from the date of posting; or

10.3.5 if deemed receipt under the previous paragraphs of this clause 10.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a Business Day), when business next starts in the place of deemed receipt.

# 11 Severance

11.1 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.

11.2 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.

# 12 Third Party Rights

12.1 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.

## 13 Successors

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

## 14 Counterparts

14.1 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.

14.2 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.

## 15 Language

15.1 If this Agreement is translated into any language other than English, the English language text shall prevail.

## 16 Governing Law and Jurisdiction

16.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

16.2 The parties irrevocably agree that the courts of England 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).

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