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Market Arrangements Code

Change History

Version Number	Date of Issue	Reason For Change	Change Control Reference	Sections Affected

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Market Arrangements Code

Introduction

This is the Market Arrangements Code ("Market Arrangements Code") referred to in ~~standard condition B1 of the Licence and condition R3 of the Appointment~~~~[licence]~~~~[appointment]~~~~condition [x]~~.

1. Commencement and term

1.1.1 This Market Arrangements Code will come into force on the ~~Effective Date~~ Go Live Date and will remain in full force and effect in respect of:

- (a) the Market Operator, unless and until it is replaced by a Successor Market Operator; or
- (b) a Wholesaler, until that Wholesaler's Appointment is revoked; or
- (c) a Retailer, until that Retailer's Licence is revoked; or
- (d) a Wholesaler, until that Wholesaler meets the Cessation of Trading Conditions in relation to its Area, providing it would not be a breach of that Wholesaler's Appointment for the Market Arrangements Code to cease to be in force in respect of such Wholesaler; or
- (e) a Retailer, until that Retailer meets its Cessation of Trading Conditions in relation to all Areas it previously traded in, providing it would not be a breach of that Retailer's Licence for the Market Arrangements Code to cease to be in force in respect of such Retailer; or
- (f) a Retailer, until that Retailer's participation in the Competitive Market has ended; or
- (g) the Market Operator and all Trading Parties together, until this Market Arrangements Code is terminated ~~in accordance with Section 13 (Termination of the Market Arrangements Code)~~.

1.1.2 A Party ceasing to be a Party to this Market Arrangements Code shall be without prejudice to any accrued rights and liabilities of that Party prior to the date of it

ceasing to be a Party and shall not affect any continuing obligations of that Party under this Market Arrangements Code.

- 1.1.3 The Parties shall cooperate to ensure each Party in respect of whom the Market Arrangements Code has ceased to have effect in accordance with Section 1.1.1 is removed as a Party to the Framework Agreement (where relevant) and the Market Arrangements Code and where such Party is a Trading Party, that they are removed as a Member of the Market Operator.

2. Becoming a Party

- 2.1.1 Each Original Party has signed the Framework Agreement to become a Party to the Market Arrangements Code and to be contractually bound by the Market Arrangements Code.

- 2.1.2 The Parties shall admit as an additional Party following the process in Section 2.1.3, any person who is not at that time already a Party provided that the Applicant:

- (a) holds an Appointment or a Licence (as appropriate);
- (b) completes and delivers to the Market Operator a complete and accurate Trading Application; and
- (c) successfully completes Market Entry Assurance.

- 2.1.3 Subject to meeting the requirements of Section 2.1.2, the Market Operator Secretary shall deliver to the Applicant and the Applicant shall sign and return an Accession Agreement. The Applicant will become a Party and be contractually bound by the Framework Agreement and the Market Arrangements Code from the date specified in such Accession Agreement. The Parties from time to time authorise the Market Operator to enter into Accession Agreements as agent for and on behalf of such Parties.

- 2.1.4 The Market Operator shall promptly notify all Trading Parties and the Authority of the execution and delivery of each Accession Agreement.

3. Market Operator duties, appointment and removal

3.1 Market Operator duties

3.1.1 The Market Operator shall:

- (a) fulfil the role of the Market Operator and carry out the obligations of the Market Operator as set out or referred to in the Wholesale-Retail Code, in particular the Market Terms, the Code Subsidiary Documents and the Disputes Procedure;
- (b) carry out its obligations as set out in this Market Arrangements Code in accordance with the terms of this Market Arrangements Code;
- (c) fulfil the role of the Market Operator and carry out the obligations of the Market Operator in relation to each Undertaker that comprises both an Undertaker Wholesale Business and an Undertaker Retail Business as ~~set out in~~ modified by the provisions of Schedule 8;
- (d) carry out any activities reasonably ancillary thereto;
- (e) without prejudice to that generality, provide support and assistance to the Trading Parties, the Panel and any Panel committee in respect of the change processes described in the Market Arrangements Code; and
- (f) shall not undertake any business or activity other than as set out in this Section 3.1.1.

3.1.2 In carrying out its role as described in Section 3.1.1, the Market Operator shall:

- (a) exercise all due skill, care and attention;
- (b) act independently of the interests of any market participant or group of market participants and at all times act in the best interests of the market as a whole;
- (c) act impartially and show no undue preference in its relationship with and no discrimination between market participants; and
- (d) in the absence of any prescribed time period, act promptly when taking any action it is required to take.

For the avoidance of doubt nothing in the Market Arrangements Code shall be construed to prevent the Market Operator from discharging any duty or obligation which is required by any other Law or shall prejudice or affect the rights, remedies, powers, liabilities, functions, duties or obligations of the Market Operator under such Law.

3.2 Appointment and removal of Market Operator

3.2.1 Incorporation of and appointment of Market Operator

Each Wholesaler and each Retailer shall cooperate to ensure the establishment and operation of a company to be the Market Operator.

The first Market Operator shall be the company appointed by the Wholesalers and Retailers.

3.2.2 Removal of Market Operator

If for any reason, the first or any subsequent Market Operator is, to be replaced by a Successor Market Operator,

- (a) the Trading Parties shall exercise their rights as Members to procure that:
 - (i) the departing Market Operator shall, and, to the extent they are able to do so, procure that any Successor Market Operator shall, carry out the transfer and exit duties set out in Schedule 4 (Market Operator exit plan and transfer provisions) and the provisions of that Schedule shall apply to any transfer of assets and/or liabilities to the Successor Market Operator;
 - (ii) the departing Market Operator is removed as a Party to the Framework Agreement and the Market Arrangements Code; and
 - (iii) the Successor Market Operator becomes a Party to the Framework Agreement and the Market Arrangements Code following the process in Section 3.2.2(b).
- (b) the Panel shall nominate a Trading Party who has an employee who is a Panel Member to enter into an Accession Agreement with the Successor Market Operator as agent for and on behalf of the Parties. The

nominated Trading Party shall enter into an Accession Agreement with the Successor Market Operator. The Successor Market Operator will become a Party and be contractually bound by the Framework Agreement and the Market Arrangements Code from the date specified in such Accession Agreement. The Successor Market Operator shall promptly notify all Trading Parties and the Authority of the execution and delivery of such Accession Agreement.

3.2.3 **Market Operator no longer required**

- (a) Where the Market Operator is no longer required to fulfil the duties of the Market Operator due to termination of the Market Arrangements Code ~~in accordance with Section 13 (Termination of the Market Arrangements Code)~~, then the Trading Parties shall exercise their rights as Members to comply with any request from the Board to pass the resolutions required to conduct an orderly winding up of the Market Operator.
- (b) On such an orderly winding up of the Market Operator and after payment or settlement of all liabilities of the Market Operator, any amount which would otherwise be available for distribution to the members of the Market Operator shall be paid to Trading Parties in the same proportions as they pay Wholesaler Market Operator Charges and Retailer Market Operator Charges at the time of such winding up.

3.3 **Market Operator escrow arrangements**

The Market Operator shall enter into the escrow arrangements set out in Schedule 5 (Market Operator escrow arrangements) and shall maintain such arrangements in full force and effect.

4. **Market Operator governance**

4.1 Scope

This Section 4 (Market Operator governance) sets out the governance processes for the Market Operator. The Trading Parties agree to exercise their rights as Members to procure that the Market Operator shall be managed in accordance with the provisions of this Section 4 (Market Operator governance). In particular this Section 4 (Market Operator governance) confirms:

- (a) the membership of the Market Operator;
- (b) the composition of the Board;
- (c) the role of the Board;
- (d) guidance as to the proceedings of the Board; and
- (e) various ancillary matters relating to the Board.

4.2 Membership of the Market Operator

4.2.1 Each Wholesaler and each Retailer shall become a Member of the Market Operator subject to the terms of the Market Operator's constitution and shall remain a Member in good standing of the Market Operator.

4.2.2 Each Wholesaler and each Retailer shall apply to become a Member by completing a Trading Application in accordance with Section 2.1.2.

4.2.3 Each Member agrees with the other Members to exercise its rights as a Member so as to ensure that:

- (a) the Market Operator fulfils its duties under the Market Terms, the Disputes Procedure and the Market Arrangements Code and complies with the Articles of Association of the Market Operator in force from time to time;
- (b) the Market Operator carries out its duties under the Market Terms, the Disputes Procedure and the Market Arrangements Code in acting efficiently and economically and in accordance with sound business practice and so as to break even in any Year;

- (c) the Market Operator does not carry out any business or activity other than the duties set out in the Market Terms, the Disputes Procedure and the Market Arrangements Code;
- (d) the Market Operator is independent of the interests of that Member and is not obstructed or interfered with in performing its duties by that Member;
- (e) the elected Director of any Member shall take such action as is necessary to discharge any obligation of the Board under this Market Arrangements Code to the maximum extent permissible provided always that no Director shall be obliged by this Section 4.2.3(e) to take any action which would cause a Director to be in breach of any fiduciary or other duty of that Director to the Market Operator; and
- (f) each Trading Party in respect of whom the Market Arrangements Code has ceased to have effect in accordance with Section 1.1.1 is removed as a Member of the Market Operator.

4.2.4 The provisions of this Section 4.2 do not constitute an agreement to alter the Articles of Association of the Market Operator.

4.3 The Market Operator Secretary

There shall be a secretary to the Market Operator who shall be appointed by the Market Operator (the "Market Operator Secretary").

4.4 The Market Operator Board

4.4.1 The Chairman will be selected and appointed by unanimous decision of the Nominations Committee as being an individual that they believe would enjoy the confidence of all stakeholders in the industry and who has not been employed or engaged by any Undertaker or by an Affiliated Company of any Undertaker or by any Retailer or by an Affiliated Company of any Retailer during the period of five (5) years prior to the date of their appointment. The term of office of the Chairman will be a period of three (3) years. The Chairman may hold more than one term of office. The Board shall be entitled to remove any Chairman appointed and the Members shall have the right to remove the Chairman by ordinary resolution.

4.4.2 Retailers shall elect one (1) Retailer Director (such individual to be an employee of an Unassociated Retailer Member), and Wholesalers shall elect one (1) Wholesaler Director, each in accordance with Section 4.4.3 below. The number of Retailer Directors shall not exceed one (1). The number of Wholesaler Directors shall not exceed one (1).

4.4.3 **Appointment of Member Directors**

- (a) **Purpose of the Board Nomination Meeting** - The Retailer Members and the Wholesaler Members shall attend a Board Nomination Meeting with a view to electing the Retailer Director and the Wholesaler Director for the following two-yearly period.
- (b) **Date of the Board Nomination Meeting** - The Market Operator Secretary shall, in consultation with all Retailer Members and Wholesaler Members, fix the date of each Board Nomination Meeting and shall give each Retailer Member and Wholesaler Member not less than twenty (20) Business Days' notice in writing of the date of such meeting. The first Board shall be that which was appointed in accordance with the governance processes of the Market Operator. The first Board Nomination Meeting shall be held within 6 months of the Go Live Date. ~~on the Board Indicated Date, and e~~Each subsequent Board Nomination Meeting shall be held no later than 1 March in every second year thereafter.
- (c) **Method of attendance** - Each Retailer Member and Wholesaler Member shall send one suitably authorised representative to attend each Board Nomination Meeting in person wherever possible. Where a Retailer Member or Wholesaler Member has no suitably authorised representative who is available to attend the Board Nomination Meeting in person, it shall arrange for a suitably authorised representative to participate in the Board Nomination Meeting by way of a conference telephone call providing such representative is able to speak to each of the others and to be heard by each of the others simultaneously. In such circumstances, the Retailer Member or Wholesaler Member shall provide the Market Operator Secretary with notice in writing confirming that no suitably authorised representative is available to attend the Board Nomination

Meeting in person, such notice to be received not less than forty eight (48) hours before the stated commencement time for the Board Nomination Meeting.

- (d) **Making a nomination** - Each Retailer Member shall be entitled, by notice to the Market Operator Secretary given no earlier than ninety (90) days before the date of and not later than five (5) Business Days before the stated commencement time of the Board Nomination Meeting, to nominate one (1) individual to be Retailer Director. Each Retailer Member may only nominate an individual employed by an Unassociated Retailer Member. Each Wholesaler Member shall be entitled, by notice to the Market Operator Secretary given no earlier than ninety (90) days before the date of and not later than five (5) Business Days before the stated commencement time of the Board Nomination Meeting, to nominate one (1) individual to be Wholesaler Director. Individuals nominated pursuant to this Section 4.4.3(d) shall be employed by a Trading Party (and in the case of the Retailer Director nominees, by an Unassociated Retailer Member) and shall have the requisite skills and experience. Nominations made pursuant to this Section 4.4.3(d) shall contain the name, address and details of the relevant skills and experience of the nominated individual. For such nomination to be valid it must be in writing and must be accompanied by a written statement from the nominated individual stating that he is aware of the nomination and would be prepared to serve as Retailer Director or Wholesaler Director (as appropriate) if elected.
- (e) **Conduct of the Board Nomination Meeting** - The Market Operator Secretary shall circulate to each Retailer Member a list of the names of all of the individuals nominated to serve as Retailer Director and a voting paper (in the form to be provided pursuant to Section 4.4.3(g)(i)) no earlier than twenty four (24) hours before the stated commencement time for the Board Nomination Meeting. At each Board Nomination Meeting the Market Operator Secretary shall provide a voting paper. Where a Retailer Member's authorised representative is participating in the Board Nomination Meeting by way of a conference telephone call as referred to in 4.4.3(c) and the number of individuals nominated to serve as Retailer Director exceeds one (1), the Retailer Member shall complete the voting

paper in accordance with the provisions of Section 4.4.3(g)(ii) and return the voting paper to the Market Operator Secretary by email no later than one (1) hour in advance of the stated commencement time for the Board Nomination Meeting (with the original to follow in the post). Any authorised representative of a Retailer Member who is participating in the Board Nomination Meeting by way of a conference call shall only be entitled to take part in the Board Nomination Meeting where the Retailer Member whom it represents has submitted their voting paper to the Market Operator Secretary in accordance with this Section 4.4.3(e).

- (f) In the event that there is only one (1) individual nominated to serve as Retailer Director then that individual shall duly become the Retailer Director for the following two-yearly period.

- (g) **Voting process** - In the event that the number of individuals nominated to serve as Retailer Director exceeds one (1) and the Retailer Members present at the Board Nomination Meeting (or participating by way of a conference telephone call) cannot agree unanimously on the identity of the Retailer Director for the following two-yearly period, the following procedures shall be applied in sequence in relation to the election of the Retailer Director:
 - (i) each Retailer Member shall have received a voting paper with the name of every individual nominated to serve as Retailer Director on it in accordance with Section 4.4.3(e);
 - (ii) each Retailer Member shall rank each and every nominated individual in order of preference by marking the nominated individual which is its first choice as Retailer Director with the number "1" and continuing numbering sequentially in order of preference until all nominated individuals have been ranked;
 - (iii) the Market Operator Secretary shall prepare a list ranking the nominated individuals in order according to the number of 1st preference votes cast for each with the individual with the greatest number of 1st preference votes at the head of the list;

- (iv) the nominated individual whose name appears last on the list shall be removed from that list (in accordance with Section 4.4.3(g)(v) where necessary) and shall take no further part in the nomination process. The Market Operator Secretary shall transfer the votes of all those Retailer Members who voted for the nominated individual excluded in accordance with this Section 4.4.3(g)(iv) to the next preference nominated individual on those Retailer Members' voting papers. The Market Operator Secretary shall then prepare a revised voting list in accordance with Section 4.4.3(g)(iii) and the procedure set out in this Section 4.4.3(g) (other than Sections 4.4.3(g)(i) and 4.4.3(g)(ii)) shall be repeated as often as may be necessary until only one (1) of the nominated individuals remain;
- (v) if, at any point in the procedure set out in this Section 4.4.3(e) the 1st preference votes cast in favour of nominated individuals at the bottom of the voting list are equal then reference shall be made to the next preference on each and every voting paper in order to identify which of the nominated individuals at the bottom of the voting list has the fewest next preference votes and this shall be repeated in relation to each subsequent preference on each and every voting paper until either one of the nominated individuals at the bottom of the voting list can be eliminated or the preferences are exhausted. In the event that preferences are exhausted, the nominated individual at the bottom of the voting list who is to be removed from the voting list shall be decided by the drawing of lots in a manner to be determined by the Market Operator Secretary;
- (vi) if the next preference expressed on a voting paper is for a nominated individual who has already been excluded then the next preference again shall be referred to, in other words where a nominated individual has been excluded each voting paper is treated as though such individual had not been nominated;
- (vii) the nominated individual remaining once the procedure set out in this Section 4.4.3(e) has been completed shall duly become the Retailer Director for the following two-yearly period; and

- (viii) the provisions of Sections 4.4.3(e), 4.4.3(f) and 4.4.3(g) shall also apply to the election of the Wholesaler Director for the following two-yearly period.

4.4.4 **Appointment of Independent Directors**

- (a) Independent Directors shall be appointed by the Chairman, having regard to the recommendations of the Nominations Committee. Each Independent Director must be Qualified and the Chairman may not appoint an individual to be an Independent Director who:
 - (i) is currently or has in the preceding three (3) years been employed by a Party; and/or
 - (ii) has any financial connections to any Party.
- (b) The Nominations Committee shall provide its recommendations to the Chairman in accordance with ~~Article [] of~~ the Articles of Association of the Market Operator.
- (c) Independent Directors shall be appointed for a fixed term not exceeding three (3) years and shall be eligible for re-appointment following expiry of their initial term on one occasion only.
- (d) The Chairman shall ensure that the Board has no more than four (4) Independent Directors at any time.

4.4.5 **Commencement of appointment**

The appointment of any person to be a Director under Sections 4.4.3 or 4.4.4 shall take effect on commencement of the Year following such election, unless they are a replacement Director nominated in accordance with the provisions of 4.4.6(c) and 4.4.6(d) below.

4.4.6 **Removal of Directors**

- (a) A person appointed as an Independent Director shall hold office for the period of his term of appointment unless he resigns or is removed from office in accordance with the Articles of Association of the Market Operator.

- (b) Retailer Members may by unanimous agreement between themselves elect to remove and replace any Retailer Director elected by them by giving notice to the Market Operator Secretary, such notice must contain the Retailers Members' replacement nomination(s) in accordance with Section 4.4.6(c) below. Wholesaler Members may by unanimous agreement between themselves elect to remove and replace any Wholesaler Director elected by them by giving notice to the Market Operator Secretary, such notice must contain the Wholesalers Members' replacement nomination(s) in accordance with Section 4.4.6(c) below.
- (c) Where a Director nominated by the Retailer Members or the Wholesaler Members ceases to be a Director by reason of resignation, removal (including under Section 4.4.6(b), death, incapacity or any other reason in accordance with the provisions of the Articles of Association of the Market Operator or the Companies Act) the Retailer Members or the Wholesaler Members (as appropriate) shall elect a replacement Director in accordance with Section 4.4.3.
- (d) Once elected a replacement Director shall take office with immediate effect.

4.5 Alternates

- 4.5.1 A Retailer Director may by notice to the Market Operator Secretary appoint an individual to be his alternate provided that such individual is an employee of an Unassociated Retailer Member and is not employed by that Retailer Director's employer or an Affiliated Company of his employer. A Wholesaler Director may by notice to the Market Operator Secretary appoint an individual to be his alternate provided that such individual is an employee of a Wholesaler Member and is not employed by that Wholesaler Director's employer or an Affiliated Company of his employer.
- 4.5.2 Each Director who has nominated an alternate in accordance with Section 4.5.1 may at his discretion remove such alternate and shall remove such an alternate as soon as that individual ceases to be an employee of the an Unassociated Retailer (in the case of a Retailer Director) or a Wholesaler (in the case of a Wholesaler Director).

- 4.5.3 An alternate shall be entitled to:
- (a) receive notice of all meetings of the Board which take place while his appointor is a Director; and
 - (b) attend as the Director at any such meeting at which the Director appointing him is not personally present and:
 - (i) vote; and
 - (ii) exercise and discharge all the functions, powers and duties of his appointor, as if a Director.
- 4.5.4 Every person acting as an alternate shall be entitled to exercise the voting rights of his appointor and execution by an alternate of any resolution in writing of the Board shall, unless the notice of his appointment provides to the contrary, be as effective as execution by his appointor.
- 4.5.5 When a Director ceases to be a Director for any reason then, provided that the alternate's employer is still an Unassociated Retailer Member or Wholesaler Member (as relevant) the alternate shall discharge all the functions, powers and duties of his appointor until a replacement Director is appointed under Section 4.4.3.

4.6 Role of the Market Operator Board

- 4.6.1 The Board shall ensure that the Market Operator:
- (a) carries out its duties pursuant to Section 3.1.1 as necessary for the effective operation of the Competitive Market and in accordance with the requirements in Section 3.1.2; and
 - (b) carries out its duties under the Market Terms, within the scope of the Market Terms Objectives and consistent with the Principles.
- 4.6.2 In fulfilling the duties in Section 4.6.1 above the Board will:
- (a) have oversight of all of the activities of the Market Operator including:
 - (i) establishing policies and objectives of the Market Operator;

- (ii) selecting, appointing, supporting and reviewing the performance of the Chief Executive Officer;
 - (iii) ensuring the availability of sufficient financial resources;
 - (iv) accounting to the Members for the Market Operator's performance;
and
 - (v) setting the salaries and compensation of the Market Operator's management team;
- (b) appoint, remove and remunerate the Market Auditor following detailed consultation with the Panel regarding the scope of the audit and the proposed audit plan;
 - (c) keep under review the risk register of the Market Operator and ensure the Market Operator has appropriate internal audit and risk processes in place consistent with best practice for similar entities;
 - (d) consult with the Panel in respect of the Market Operator Budget and proposed Market Operator Charges, list of Additional Services and Additional Services Charges and the Market Operator will approve the Market Operator Budget and Market Operator Charges, list of Additional Services and Additional Services Charges after considering all comments received from the Panel;
 - (e) provide a forum for discussion among market participants regarding the operation and development of the Central Systems and the Market Terms and the Market Arrangements Code;
 - (f) approve release of Reports and data by the Market Operator in accordance with the Market Terms and the Market Arrangements Code;
 - (g) report to the Authority on the activities of the Market Operator against the requirements of the Market Terms and the Market Arrangements Code;
and

(h) report to the Panel on the activities and performance of the Market Operator against the requirements of the Market Terms as set out in the Market Terms (including, for clarity, the Code Subsidiary Documents).

4.6.3 The Market Operator shall publish the minutes of the Board meetings on its website.

4.7 Indemnity and insurance

4.7.1 Director indemnity

Subject to the provisions of the Companies Act, but without prejudice to any indemnity to which the person concerned may otherwise be entitled, every Director or other officer of the Market Operator (other than any person (whether an officer or not) engaged by the Market Operator as auditor) shall be indemnified out of the assets of the Market Operator against any liability incurred by him in respect of any allegations or claims for negligence, default, breach of duty or breach of trust in relation to the affairs of the Market Operator, provided that this Section 4.7.1 shall be deemed not to provide for, or entitle any such person to, indemnification to the extent that it would cause this Section 4.7.1, or any element of it, to be treated as void under the Companies Act (as amended). The Market Operator shall, upon request, provide the relevant Director with a written indemnity to that effect. For the avoidance of doubt nothing in this Section 4.7.1 shall be deemed to allow any Director recovery of personal charges and expenses incurred pursuant to his appointment as a Director.

4.7.2 The Market Operator shall recover all costs incurred or suffered by it in providing indemnities to each Director in accordance with Section 4.7.1 by way of Market Operator Charges.

4.7.3 Notwithstanding Sections 4.7.1 and 4.7.2, the Market Operator may, if it deems appropriate, insure each Director (including the Chairman) together with the CEO and/or the Market Operator Secretary against any and all Costs properly incurred or suffered by them in relation to the Board or their office as Director, CEO or as Market Operator Secretary or the due exercise by him of his powers, duties and responsibilities in that office and all claims, demands or proceedings arising out of or in connection with the same. The cost of any such insurance taken out under this Section 4.7.3 to the Market Operator shall be included in the Market

Operator Budget and recovered from Undertaker Wholesale Businesses and Retailer Businesses by way of Market Operator Charges.

5. The Panel

5.1 General

5.1.1 The Trading Parties agree that they will establish a panel which will perform the role set out in Section 5.2 below. Subject to Section 5.1.2 below, the Panel shall be constituted in accordance with the following provisions of this Section 5 (The Panel).

~~5.1.1~~5.1.2 Notwithstanding any other provision of this Section 5, the Trading Parties acknowledge and agree that, at the Go Live Date, the first Associated Retailer Panel Members, Unassociated Retailer Panel Members and Wholesaler Panel Members have been appointed in accordance with a process determined by the Authority. The terms of appointment of the Panel Members appointed in accordance with this Section 5.1.2 shall be for two (2) years from the Go Live Date.

5.2 Role of the Panel

5.2.1 The Panel shall carry out the following activities:

- (a) keep the contents of the Wholesale-Retail Code under review to ensure that they continue to reflect the Objectives and Principles and where the Panel believes that a Change Proposal would result in the Wholesale-Retail Code better reflecting the Objectives and Principles it shall nominate a Panel Member to make such Change Proposal in accordance with Sections 6.1 and 6.2;
- (b) keep the contents of the Market Arrangements Code under review;
- (c) work with the Market Operator to develop the scope and audit plan for each market audit;
- (d) review and comment on any Market Audit Reports;
- (e) provide advice, recommendations and support to the Market Operator on request in order to assist a Trading Party in successfully carrying out and

satisfactorily completing the relevant Market Entry Assurance processes or the Market Re-assurance processes;

- (f) comment or provide advice to the Market Operator on request in relation to any Market Entry Assurance Plan or Market Re-assurance Plan;
- (g) consider and comment on the draft Market Operator Budget and Market Operator Charges, list of Additional Services and Additional Services Charges;
- (h) consider, vote on and, where appropriate, make recommendations to the Authority in respect of any Change Proposal and Charging Change Proposal in accordance with Section 6 (Change process in respect of the Wholesale-Retail Code) and any Market Arrangements Code Change Proposal in accordance with Section 7 (Change process in respect of the Market Arrangements Code);
- (i) approve all forms and supporting documents that the Market Operator is required to produce under the Code Subsidiary Documents from time to time;
- (j) receive and consider Reports from the Market Operator on performance by Trading Parties or any other matters as specified in the Market Terms, including the Code Subsidiary Documents;
- (k) establish a Trading Disputes Committee on a standing basis in accordance with the provisions of Schedule 9 (Trading Disputes Committee), to investigate and resolve Trading Disputes;
- (l) perform the role and functions of the Panel in relation to a Trading Dispute, as described in Schedule 9 (Trading Disputes Committee);
- (m) establish a Market Performance Committee on a standing basis in accordance with the provisions of Schedule 10 (Market Performance Committee) and delegate such of its role and functions to the Market Performance Committee as required in order to give effect to the market performance processes and methods described in CSD 0002 (Market Performance Framework) and the Market Performance Operating Plan;

- (n) oversee the administration of the Market Performance Framework in accordance with the provisions of CSD 0002 (Market Performance Framework) and the Market Performance Operating Plan;
- (o) establish the Market Incident Management Plan Committee in accordance with the provisions of Schedule 11 (Market Incident Management Plan Committee), which committee shall perform the role and functions of the Market Incident Management Plan Committee as described in CSD 0007 (Business Continuity Management);
- (p) without prejudice to Sections 5.2.1(k), 5.2.1(m) and 5.2.1(o), establish Additional Panel Committees, delegate any of the Panel's role and functions to any such Additional Panel Committee in accordance with Schedule 12 (Additional Panel Committees) and decide that such Additional Panel Committee shall cease to be established from time to time; and
- (q) report to the Authority on the activities of the Panel, the Trading Disputes Committee, the Market Performance Committee, the Market Incident Management Plan Committee and any Additional Panel Committee.

5.2.2 The Market Operator shall provide the administrative and other support required by:

- (a) the Panel, in order to perform its role as set out in Section 5.2.1;
- (b) the Trading Disputes Committee, in order to perform its role and functions as set out in Schedule 9 (Trading Disputes Committee);
- (c) the Market Performance Committee, in order to perform its role and functions as set out in CSD 0002 (Market Performance Framework) and the Market Performance Operating Plan;
- (d) the Market Incident Management Plan Committee, in order to perform its role and functions as set out in CSD 0007 (Business Continuity Management); and

- (e) any Additional Panel Committee established in accordance with Section 5.2.1(p), in order to perform the role and functions delegated to that Additional Panel Committee by the Panel.

5.3 Composition of the Panel

5.3.1 The Panel shall comprise the following Panel Members:

- (a) the Panel Chairman;
- (b) three (3) Associated Retailer Panel Members;
- (c) three (3) Unassociated Retailer Panel Members;
- (d) three (3) Wholesaler Panel Members; and
- (e) three (3) Independent Panel Members.

5.3.2 The Chairman of the Market Operator Board shall act as Panel Chairman. If the Panel Chairman is unable to be present at a meeting of the Panel he may appoint an Independent Director of the Market Operator to act as chairman of that meeting.

5.3.3 The Associated Retailer Panel Members, the Unassociated Retailer Panel Members and the Wholesaler Panel Members shall be elected in accordance with Section 5.6 below. The Independent Panel Members shall be appointed in accordance with Section 5.7 below.

5.4 Attendees

The meetings of the Panel shall be open and public and the CEO of the Market Operator (or an alternate appointed by the CEO of the Market Operator), a representative from the Authority and the Commission and the Customer Representative shall be entitled to attend and speak at all meetings of the Panel but not to vote (each an "Affiliated Member").

5.5 Panel Secretary

There shall be a secretary to the Panel who shall be appointed by the Market Operator (the "Panel Secretary"). The Panel Secretary shall be entitled to attend and speak at all meetings of the Panel but not to vote.

5.6 Panel Members

Elections - Associated Retailer Members shall elect three (3) Associated Retailer Panel Members, Unassociated Retailer Members shall elect three (3) Unassociated Retailer Panel Members and Wholesaler Members shall elect three (3) Wholesaler Panel Members as follows:

5.6.1 **Purpose of the Panel Nomination Meeting** - The Associated Retailer Members, Unassociated Retailer Members and the Wholesaler Members shall attend the Panel Nomination Meeting with a view to electing the Associated Retailer Panel Members, Unassociated Retailer Panel Members and the Wholesaler Panel Members for the following two-yearly period.

5.6.2 **Date of the Panel Nomination Meeting** - The Panel Secretary shall, in consultation with all Associated Retailer Members, Unassociated Retailer Members and Wholesaler Members, fix the date of each Panel Nomination Meeting and shall give each Associated Retailer Member, Unassociated Retailer Member and Wholesaler Member not less than twenty (20) Business Days' notice in writing of the date of such meeting. ~~The first Panel Nomination Meeting shall be held on the Panel Indicated Date and each subsequent A~~ Panel Nomination Meeting shall be held no later than 1 March in every second year ~~thereafter~~following the Go Live Date.

5.6.3 **Method of attendance** - Each Associated Retailer Member, Unassociated Retailer Member and Wholesaler Member shall send one suitably authorised representative to attend each Panel Nomination Meeting in person wherever possible. Where an Associated Retailer Member, Unassociated Retailer Member or Wholesaler Member has no suitably authorised representative who is available to attend the Panel Nomination Meeting in person, it shall arrange for a suitably authorised representative to participate in the Panel Nomination Meeting by way of a conference telephone call providing such representative is able to speak to each of the others and to be heard by each of the others simultaneously. In such circumstances, the Associated Retailer Member, Unassociated Retailer Member or Wholesaler Member (as relevant) shall provide the Panel Secretary with notice in writing confirming that no suitably authorised representative is available to attend the Panel Nomination Meeting in person,

such notice to be received not less than forty eight (48) hours before the stated commencement time for the Panel Nomination Meeting.

5.6.4 **Making a nomination** - Each Associated Retailer Member shall be entitled, by notice to the Panel Secretary given no earlier than ninety (90) days before the date of and not later than five (5) Business Days before the stated commencement time of the Panel Nomination Meeting, to nominate one (1) individual to be an Associated Retailer Panel Member. Each Unassociated Retailer Member shall be entitled, by notice to the Panel Secretary given no earlier than ninety (90) days before the date of and not later than five (5) Business Days before the stated commencement time of the Panel Nomination Meeting, to nominate one (1) individual to be an Unassociated Retailer Panel Member. Each Wholesaler Member shall be entitled, by notice to the Panel Secretary given no earlier than ninety (90) days before the date of and not later than five (5) Business Days before the stated commencement time of the Panel Nomination Meeting, to nominate one (1) individual to be a Wholesaler Panel Member. Individuals nominated pursuant to this Section 5.6.4 shall be employed by a Trading Party and shall have the requisite skills and experience. Nominations made pursuant to this Section 5.6.4 shall contain the name, address, date of birth and details of the relevant skills and experience of the nominated individual. For such nomination to be valid it must be in writing and must be accompanied by a written statement from the nominated individual stating that he is aware of the nomination and would be prepared to serve as an Associated Retailer Panel Member, Unassociated Retailer Panel Member or Wholesaler Panel Member (as appropriate) if elected.

5.6.5 **Conduct of the Panel Nomination Meeting**

- (a) The Panel Secretary shall circulate to each Associated Retailer Member a list of the names of all of the individuals nominated to serve as Associated Retailer Panel Members and a voting paper (in the form to be provided pursuant to Section 5.6.6(a)) no earlier than twenty four (24) hours before the stated commencement time for the Panel Nomination Meeting;
- (b) Where an Associated Retailer Member's authorised representative is participating in the Panel Nomination Meeting by way of a conference

telephone call as referred to in Section 5.6.3 and the number of nominated individuals exceeds the number of Associated Retailer Panel Members to be elected for the following two-yearly period, the Panel Secretary shall provide that Associated Retailer Member with a list of the names of all of the individuals nominated to serve as Associated Retailer Panel Members and a voting paper (in the form to be provided pursuant to Section 5.6.6(a)) no earlier than twenty four (24) hours before the stated commencement time for the Panel Nomination Meeting;

- (c) The Associated Retailer Member shall complete the voting paper in accordance with the provisions of Section 5.6.6(b) and return the voting paper to the Panel Secretary by email no later than one (1) hour in advance of the stated commencement time for the Panel Nomination Meeting (with the original to follow in the post);
- (d) Any authorised representative of an Associated Retailer Member who is participating in the Panel Nomination Meeting by way of a conference call shall only be entitled to take part in the Panel Nomination Meeting where the Associated Retailer whom it represents has submitted their voting paper to the Panel Secretary in accordance with this Section 5.6.5; and
- (e) In the event that the number of individuals nominated to serve as Associated Retailer Panel Members equals the number of Associated Retailer Panel Members to be elected for the following two-yearly period then those individuals shall duly become the Associated Retailer Panel Members for the following two-yearly period.

5.6.6 **Voting process** - In the event that the number of individuals nominated to serve as Associated Retailer Panel Members exceeds the number to be elected for the following two-yearly period and the Associated Retailer Members present at the Panel Nomination Meeting (or participating by way of a conference telephone call) cannot agree unanimously on the identity of the Associated Retailer Panel Members for the following two-yearly period, the following procedures shall be applied in sequence in relation to the election of Associated Retailer Panel Members:

- (a) each Associated Retailer Member shall have received a voting paper with the name of every individual nominated to serve as an Associated Retailer Panel Member on it in accordance with Section 5.6.5;
- (b) each Associated Retailer Member shall rank each and every nominated individual in order of preference by marking the nominated individual which is its first choice as Associated Retailer Panel Member with the number "1" and continuing numbering sequentially in order of preference until all nominated individuals have been ranked;
- (c) the Panel Secretary shall prepare a list ranking the nominated individuals in order according to the number of 1st preference votes cast for each with the individual with the greatest number of 1st preference votes at the head of the list;
- (d) the nominated individual whose name appears last on the list shall be removed from that list (in accordance with Section 5.6.6(e) where necessary) and shall take no further part in the nomination process. The Panel Secretary shall transfer the votes of all those Associated Retailer Members who voted for the nominated individual excluded in accordance with this Section 5.6.6(d) to the next preference nominated individual on those Associated Retailer Members' voting papers. The Panel Secretary shall then prepare a revised voting list in accordance with Section 5.6.6(c) and the procedure set out in this Section 5.6.6 (other than Sections 5.6.6(a) and 5.6.6(b)) shall be repeated as often as may be necessary until the number of nominated individuals equals the number of Associated Retailer Panel Members to be elected at the Panel Nomination Meeting;

- (e) if, at any point in the procedure set out in this Section 5.6.6 the 1st preference votes cast in favour of nominated individuals at the bottom of the voting list are equal then reference shall be made to the next preference on each and every voting paper in order to identify which of the nominated individuals at the bottom of the voting list has the fewest next preference votes and this shall be repeated in relation to each subsequent preference on each and every voting paper until either one of the nominated individuals at the bottom of the voting list can be eliminated or the preferences are exhausted. In the event that preferences are exhausted, the nominated individual at the bottom of the voting list who is to be removed from the voting list shall be decided by the drawing of lots in a manner to be determined by the Panel Secretary;
- (f) if the next preference expressed on a voting paper is for a nominated individual who has already been excluded then the next preference again shall be referred to, in other words where a nominated individual has been excluded, each voting paper is treated as though such individual had not been nominated;
- (g) once the procedure set out in this Section 5.6.6 results in a number of nominated individuals in the voting list equal to the number of Associated Retailer Panel Members to be elected for the following two-yearly period then these individuals shall duly become the Associated Retailer Panel Members for the following two-yearly period; and
- (h) the provisions of Sections 5.6.5 and 5.6.6 shall apply to both the election of Unassociated Retailer Panel Members and Wholesaler Panel Members for the following two-yearly period.

5.6.7 **Insufficient number of Unassociated Retailer Panel Members** - In the event that the number of individuals nominated to serve as Unassociated Retailer Panel Members is two (2), one (1) or nil (0) for the following two-yearly period, the Panel Chairman shall appoint one (1), two (2) or three (3) additional Panel Members as appropriate to fill the number of vacancies who must be Qualified and have specific expertise in the provision of retail services in utilities markets.

- 5.6.8 **Term of appointment** - Panel Members appointed in accordance with this Section 5.6.8 shall be appointed for a fixed term not exceeding two (2) years and shall be eligible for re-appointment following expiry of their initial or any subsequent term.
- 5.6.9 **Commencement of appointment** - The appointment of any person to be a Panel Member in accordance with this Section 5.6.9 shall take effect on commencement of the Year following such election under this Section 5.6.6(g)
- 5.6.10 **Independent Panel Members** - Independent Panel Members shall be appointed by the Panel Chairman. Each Independent Panel Member must be Qualified. Independent Panel Members shall be appointed for a fixed term not exceeding three (3) years and shall be eligible for re-appointment following expiry of their initial or any subsequent term.
- 5.6.11 **Replacing Panel Members** - A person shall cease to hold office as a Panel Member if:
- (a) he resigns his office by notice delivered to the Panel Secretary; or
 - (b) the Panel resolves that he should cease to hold office; or
 - (c) they are, for any reason or change of circumstance, no longer able to act in accordance with the requirements at 5.7.1;

and upon any person ceasing to hold office as a Panel Member a new Panel Member shall be elected as appropriate in accordance with Section 5.6 or Section 5.7 as appropriate. Once elected a new Panel Member shall take office with immediate effect.

5.7 Role of a Panel Member

- 5.7.1 A person appointed as a Panel Member, when acting in that capacity:
- (a) shall act impartially, in the best interests of the market as a whole and shall be guided by the Principles and Objectives;
 - (b) shall not be representative of and shall act without regard to the particular interests of the body or person by whom he was nominated to be Panel Member; and

- (c) shall not be elected as a Panel Member unless he shall have first:
 - (i) confirmed in writing to the Market Operator for the benefit of all Trading Parties that he agrees to act as a Panel Member in accordance with the Market Arrangements Code and acknowledges the requirements of this Section 5.7.1; and
 - (ii) provided to the Panel Secretary a letter from his employer agreeing that he may act as a Panel Member and that the requirements in Section 5.7 shall prevail over his duties as an employee; and
- (d) shall notify the Panel Secretary in writing where they cease to be employed by the employer by whom they were employed at the date of their appointment or any change of role which impacts on their ability to act in accordance with this Section 5.7.

5.7.2 Where the Panel Chairman (on the application of a Panel Member) agrees in advance in writing, a Panel Member may appoint a person to be his alternate. A Panel Member may remove a person so appointed by giving notice of such appointment or removal to the Panel Secretary. Any alternate appointed in accordance with this Section 5.7.2 shall be entitled to attend, speak and vote at any meeting of the Panel where the Panel Member who appointed him is not present. Such alternate shall cast one (1) vote for the Panel Member by whom he was appointed in addition to any vote which he may hold if he is also a Panel Member. All alternates must act in accordance with the provisions of Section 5.7.1.

5.8 Panel meetings

5.8.1 Meetings of the Panel shall be held at regular intervals and at least every three (3) months at such time and place in England or Wales as the Panel shall decide. The Panel Secretary shall maintain a calendar of the dates of the forthcoming regular meetings and will provide copies of this to the Trading Parties on a rolling Quarterly basis, giving not less than six (6) months' notice of each meeting. The Panel Secretary shall also convene a meeting of the Panel before the next regular meeting if required in order to consider any Change

Proposal, Charging Change Proposal or Market Arrangements Code Change Proposal.

5.8.2 Any meeting of the Panel shall be convened by the Panel Secretary by:

- (a) by giving notice to each Panel Member and any alternate appointed in accordance with Section 5.7.2, setting out the date, time and place of the meeting and (unless the Panel has otherwise decided) giving at least ten (10) Business Days' notice of the meeting and accompanied by an agenda and such supporting papers as are necessary. A copy of such notice and papers shall also be sent to the Affiliated Members; or
- (b) where the Panel Secretary with the agreement of the Panel Chairman is of the reasonable opinion that an urgent meeting is required to consider any Change Proposal, Charging Change Proposal or Market Arrangements Code Change Proposal, (and the business of that meeting is capable of being transacted in accordance with Section 5.9), the notice period required at Sections 5.8.1 and 5.8.2(a) shall be waived.

5.8.3 With the consent of all Panel Members and the Panel Chairman the requirements of Section 5.8.2 may be waived or modified.

5.8.4 A meeting of the Panel may consist of a conference between Panel Members who are not all in one place, but who are able to speak to each of the others and to be heard by each of the others simultaneously. A Panel Member taking part in such a conference or telephone call shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in the quorum accordingly. In this case there is no requirement that the Panel Members are in England or Wales as the case may be.

5.8.5 The Panel shall, in the event of any conflict of interest being declared by a Panel Member (under the requirements of 5.7.1(a)) at a meeting of the Panel, decide the most appropriate course of action and in doing so, will be guided by the Code Principles set out at Schedule 1.

5.9 Quorum

5.9.1 No business shall be transacted at any meeting of the Panel unless a quorum is present at the meeting. A quorum shall be a minimum of the Panel Chairman (or

an Independent Director nominated by the Panel Chairman under Section 5.3.2), two (2) Associated Retailer Panel Members, two (2) Unassociated Retailer Panel Members, two (2) Wholesaler Panel Members and two (2) Independent Panel Members (or any of their alternates entitled to be present), each of whom must be entitled to vote at that meeting.

5.10 Voting

5.10.1 At any meeting of the Panel any matter to be decided shall be put to a vote of Panel Members upon the request of any Panel Member.

5.10.2 Any matter to be decided by a vote shall be decided by:

- (a) a unanimous vote of those votes cast at the meeting by Panel Members (and an abstention shall not be counted as a cast vote); or
- (b) being voted for by a Qualifying Majority.

For the purposes of this Section 5.10.2 a "Qualifying Majority" shall be not less than ten of the Panel Members.

5.10.3 A resolution in writing signed by or on behalf of all of the Panel Members entitled to vote in respect of the matter which is the subject of the resolution shall be valid and effectual as if it had been passed at a duly convened and quorate meeting of the Panel and such an instrument may consist of several instruments in like form each signed by or on behalf of one or more of the Panel Members.

5.11 Panel/Committee Member indemnity

5.11.1 All Trading Parties agree that the Market Operator shall indemnify and keep indemnified Panel Members, members of the Trading Disputes Committee, members of the Market Performance Committee, members of the Market Incident Management Plan Committee and members of any Additional Panel Committee (each an "Indemnified Party") in respect of all Costs properly incurred or suffered by such Indemnified Party when acting in or in connection with his office under this Market Arrangements Code, or in what he in good faith believes to be the proper exercise and discharge of his powers, duties, functions and discretions of that office in accordance with this Market Arrangements Code, and all claims, demands and proceedings in connection therewith other than any

such Costs incurred or suffered as a result of the wilful default or bad faith of such Indemnified Party. The Market Operator shall, upon request, provide the relevant Indemnified Party with a written indemnity to that effect. For the avoidance of doubt nothing in this Section 5.11.1 shall be deemed to allow any party recovery of personal charges and expenses incurred pursuant to his appointment as a Panel Member, member of the Trading Disputes Committee, member of the Market Performance Committee, member of the Market Incident Management Plan Committee or member of any Additional Panel Committee.

5.11.2 The Market Operator shall recover all Costs incurred or suffered by it in providing indemnities to each Indemnified Party in accordance with Section 5.11.1 by way of Market Operator Charges.

5.11.3 Notwithstanding Sections 5.11.1 and 5.11.2, the Market Operator can, if it deems appropriate, insure each Indemnified Party against any and all Costs properly incurred or suffered by him in relation to the Panel, the Trading Disputes Committee, the Market Performance Committee, the Market Incident Management Plan Committee or any Additional Panel Committee or his office as a member of the same or the due exercise by him of his powers, duties and responsibilities in that office and all claims, demands or proceedings arising out of or in connection with the same. The cost of any such insurance taken out under this Section 5.11.3 to the Market Operator shall be included in the Market Operator Budget and recovered from Trading Parties by way of Market Operator Charges.

6. Change process in respect of the Wholesale-Retail Code

Nothing in this Market Arrangements Code shall affect, prejudice or vary the Authority's right to revise the Wholesale-Retail Code and issue a revised Wholesale-Retail Code pursuant to Sections 66DA, s66DC or 117F or 117G of the Water Industry Act 1991.

6.1 Who may make a Change Proposal or a Charging Change Proposal

6.1.1 A Change Proposal may be made to the Panel Secretary in respect of the Wholesale-Retail Code by:

- (a) any Trading Party;
- (b) any Panel Member;
- (c) the Customer Representative; or
- (d) the Authority.

6.1.2 A Change Proposal may be made to the Panel Secretary by the Market Operator in respect of Parts 4 and/or 5 (and in respect of Part 1 as necessary to give effect to a Change Proposal in respect of Parts 4 and/or 5) of Schedule 1 of the Wholesale Contract.

6.1.3 A Charging Change Proposal may be made to the Panel Secretary by any Wholesaler. For the avoidance of doubt, the Panel shall not consider whether a Charging Change itself should be accepted or rejected by the Authority but shall consider, evaluate and make a recommendation in respect of each Charging Change Proposal (being the proposed changes to the Wholesaler-Retail Code that would be needed to facilitate a Charging Change), in accordance with the following provisions of this Section 6 (Change Process in respect of the Wholesale-Retail Code).

6.2 What must a Change Proposal and a Charging Change Proposal contain?

6.2.1 A Change Proposal and a Charging Change Proposal made pursuant to Section 6.1 will be submitted in writing in the form set out in Part A of Schedule 7 (Proposal forms) and will contain the following information:

- (a) the name of the Proposer;
- (b) a description (in reasonable but not excessive detail) of the enhancement, issue or defect which the Change Proposal seeks to

address or, in the case of a Charging Change Proposal, the Charging Change;

- (c) a description (in reasonable but not excessive detail) of the Change Proposal or Charging Change Proposal and of its nature and purpose, including (for Change Proposals only) confirmation of how the Change Proposal is consistent with the Principles and how the Change Proposal falls within the:
 - (i) Business Terms Objectives, where the Change Proposal is in respect of a change to the Business Terms;
 - (ii) Operational Terms Objectives, where the Change Proposal is in respect of a change to the Operational Terms; or
 - (iii) Market Terms Objectives, where the Change Proposal is in respect of a change to the Market Terms;
- (d) where the Proposer considers that the Change Proposal or Charging Change Proposal is urgent, a statement of that fact, the date by which the Proposer considers that the Change Proposal or Charging Change Proposal should be implemented and a full justification of why the Proposer considers that the Change Proposal or Charging Change Proposal requires to be implemented by this date;
- (e) where the Proposer considers that the Change Proposal or Charging Change Proposal is necessary to comply with or implement any Law, a statement of that fact and an indication of why the Proposer considers this to be the case;
- (f) where reasonably practicable, an indication of the impact of the Change Proposal or Charging Change Proposal on all Parts of the Wholesale-Retail Code, and any Appointment, Licence or any other industry code, agreement or document;
- (g) where practicable, an indication of the impact of the Change Proposal or Charging Change Proposal on the Central Systems and any interfacing systems used by Trading Parties and the benefits in respect of the same;

- (h) where practicable, an indication of the impact of the Change Proposal or Charging Change Proposal on the Scottish Core Industry Documents; and
- (i) a description of any discussion of the topic at the User Forum.

The Proposer may request the assistance of the Market Operator when preparing a Change Proposal or Charging Change Proposal and the Market Operator shall provide such assistance as is appropriate in the circumstances. Assistance given by the Market Operator shall not be taken to signify any form of approval for the Change Proposal or Charging Change Proposal. Following a request from a Proposer and on a case by case basis, the Panel may decide to accept for consideration a Change Proposal or Charging Change Proposal that does not contain all of the information listed in this Section 6.2. The Panel must accept for consideration a Change Proposal or Charging Change Proposal where it states that it is necessary to comply with or implement any Law.

- 6.2.2 No Change Proposal or Charging Change Proposal may purport to change or affect the rights or obligations of the Authority, including in relation to the Wholesale-Retail Code.

6.3 What happens when a Change Proposal or a Charging Change Proposal is received?

- 6.3.1 Where a Change Proposal or Charging Change Proposal is received by the Panel Secretary:

- (a) if it is neither:
 - (i) an Authority Timetabled Change Proposal; nor
 - (ii) a Change Proposal or Charging Change Proposal which the Proposer has stated is necessary to comply with or implement any Law, except where the Authority has considered that Change Proposal or Charging Change Proposal pursuant to (b) below and decided that it is not an Applicable Law Change Proposal,

and it (or, in the case of a Change Proposal or Charging Change Proposal which the Authority has decided is not an Applicable Law

Change Proposal, the Authority's decision pursuant to (b) below) is received by the Panel Secretary more than fifteen (15) Business Days prior to the next meeting of the Panel, the Panel Secretary will place the Change Proposal or Charging Change Proposal on the agenda of the next Panel meeting. If it (or, in the case of a Change Proposal or Charging Change Proposal which the Authority has decided is not an Applicable Law Change Proposal, the Authority's decision pursuant to (b) below) is received less than fifteen (15) Business Days prior to the next meeting of the Panel, the Panel Secretary will place it on the agenda of the next succeeding Panel meeting. The Panel Secretary will also send a copy of the Change Proposal or Charging Change Proposal to the Market Operator, the Authority, each Panel Member, the Affiliated Members and all Trading Parties.

- (b) if it is a Change Proposal or Charging Change Proposal which the Proposer has stated is necessary to comply with or implement any Law, the Panel Secretary will send the Change Proposal or Charging Change Proposal and any evidence to support it to the Authority within three (3) Business Days of receiving it. As soon as practicable following receipt of the Change Proposal or Charging Change Proposal, the Authority will decide if the Change Proposal or Charging Change Proposal is an Applicable Law Change Proposal and will provide a timetable and/or process for the Applicable Law Change Proposal to the Panel Secretary, including the date by which it should first be considered at a Panel meeting and the date by which the Panel Secretary should provide a Final Report in relation to the Applicable Law Change Proposal. The Panel Secretary shall ensure that the Applicable Law Change Proposal is placed on the agenda for one or more duly convened meetings in accordance with the Authority's timetable/process. The Panel Secretary will also send a copy of the Applicable Law Change Proposal to the Market Operator, the Authority, each Panel Member, the Affiliated Members and all Trading Parties. If the Authority decides that the Change Proposal or Charging Change Proposal is not an Applicable Law Change Proposal and informs the Panel Secretary of its decision, the Panel Secretary will manage the Change Proposal or Charging Change

Proposal in accordance with 6.3.1(a) above. An Applicable Law Change Proposal may not be withdrawn without the consent of the Authority.

6.3.2 if it is an Authority Timetabled Change Proposal, the Authority will provide a timetable and/or process to the Panel Secretary with the Authority Timetabled Change Proposal, including the date by which it should first be considered at a Panel meeting and the date by which the Panel Secretary should provide a Final Report in relation to the Authority Timetabled Change Proposal. The Panel Secretary shall ensure that the Authority Timetabled Change Proposal is placed on the agenda for one or more duly convened meetings in accordance with the Authority's timetable. The Panel Secretary will also send a copy of the Authority Timetabled Change Proposal to the Market Operator, the Authority, each Panel Member, the Affiliated Members and all Trading Parties. The Panel will consider and evaluate each Change Proposal or Charging Change Proposal and will, when it has undertaken its deliberations, recommend to the Authority (i) whether or not to approve each Change Proposal, or (ii) the most appropriate amendments in order to facilitate the Charging Change, as soon as reasonably practicable in accordance with the following provisions of this Section 6 (Change Process in respect of the Wholesale-Retail Code), having taken due account of the complexity, importance and urgency of the Change Proposal or Charging Change Proposal and (in the case of a Change Proposal only) having regard to whether or not such Change Proposal is within the Business Terms Objectives, Operational Terms Objectives or Market Terms Objectives (as relevant) and is consistent with the Principles.

6.3.3 If the Change Proposal or Charging Change Proposal is an Applicable Law Change Proposal or an Authority Timetabled Change Proposal, the Panel must comply with any requirements which the Authority has provided to the Panel Secretary in relation to the process to be followed and/or the timetable within which the Panel must consider the Applicable Law Change Proposal or Authority Timetabled Change Proposal and issue a Final Report. Other than for Applicable Law Change Proposals and Authority Timetabled Change Proposals, when considering and evaluating each Change Proposal or Charging Change Proposal the Panel must:

- (a) consult in such manner as the Panel decides is appropriate in the circumstances with any such persons who may properly be considered to

have an appropriate interest in the Change Proposal or Charging Change Proposal, consider the responses from interested parties (including any alternative change proposals they believe better implement the relevant Change Proposal or Charging Change Proposal) and recommend amendments to the Change Proposal or Charging Change Proposal as appropriate; and

- (b) without prejudice to Section 6.3.3(a), obtain the view of the Customer Representative on the Change Proposal or Charging Change Proposal.

6.3.4 In addition to the requirements in Section 6.3.3, when considering and evaluating each Change Proposal or Charging Change Proposal the Panel may (but shall not be obliged to) undertake any one or several of the following processes:

- (a) co-opt experts or wider industry representation to give advice to the Panel on a Change Proposal or Charging Change Proposal;
- (b) establish sub groups to consider one or more Change Proposal(s) or Charging Change Proposal(s), which sub groups may co-opt experts or wider industry representation to advise on the Change Proposal or Charging Change Proposal; and
- (c) procure a cost benefit analysis and/or impact assessment in respect of one or more Change Proposal(s) or Charging Change Proposal(s), to identify, without limitation, potential cost implications and practical issues in adopting any Change Proposal or Charging Change Proposal and in particular any impact on the Central Systems and/or on and any interfacing systems used by Trading Parties.

6.3.5 Following the processes undertaken in accordance with Sections 6.3.3 and 6.3.4, the Panel shall vote on (i) whether to recommend that a Change Proposal is approved, or (ii) the most appropriate amendments in order to facilitate the Charging Change, and the Panel Secretary shall thereafter prepare a Final Report setting out:

- (a) the Panel's recommendation as to (i) whether the Change Proposal or an amended or alternative version of the Change Proposal should be approved by the Authority (and, for the avoidance of doubt, the Panel

shall recommend that the Authority should not approve a Change Proposal unless the Panel votes in favour of recommending the approval of that Change Proposal) or (ii) whether the Charging Change Proposal or an amended or alternative version of the Charging Change Proposal represents the most appropriate amendments in order to facilitate the Charging Change, along with reasons for the Panel's recommendation;

- (b) a summary of the views expressed by all interested parties who participated in the processes undertaken in accordance with Sections 6.3.3 and 6.3.4;
- (c) a description of the views of the Panel Members who voted in relation to the Panel's recommendation;
- (d) (in respect of a Change Proposal only) an explanation of how the Change Proposal better facilitates the Business Terms Objectives, Operational Terms Objectives or Market Terms Objectives (as relevant) and better facilitates the Principles; and
- (e) in respect of each and every Charging Change Proposal and where the Panel decides to recommend to the Authority that a Change Proposal should be approved:
 - (i) the time and date on which the Panel believes the Change Proposal or Charging Change Proposal could be implemented; and
 - (ii) the draft legal text that the Panel proposes could be implemented to change the relevant Part of the Wholesale-Retail Code.

6.3.6 The Market Operator shall provide such assistance as is appropriate in the circumstances to ensure that the draft legal text included in the Final Report is clear, unambiguous, comprehensive and uses consistent wording with a view to properly maintaining the Wholesale-Retail Code and the Market Arrangements Code as coherent and consistent documents.

6.3.7 The Panel Secretary will promptly provide a Final Report in respect of each Change Proposal or Charging Change Proposal to the Authority, the Market Operator and each Trading Party. Once the Change Proposal or Charging

Change Proposal is confirmed by the Authority, any such change shall be an Approved Change.

- 6.3.8 If the Authority determines that it cannot properly form an opinion on the approval of a Change Proposal or Charging Change Proposal and requests that the Panel revise and resubmit a Final Report, the Panel Secretary shall include the relevant Change Proposal or Charging Change Proposal on the agenda of the next Panel meeting. The Panel shall, as soon as reasonably practicable in the circumstances of the Authority's request, revise and arrange for the Panel Secretary to resubmit a Final Report that responds to any issues specified in the Authority's request.

6.4 Coordinated change

- 6.4.1 Following receipt of a Change Proposal or a Charging Change Proposal, the Market Operator shall provide a copy of such Change Proposal or Charging Change Proposal to the Central Market Agency and the Central Market Agency shall be considered a person who has an appropriate interest in the Change Proposal or Charging Change Proposal for the purpose of Section 6.3.3(a).

- 6.4.2 Where the Market Operator has been notified by the Central Market Agency of a proposed change to the Scottish Market Code or Scottish Operational Code which may have an impact on the terms or operation of the Wholesale-Retail Code, the Market Operator shall consider such impact and will report to the Panel on whether it believes:

- (a) an identical change can be made to the Wholesale-Retail Code to facilitate delivery of a seamless market experience for Non-Household Customers in the Areas of Wholesalers and in Scotland; or
- (b) an equivalent (but not identical) or different change can be made to the Wholesale-Retail Code to facilitate delivery of a seamless market experience for Non-Household Customers in the Areas of Wholesalers and in Scotland; or
- (c) that no change should be made to the Wholesale-Retail Code and the reasons why.

6.4.3 Where the Market Operator reports to the Panel in accordance with Section 6.4.2(a) or 6.4.2(b) with a recommendation that a Change Proposal should be made in relation to a Part of the Wholesale-Retail Code other than the Operational Terms, the Market Operator shall make the appropriate Change Proposal in accordance with Sections 6.1 and 6.2. Where the Market Operator reports to the Panel in accordance with Section 6.4.2(a) or 6.4.2(b) with a recommendation that a Change Proposal should be made in relation to the Operational Terms, a Panel Member shall make the appropriate Change Proposal in accordance with Sections 6.1 and 6.2.

7. Change process in respect of the Market Arrangements Code

7.1 Who may make a Market Arrangements Code Change Proposal?

7.1.1 Where:

- (a) any Trading Party; or
- (b) any Panel Member; or
- (c) the Market Operator; or
- (d) the Authority,

wishes to propose a change to the Market Arrangements Code, such party shall submit a Market Arrangements Code Change Proposal in the form set out in Part B of Schedule 7 (Proposal forms) to the Panel Secretary.

7.1.2 A Market Arrangements Code Change Proposal made pursuant to Section 7.1.1 will be submitted in writing and will contain the following information:

- (a) the name of the Proposer;
- (b) a description (in reasonable but not excessive detail) of the enhancement or issue or defect which the Market Arrangements Code Change Proposal seeks to address;

- (c) a description (in reasonable but not excessive detail) of the Market Arrangements Code Change Proposal and of its nature and purpose including confirmation of how the Market Arrangements Code Change Proposal is consistent with the Market Arrangements Code Principles;
- (d) where the Proposer considers that the Market Arrangements Code Change Proposal is urgent, a statement of that fact, the date by which the Proposer considers the Market Arrangements Code Change Proposal should be implemented and a full justification of why the Proposer considers that the Market Arrangements Code Change Proposal requires to be implemented by this date;
- (e) where the Proposer considers that the Market Arrangements Code Change Proposal is necessary to comply with or implement any Law, a statement of that fact and an indication of why the Proposer considers this to be the case; and
- (f) a description of the consultation carried out in advance of the Market Arrangements Code Change Proposal being made to the Panel Secretary (if any).

7.1.3 The Proposer may request the assistance of the Market Operator when preparing a Market Arrangements Code Change Proposal and the Market Operator shall provide such assistance as is appropriate in the circumstances. Assistance given by the Market Operator shall not be taken to signify any form of approval for the Market Arrangements Code Change Proposal. Following a request from a Proposer and on a case by case basis, the Panel may decide to accept for consideration a Market Arrangements Code Change Proposal that does not contain all of the information listed in Section 7.1.2. The Panel must accept for consideration a Market Arrangements Code Change Proposal where it states that it is necessary to comply with or implement any Law.

7.2 What happens when a Market Arrangements Code Change Proposal is received?

7.2.1 Where a Market Arrangements Code Change Proposal is received by the Panel Secretary:

- (a) if it is neither:
 - (i) an Authority Timetabled Market Arrangements Code Change Proposal; nor
 - (ii) a Market Arrangements Code Change Proposal which the Proposer has stated is necessary to comply with or implement any Law, except where the Authority has considered that Market Arrangements Code Change Proposal pursuant to (b) below and decided that it is not an Applicable Law Market Arrangements Code Change Proposal,

and it (or, in the case of a Market Arrangements Code Change Proposal which the Authority has decided is not an Applicable Law Market Arrangements Code Change Proposal, the Authority's decision pursuant to (b) below) is received by the Panel Secretary more than fifteen (15) Business Days prior to the next meeting of the Panel, the Panel Secretary will place the Market Arrangements Code Change Proposal on the agenda of the next Panel meeting. If it (or, in the case of a Market Arrangements Code Change Proposal which the Authority has decided is not an Applicable Law Market Arrangements Code Change Proposal, the Authority's decision pursuant to (b) below) is received less than fifteen (15) Business Days prior to the next meeting of the Panel, the Panel Secretary, will place it on the agenda of the next succeeding Panel meeting. The Panel Secretary will also send a copy of the Market Arrangements Code Change Proposal to the Market Operator, the Authority, each Panel Member and the Affiliated Members.

- (b) if it is a Market Arrangements Code Change Proposal which the Proposer has stated is necessary to comply with or implement any Law, the Panel Secretary will send the Market Arrangements Code Change Proposal and any evidence to support it to the Authority within three (3) Business Days of receiving it. As soon as practicable following receipt of the Market Arrangements Code Change Proposal, the Authority will decide if the Market Arrangements Code Change Proposal is an Applicable Law Market Arrangements Code Change Proposal and will provide a timetable and/or process for the Applicable Law Market Arrangements Code Change Proposal to the Panel Secretary, including the date by

which it should first be considered at a Panel meeting and the date by which the Panel Secretary should provide a Final Report in relation to the Applicable Law Market Arrangements Code Change Proposal. The Panel Secretary shall ensure that the Applicable Law Market Arrangements Code Change Proposal is placed on the agenda for one or more duly convened meetings in accordance with the Authority's timetable/process. The Panel Secretary will also send a copy of the Applicable Law Market Arrangements Code Change Proposal to the Market Operator, the Authority, each Panel Member, the Affiliated Members and all Trading Parties. If the Authority decides that the Market Arrangements Code Change Proposal is not an Applicable Law Market Arrangements Code Change Proposal and informs the Panel Secretary of its decision, the Panel Secretary will manage the Market Arrangements Code Change Proposal in accordance with 7.2.1(a) above. An Applicable Law Market Arrangements Code Change Proposal may not be withdrawn without the consent of the Authority.

- (c) if it is an Authority Timetabled Market Arrangements Code Change Proposal, the Authority will provide a timetable and/or process to the Panel Secretary with the Authority Timetabled Market Arrangements Code Change Proposal, including the date by which it should first be considered at a Panel meeting and the date by which the Panel Secretary should provide a Final Report in relation to the Authority Timetabled Market Arrangements Code Change Proposal. The Panel Secretary shall ensure that the Authority Timetabled Market Arrangements Code Change Proposal is placed on the agenda for one or more duly convened meetings in accordance with the Authority's timetable. The Panel Secretary will also send a copy of the Authority Timetabled Market Arrangements Code Change Proposal to the Market Operator, the Authority, each Panel Member, the Affiliated Members and all Trading Parties.

7.2.2 The Panel will consider and evaluate each Market Arrangements Code Change Proposal and will recommend to the Authority whether or not to approve each Market Arrangements Code Change Proposal as soon as reasonably practicable in accordance with the following provisions of this Section 7 (Change Process in

respect of the Market Arrangements Code), having taken due account of its complexity, importance and urgency and having regard to whether or not such Market Arrangements Code Change Proposal is consistent with the Market Arrangements Code Principles.

7.2.3 If the Market Arrangements Code Change Proposal is an Applicable Law Market Arrangements Code Change Proposal or an Authority Timetabled Market Arrangements Code Change Proposal, the Panel must comply with any requirements which the Authority has provided to the Panel Secretary in relation to the process to be followed and/or the timetable within which the Panel must consider the Applicable Law Market Arrangements Code Change Proposal or Authority Timetabled Market Arrangements Code Change Proposal and issue a Final Report. Other than for Applicable Law Market Arrangements Code Change Proposals and Authority Timetabled Market Arrangements Code Change Proposals, when considering and evaluating each Market Arrangements Code Change Proposal the Panel must:

- (a) consult in such manner as the Panel decides is appropriate in the circumstances with any such persons who may properly be considered to have an appropriate interest in the Market Arrangements Code Change Proposal, consider the responses from interested parties and recommend amendments to the Market Arrangements Code Change Proposal as appropriate; and
- (b) without prejudice to Section 7.2.3, consult with the Customer Representative on the Market Arrangements Code Change Proposal.

7.2.4 In addition to the requirements in Section 7.2, when considering and evaluating each Market Arrangements Code Change Proposal the Panel may (but shall not be obliged to) undertake any one or several of the following processes:

- (a) co-opt experts or wider industry representation to give advice to the Panel on a Market Arrangements Code Change Proposal;
- (b) establish sub groups to consider one or more Market Arrangements Code Change Proposal(s), which sub groups may co-opt experts or wider industry representation to advise on the Market Arrangements Code Change Proposal;

- (c) procure a cost benefit analysis and/or impact assessment in respect of one or more Market Arrangements Code Change Proposal(s), to identify, without limitation, potential cost implications and practical issues in adopting any Market Arrangements Code Change Proposal.

7.2.5 Following the processes undertaken in accordance with Section 7.2, the Panel shall vote on the Market Arrangements Code Change Proposal and the Panel Secretary shall thereafter prepare a Final Report setting out:

- (a) the Panel's recommendation as to whether the Market Arrangements Code Change Proposal or an amended or alternative version of the Market Arrangements Code Change Proposal should be approved by the Authority (and, for the avoidance of doubt, the Panel shall recommend that the Authority should not approve a Market Arrangements Code Change Proposal unless the Panel votes in favour of recommending the approval of that Market Arrangements Code Change Proposal) along with reasons for the Panel's recommendation;
- (b) a summary of the views expressed by all interested parties who participated in the processes undertaken in accordance with Section 7.2;
- (c) a description of the views of the Panel Members who voted in relation to the Panel's recommendation;
- (d) an explanation of how the Market Arrangements Code Change Proposal better facilitates the Market Arrangements Code Principles;
- (e) where the Panel decides to recommend to the Authority that a Market Arrangements Code Change Proposal should be approved:
 - (i) the time and date on which the Panel believes the Market Arrangements Code Change Proposal could be implemented; and
 - (ii) the draft legal text that the Panel proposes could be implemented to change the Market Arrangements Code.

The Market Operator shall provide such assistance as is appropriate in the circumstances to ensure that the draft legal text included in the Final Report is clear, unambiguous comprehensive and uses consistent wording with a view to

properly maintaining the Wholesale-Retail Code and the Market Arrangements Code as coherent and consistent documents.

- 7.2.6 The Panel Secretary will promptly provide a Final Report in respect of each Market Arrangements Code Change Proposal to the Authority, the Market Operator and each Trading Party.
- 7.2.7 If the Authority determines that it cannot properly form an opinion on the approval of a Market Arrangements Code Change Proposal and requests that the Panel revise and resubmit a Final Report, the Panel Secretary shall include the relevant Market Arrangements Code Change Proposal on the agenda of the next Panel meeting. The Panel shall, as soon as reasonably practicable in the circumstances of the Authority's request, revise and arrange for the Panel Secretary to resubmit a Final Report that responds to any issues specified in the Authority's request.
- 7.2.8 If, having considered the Final Report (and having conducted such other analysis and consultation as the Authority considers appropriate), the Authority ~~decided~~decides to approve the Market Arrangements Code Change Proposal, any such change shall be a Market Arrangements Code Approved Change.
- 7.2.9 The Market Operator shall implement any Market Arrangements Code Approved Change, including any resultant amendments required to the Central Systems in an efficient and co-ordinated manner.

8. User Forum

8.1 Objects

- 8.1.1 The Trading Parties and the Market Operator agree to establish and participate in a User Forum. The purpose of the User Forum is to:
- (a) give Trading Parties the opportunity to discuss issues arising from the development and functioning of the Competitive Market;
 - (b) act as a forum for Trading Parties to discuss any Change Proposal, Charging Change Proposal or Market Arrangements Code Change Proposal which the User Forum has been consulted on by the Panel; and

- (c) give Trading Parties the opportunity to raise potential Change Proposals, Charging Change Proposals or Market Arrangements Code Change Proposals for discussion at the User Forum before these are submitted to the Panel.

8.2 Membership

- 8.2.1 Each Trading Party shall be entitled to send one (1) representative to attend any meeting of the User Forum on their behalf.
- 8.2.2 The User Forum shall be entitled to invite other stakeholders to attend the meetings of the User Forum from time to time.
- 8.2.3 There shall be a chairman who shall chair the meetings of the User Forum. The chairman shall be appointed by the Panel for a fixed term not exceeding two (2) years and shall be eligible for re-appointment following expiry of their initial or subsequent term. The Chairman of the Market Operator shall not be eligible to be appointed as the chairman of the User Forum.
- 8.2.4 There shall be a secretary to the User Forum who shall be appointed by the Market Operator.

8.3 Meetings

- 8.3.1 Meetings of the User Forum shall be held Quarterly at such time and place in England or Wales as the User Forum shall decide. The secretary of the User Forum shall maintain a calendar of the dates of the forthcoming regular meetings and will provide copies of this to the Trading Parties on a rolling Quarterly basis, giving not less than six (6) months' notice of each meeting.
- 8.3.2 The secretary of the User Forum shall also convene a meeting of the User Forum before the next regular meeting if required in order to consider any Change Proposal or Market Arrangements Code Change Proposal which the User Forum has been consulted on by the Panel.

8.4 Notice of meetings

- 8.4.1 Any meeting of the User Forum shall be convened by the secretary of the User Forum by notice to each Trading Party and any stakeholder invited to attend the

meeting in accordance with Section 8.2.2, setting out the date, time and place of the meeting and (unless the User Forum has otherwise decided) giving at least ten (10) Business Days' notice of the meeting and accompanied by an agenda and such supporting papers as are necessary (including in particular the text of any Change Proposal or Market Arrangements Code Change Proposal which the User Forum is being consulted on by the Panel and which is to be discussed at that meeting).

8.5 Conduct of meetings

8.5.1 The chairman of the User Forum shall ensure that at each meeting, the User Forum shall receive a detailed report on:

- (a) all Change Proposals, Charging Change Proposals or Market Arrangements Code Change Proposals that have been approved since the last meeting; and
- (b) any Change Proposal, Charging Change Proposals or Market Arrangements Code Change Proposals which the User Forum are being consulted on by the Panel.

8.5.2 The User Forum shall be entitled to establish sub-groups to consider any matter put before the User Forum and in particular any Change Proposal, Charging Change Proposal or Market Arrangements Code Change Proposal which the User Forum is consulted on by the Panel. Such sub-group shall consider the relevant proposal and provide a recommendation to the User Forum at the next meeting. The secretary of the User Forum shall provide support to the sub-groups where requested.

9. Market Performance Standards Charges

9.1.1 The Market Operator shall calculate the Market Performance Standard Charges payable by Trading Parties in respect of underperformance against the Market Performance Standards (which shall be invoiced by the Market Operator on an Undertaker Wholesale Business or a Retailer Business in accordance with Section 10.4.2 and 10.4.3) and the Retailer Credited Market Performance Standard Charges to be paid to each Retailer (such payments to be made by the Market Operator in accordance with Section 9.1.2).

9.1.2 Each Month, the Market Operator shall pay each Retailer Business the sum of all Retailer Credited Market Performance Standard Charges received from Undertaker Wholesale Businesses in respect of that Retailer Business in the preceding Month. For the avoidance of doubt, the Market Operator shall not be required to pay, and shall have no liability to the Retailer Business in respect of, any Retailer Credited Market Performance Standard Charges that have not been paid by an Undertaker Wholesale Business in respect of a Retailer Business. If the Market Operator holds a surplus of Market Performance Standard Charges at the end of any Year, such surplus shall be redistributed to Undertaker Wholesale Businesses and Retailer Businesses in the same proportions as they shared the Market Operator Charges in that Year.

10. Cost recovery for the Market Operator's costs

10.1 Scope

10.1.1 This Section 10 (Cost recovery for the Market Operator's costs) sets out the requirements in relation to each of the following:

~~10.1.2~~ 10.1.2 the annual budgetary process for the Market Operator;

~~10.1.2~~ 10.1.3 ~~the initial budgetary process for the Market Operator;~~

~~10.1.3~~ 10.1.4 the method of calculation of Market Operator Charges;

~~10.1.4~~ 10.1.5 the payment of Market Operator Charges by Undertaker Wholesale Businesses and Retailer Businesses to the Market Operator; and

~~10.1.5~~ 10.1.6 the handling of any failure to pay Market Operator Charges.

10.2 Annual Market Operator Budget and Market Operator Charges process

10.2.1 Not later than three (3) Months prior to the start of each Year, the Market Operator will prepare a draft Market Operator Budget for the following Year. The draft Market Operator Budget shall include:

- (a) all proposed operating costs of the Market Operator (excluding those costs provided for by the payment of an Additional Service Charge); and

- (b) any other proposed costs of the Market Operator (including any proposed capital expenditure and any finance costs); and
- (c) any proposed borrowings that Market Operator considers necessary in order to fund its activities for the following Year in accordance with Section 10.2.7 below;

which in each case the Market Operator anticipates will be incurred in the following Year in carrying out its duties under the Market Terms and this Market Arrangements Code (together the "Total Costs"). The draft Market Operator Budget will also set out the aggregate Market Operator Charges which the Market Operator proposes to charge to the Undertaker Wholesale Businesses and Retailer Businesses during the relevant Year, being an amount no greater than the Total Costs.

10.2.2 Not later than three (3) Months prior to the start of each Year, the Market Operator shall provide the draft Market Operator Budget to the Panel for consultation (and the Market Operator shall also provide any amended Market Operator Budget to the Panel prior to amending the Market Operator Budget in accordance with Section 10.2.4 below). The Market Operator will also indicate in the draft Market Operator Budget the proposed treatment of any surplus of Market Operator Charges anticipated for the current Year compared to its Total Costs incurred in relation to that Year and any anticipated borrowings for the coming Year. The Market Operator shall give due consideration to any representations made by the Panel in relation to the draft Market Operator Budget. The Panel shall provide any such representations to the Market Operator within twenty (20) Business Days of receipt of the draft Market Operator Budget. Where the Market Operator anticipates a material increase in budget compared to the current Year's Market Operator Budget it will use all reasonable endeavours to provide earlier notice of the likely level of increase and reasons for such increase to the Panel. The Market Operator shall also publish a forward release plan which sets out its anticipated dates for issuing new releases of the Wholesale-Retail Code, the Market Arrangements Code and the Central Systems on its website on a rolling quarterly basis.

- 10.2.3 Subject to Section 10.2.2, the Market Operator shall finalise the Market Operator Budget and make copies available to each Undertaker Wholesale Business and Retailer Business.
- 10.2.4 If, at any time during the Year to which the Market Operator Budget relates, the Market Operator reasonably believes that the Market Operator will exceed its expected budget, the Market Operator shall consider what remedial action might be taken or whether any change to the Market Operator Budget is required. Subject to Section 10.2.2, the Market Operator may change the Market Operator Budget at any time during the relevant Year if the Market Operator reasonably believes it is necessary to do so.
- 10.2.5 If the Market Operator Budget is changed during the relevant Year under Section 10.2.4, the Market Operator shall, if necessary recalculate the Market Operator Charges for the remainder of the relevant Year.
- 10.2.6 The Market Operator will issue a profile of payments due for each Year by each Undertaker Wholesale Business and each Retailer Business at the start of each Year with the default profile being one twelfth (1/12) due per Month. Where the Market Operator considers that a substantial proportion of Market Operator Charges are likely to be incurred on a significantly uneven basis over the course of a Year:
- (a) the Market Operator may adjust the profile of recovery of Market Operator Charges in accordance with Section 10.2.6(b);
 - (b) such profile will be recognised by applying factors other than one twelfth (1/12) in relation to all or certain Months for the calculation of Market Operator Charges; and
 - (c) the Market Operator shall inform the Undertaker Wholesale Businesses and Retailer Businesses of such factors (and the month(s) to which each such factor applies) at the start of the relevant Year or as soon as they have been approved by the Market Operator thereafter.
- 10.2.7 The Parties acknowledge that the Market Operator shall fund its activities via Market Operator Charges in the normal course but that the Market Operator shall be entitled to supplement the Market Operator Charges to the extent necessary

in order to fund its activities by prudent borrowing. It shall be entitled to recover the cost of any such borrowing by way of Market Operator Charges.

10.2.8 The Market Operator shall allocate the costs of capital expenditure equitably as between current and future Undertaker Wholesale Businesses and Retailer Businesses.

10.2.9 Where for any reason the Market Operator recovers a surplus of Market Operator Charges in any Year compared to its Total Costs incurred in relation to that Year, the Board shall consider the representations made by the Panel as to the treatment of a surplus in accordance with 10.2.2. The Board shall resolve (in its discretion), as soon as possible after the final accounts for the Year are available, whether or not to retain a small cash reserve and otherwise such surplus shall be redistributed to Undertaker Wholesale Businesses and Retailer Businesses in the same proportions as they shared the Market Operator Charges in that Year.

10.2.10 Initial budgetary process for the Market Operator

Sections 10.2.1 to 10.2.9 above are without prejudice to the initial budgetary process for the Market Operator, which the Trading Parties acknowledge and agree has been carried out in accordance with the governance processes of the Market Operator.

10.3 Recovering the Market Operator Charges and other charges

10.3.1 **All subsequent Years**

Following finalisation of the Market Operator Budget and the Market Operator Charges for any Year, the Market Operator shall be entitled to recover the Market Operator Charges and any Default Market Operator Charges in respect of that Year on the following basis:

- (a) Undertaker Wholesale Businesses shall pay one half of the Market Operator Charges ("Wholesaler Market Operator Charges") and one half of any Default Market Operator Charges in respect of that Year; and

- (b) Retailer Businesses shall pay one half of the Market Operator Charges ("Retailer Market Operator Charges") and one half of any Default Market Operator Charges in respect of that Year.
- 10.3.2 Each Undertaker Wholesale Business' share of the Wholesale Market Operator Charges for the first Month following the Go Live Date and all subsequent Months shall be calculated in accordance with Schedule 6 (Market Operator Charges).
- 10.3.3 Each Retailer Business' share of the Retailer Market Operator Charges for the first Month following the Go Live Date and all subsequent Months shall be calculated in accordance with Schedule 6 (Market Operator Charges).
- 10.3.4 The Market Operator shall be entitled to charge for providing any Additional Service for an Undertaker Wholesale Business or Retailer Business in accordance with a schedule of Additional Services. The Market Operator shall propose its list of standardised Additional Services and related Additional Service Charges to the Panel at least once every Year for consultation with the Panel. The proposed Additional Service Charges must be cost reflective and set on a not for profit basis consistent with the status of the Market Operator as a not for profit organisation. Following such consultation with the Panel, the Market Operator shall publish the list of standardised Additional Services and related charges. For the avoidance of doubt, the list of Additional Services shall include, but shall not be limited to:
- (a) the correction of an error in SPID Data; and
- (b) work required to deal with an application under section 4.14 of the Market Terms.
- 10.3.5 For the avoidance of doubt, the Market Operator will still be entitled to levy an Additional Service Charge in respect of such work even where this does not result in the issue of a Post RF Settlement Report. Where the Additional Service is requested on a one off or ad hoc basis, the Market Operator shall be entitled to agree an Additional Service Charge for the relevant service with the Undertaker Wholesale Business or Retailer Business requesting the service. To avoid doubt this will not apply to any request by an Undertaker Wholesale Business to make a Charging Change during the Year.

10.4 Invoicing of Market Operator Charges and Performance Standard Charges

10.4.1 Following finalisation of the Market Operator Budget and the Market Operator Charges, the Market Operator shall:

- (a) notify all Undertaker Wholesale Businesses of the initial aggregate amount of the Wholesaler Market Operator Charges for the Year; and
- (b) notify all Retailer Businesses of the initial aggregate Retailer Market Operator Charges for the Year; and
- (c) provide each Undertaker Wholesale Business and each Retailer Business with a company specific profile in accordance with Section 10.2.6.

10.4.2 Save as set out in Section 10.4.4, the Market Operator shall deliver invoices for each Undertaker Wholesale Business detailing:

- (a) the amount of the Undertaker Wholesale Business' share of the Wholesaler Market Operator Charges and any Default Market Operator Charges payable in respect of that Month and the basis of calculation of such amount no less than fourteen (14) Business Days prior to the start of the relevant Month;
- (b) any Additional Service Charge payable by the Undertaker Wholesale Business in terms of Section 10.3.4 no later than fourteen (14) Business Days following the end of the relevant Month;
- (c) any Market Performance Standard Charges payable by the Undertaker Wholesale Business other than during the Initial Suspension Period no later than fourteen (14) Business Days following the end of the relevant Month;
- (d) any interest payable by the Undertaker Wholesale Business under Section 10.7 no later than fourteen (14) Business Days following the end of the relevant Month; and

- (e) the total amount payable by the Undertaker Wholesale Business and any value added tax payable thereon, no later than fourteen (14) Business Days following the end of the relevant Month.

10.4.3 Save as set out in Section 10.4.4, no less than fourteen (14) Business Days prior to the start of each Month, the Market Operator shall prepare for that Month invoices for each Retailer Business detailing:

- (a) the amount of the Retailer Business' share of the Retailer Market Operator Charges and any Default Market Operator Charges payable in respect of that Month and the basis of calculation of such amount no less than fourteen (14) Business Days prior to the start of the relevant Month;
- (b) any Additional Service Charge payable by the Retailer Business in terms of Section 10.3.4 no later than fourteen (14) Business Days following the end of the relevant Month;
- (c) any Market Performance Standard Charges payable by the Retailer Business other than during the Initial Suspension Period no later than fourteen (14) Business Days following the end of the relevant Month;
- (d) any interest payable by the Retailer Business under Section 10.7 no later than fourteen (14) Business Days following the end of the relevant Month; and
- (e) the total amount payable by the Retailer Business and any value added tax payable thereon no later than fourteen (14) Business Days following the end of the relevant Month.

10.4.4 An invoice covering the first Month after the Go Live Date shall be despatched by the Market Operator to each Undertaker Wholesale Business and Retailer Business not later than seven (7) Business Days prior to the start of the relevant Month.

10.5 Due date for payment

10.5.1 Each Undertaker Wholesale Business and Retailer Business shall:

- (a) pay the amounts set out on the invoice issued pursuant to Section 10.4.2 or Section 10.4.3 (as relevant) not later than ten (10) Business Days prior to the start of the Month; and
- (b) in respect of reconciliation payments payable under Section 10.10 each Undertaker Wholesale Business and Retailer Business shall make any payment not later than five (5) Business Days after the date of any invoice issued to an Undertaker Wholesale Business and Retailer Business under Section 10.10.5; and
- ~~(c) in the case of the Transitional Charges each Undertaker Wholesale Business shall make any payment not later than ten (10) Business Days after receipt by an Undertaker Wholesale Business of any request by the Market Operator;~~

and references to the invoice due date in Section 10.7 and 10.8 shall be to each of the dates on which payment is due under Sections 10.5.1(a) and, 10.5.1(b), ~~and 10.5.1(c).~~

10.5.2 During the Initial Suspension Period the Market Operator shall report the level of Market Performance Standard Charges that would be due by each Undertaker Wholesale Business and Retailer Business at the time of the invoice issued pursuant to Section 10.4.2 and Section 10.4.3 but such amounts shall not be due and payable.

10.6 Method of payment

10.6.1 Each Undertaker Wholesale Business and Retailer Business shall pay all amounts due hereunder by electronic transfer to a bank account specified from time to time by the Market Operator, such payment to be made in sterling in cleared funds and in full without set off or counter claim, withholding or deduction of any kind whatsoever. All Market Operator Charges, Default Market Operator Charges and Market Performance Standard Charges are exclusive of United Kingdom value added tax which shall be added to such Market Operator Charges, Default Market Operator Charges and Market Performance Standard Charges, if applicable.

10.7 Interest

10.7.1 If any amount due to the Market Operator in terms of the Market Arrangements Code is not received on the invoice due date as set out in Section 10.5, the Undertaker Wholesale Business or Retailer Business required to pay such amount shall pay interest to the Market Operator on such amount at the rate which is four per cent (4%) per annum over the published base lending rate from time to time of Bank of England, such interest to be calculated from (but excluding) the date of default to the date of actual payment (whether after or before judgement), calculated on a daily basis and compounded annually. The Parties acknowledge and agree that the amounts set out in this Section 10.7 represent a substantial remedy under the Late Payment of Commercial Debts (Interest) Act 1998.

10.8 Failure to pay Market Operator Charges

10.8.1 If any Undertaker Wholesale Business or Retailer Business (a "non-paying Party") fails to pay in full, within ten (10) Business Days after the invoice due date as set out in Section 10.5, any amount payable by it in respect of Market Operator Charges:

- (a) the Market Operator shall promptly notify all Undertaker Wholesale Businesses and Retailer Businesses and the Panel and the Authority of such failure within two (2) Business Days of such failure; and
- (b) the Market Operator shall take reasonable steps to recover any amount payable by the non-paying party; and
- (c) in the event that payment is not made following the steps taken by the Market Operator at 10.8.1(b) above and subject to and with effect from the time at which the Market Operator decides to treat such amount as a bad debt, such amount shall be recovered by the Market Operator from all Undertaker Wholesale Businesses and Retailer Businesses (other than the non-paying Party) as a Default Market Operator Charge and each such Undertaker Wholesale Businesses and Retailer Businesses will be liable to pay additional amounts by way of Market Operator Charges, determined in accordance with this Section 10.8, provided that sums due in respect of Market Performance Standard Charges shall not

be recoverable from all Undertaker Wholesale Businesses and Retailer Businesses in this manner.

10.8.2 Undertaker Wholesale Businesses shall pay one half of any Default Market Operator Charges and Retailer Businesses shall pay one half of any Default Market Operator Charges.

10.8.3 Each Retailer Business' share of any Default Market Operator Charges payable by Retailer Businesses shall be calculated in accordance with that Retailer Business' market share as determined based on the Primary Charges levied during the most recent full calendar Month that has passed prior to the date the invoice for the Default Market Operator Charges is issued by the Market Operator (the "relevant Month") as shown in the R1 Settlement Run applicable to the relevant Month. Each Retailer Business' market share (expressed as a percentage) shall be calculated as follows:

$$\text{Retailer Business' market share} = \left(\frac{A}{B - C} \right) \times 100\%$$

Where:

A = the Primary Charges levied on the relevant Retailer Business by all Undertaker Wholesale Businesses during the relevant Month;

B = the aggregate Primary Charges levied by all Undertaker Wholesale Businesses on all Retailer Businesses during the relevant Month; and

C = the Primary Charges levied (i) on the non-paying Party where this is a Retailer Business; or (ii) by the non-paying Party where this is an Undertaker Wholesale Business (as appropriate) during the relevant Month.

10.8.4 Each Undertaker Wholesale Business' share of any Default Market Operator Charges payable by Undertaker Wholesale Businesses shall be calculated in accordance with that Undertaker Wholesale Business' market share as determined based on the Primary Charges levied during the most recent full calendar Month that has passed prior to the date the invoice for the Default Market Operator Charges is issued by the Market Operator (the "relevant

Month") as shown in the R1 Settlement Run applicable to the relevant Month. Each Undertaker Wholesale Business' market share (expressed as a percentage) shall be calculated as follows:

$$\text{Undertaker Wholesale Business' market share} = \left(\frac{D}{B-C} \right) \times 100\%$$

Where:

D = the Primary Charges levied by the relevant Undertaker Wholesale Business on all Retailer Businesses during the relevant Month;

B = the meaning given above; and

C = the meaning given above.

- 10.8.5 Where an amount is unpaid in respect of Market Operator Charges as described in Section 10.8.1 the Market Operator shall take reasonable steps (which will include court proceedings if appropriate) to pursue and recover the unpaid amount from the non-paying Party.
- 10.8.6 Without prejudice to the Market Operator's continuing entitlement to payment by a non-paying Party in respect of the Market Operator Charges, a non-paying Party shall indemnify and keep indemnified each other Undertaker Wholesale Businesses and Retailer Businesses on demand in respect of all amounts paid by such other Undertaker Wholesale Businesses or Retailer Businesses to the Market Operator under Section 10.8.1(b).
- 10.8.7 While any amount is outstanding from the non-paying Party in respect of Market Operator Charges, the Market Operator will be entitled to withhold any payments which may be due to that non-paying Party from the Market Operator.
- 10.8.8 If the Market Operator subsequently recovers any amount from the non-paying Party in respect of the unpaid Market Operator Charges the amount recovered will be taken into account in determining under Section 10.3 and Schedule 6 (Market Operator Charges) the amounts payable in subsequent Months by Undertaker Wholesale Businesses and Retailer Businesses in respect of Market Operator Charges.

10.9 Market Operator conduct

10.9.1 The obligations of each Undertaker Wholesale Business and Retailer Business to pay Market Operator Charges, Default Market Operator Charges, Market Performance Standard Charges and Additional Service Charges provided for in this Section 10 (Cost recovery for the Market Operator's costs) shall not be prejudiced, qualified or affected in any way by any breach by the Market Operator of any provision of the Market Terms or the Market Arrangements Code, or any other act or omission of the Market Operator.

10.10 Reconciliation

10.10.1 In relation to each Year the Market Operator shall, not later than twenty five (25) Business Days after publication of its audited accounts for that Year, make a final determination and adjustment in respect of the amounts payable by each Undertaker Wholesale Business and Retailer Business by way of Market Operator Charges for that Year or any amount payable by the Market Operator in respect of any surplus of Market Operator Charges for that Year. The adjustment in respect of the amounts payable by each Undertaker Wholesale Business and Retailer Business, and their liability for any shortfall, or subject to Section 10.10.2 entitlement to any surplus shall be calculated in accordance with Schedule 6 (Market Operator Charges).

10.10.2 The Market Operator shall pay any sums due to Undertaker Wholesale Businesses and Retailer Businesses in accordance with this Section 10.10 within five (5) Business Days of the date of its final determination under Section 10.10.1 provided that no such reimbursement shall be made:

- (a) to any Undertaker Wholesale Business where the sum in question is less than £10,000; or
- (b) to any Retailer Business where the sum due to that Retailer Business is less than five per cent (5%) of the Market Operator Charges paid or payable by that Retailer Business in the final Month of the Year to which such sum due relates,

in which case such sum shall be deducted from the next invoice for Market Operator Charges submitted to the relevant Undertaker Wholesale Business or Retailer Business under Section 10.4.

- 10.10.3 The Market Operator shall use only actual data and shall not (unless any actual data remains unavailable to it at the time of such determination) use estimated data in calculating any payments due under this Section 10.10.
- 10.10.4 The Market Operator shall invoice any amounts determined to be payable by Undertaker Wholesale Businesses and Retailer Businesses in the relevant Year under this Section 10.10 and such amounts shall be payable in accordance with Section 10.5.1(b).
- 10.10.5 Subject only to Section 10.10.6, the Market Operator's determination of Market Operator Charges for any Year shall be final and binding and no further adjustment shall be made.
- 10.10.6 If, after the final determination under Section 10.10.1 the Market Operator determines that there are exceptional circumstances which justify an adjustment in respect of an extraordinary error in the determination of, or in data used in the determination of Market Operator Charges for any Year, the Market Operator may in its discretion direct, and Undertaker Wholesale Businesses and Retailer Businesses shall be bound by, and the Market Operator shall give effect to, such adjustments in respect of Market Operator Charges (payable by and to Undertaker Wholesale Businesses and Retailer Businesses) in that Year as appears to the Market Operator to be appropriate.

10.11 Charging disputes

- 10.11.1 If an Undertaker Wholesale Business or Retailer Business disputes any amount shown in any Relevant Invoice, that Undertaker Wholesale Business or Retailer Business shall nevertheless pay the amount shown in full and may not withhold payment of such amount or any part thereof, save in the case of manifest error. An Undertaker Wholesale Business or Retailer Business shall only be entitled to dispute any amount shown in any Relevant Invoice provided it has notified the Market Operator of such dispute within three (3) Months of the date on which such Relevant Invoice was issued.

- 10.11.2 Where an Undertaker Wholesale Business or Retailer Business notifies the Market Operator of any dispute or query as to the amount shown in any Relevant Invoice, the Market Operator shall in a timely fashion (but not necessarily before the due date for payment) investigate the matter and inform the Undertaker Wholesale Business or Retailer Business of the outcome of its investigation.
- 10.11.3 Where (pursuant to Section 10.11.2 or otherwise) the Market Operator establishes that any error has been made in the determination of the amounts payable by any Undertaker Wholesale Business or Retailer Business in respect of any Relevant Invoice (whether such error resulted in over-payments or in under-payment by any such Undertaker Wholesale Business or Retailer Business), the Market Operator will make such adjustments, in respect of the subsequent Relevant Invoice (following such establishment or determination) payable in accordance with this Section 10 (Cost recovery for the Market Operator's costs) by or to such Undertaker Wholesale Business or Retailer Business, as will ensure that the correct amounts have been so paid.
- 10.11.4 No amount in respect of interest shall be included in any adjustment under Section 10.11.3.
- 10.11.5 Nothing in this Section 10 (Cost recovery for the Market Operator's costs) shall be construed as preventing the Market Operator from withdrawing and replacing (with the same due date for payment) any Relevant Invoice, before the due date for payment, by agreement with the Undertaker Wholesale Business or Retailer Business concerned, where the Market Operator is aware of an error in such invoice or statement.

11. Intellectual property

11.1 Intellectual Property Rights

- 11.1.1 The Market Operator shall secure and retain ownership and/or licences of Intellectual Property Rights, and authorisations in respect of data, relevant to carrying out its duties under the Market Terms and/or the Market Arrangements Code and to enable it to grant the licences set out in Section 11.2.1.
- 11.1.2 Each Trading Party shall secure and retain ownership and/or licences of Intellectual Property Rights and authorisations in respect of data relevant to

carrying out its duties under the Market Terms and/or Market Arrangements Code and to enable it to grant the licences set out in Section 11.2.3.

11.2 Licensing of Intellectual Property Rights

- 11.2.1 Where data, software, user manuals, guidance, Working Procedures, case studies, documentation or training material is provided by the Market Operator to Trading Parties, the Market Operator grants the Trading Parties, for the duration of the Market Terms and/or Market Arrangements Code, a non-exclusive, royalty-free, non-transferable licence to use (and to sub-license to their contractors and agents) such data, software, user manuals, guidance, Working Procedures, documentation or training material to the extent necessary for the purposes contemplated by the Wholesale-Retail Code and/or Market Arrangements Code. To avoid doubt, Trading Parties (and their contractors and agents) are entitled to use and replicate copies of any of the documents comprising the Wholesale-Retail Code and this Market Arrangements Code and any other information provided to the Trading Parties by the Market Operator from time to time and to include links to the Market Operator's website in internal training and compliance materials, to the extent necessary for the purposes contemplated by the Wholesale-Retail Code and/or Market Arrangements Code.
- 11.2.2 Except as permitted by applicable law, none of the Trading Parties shall, without the Market Operator's prior written consent, copy, de-compile or modify the software, nor copy the data, user manuals, documentation or training material, nor knowingly allow any other person to do so.
- 11.2.3 Each of the Trading Parties grants the Market Operator, for the duration of the Market Terms and/or Market Arrangements Code, a non-exclusive, royalty-free, transferable (but only transferrable to a Successor Market Operator) licence to use any data, software or other material provided to the Market Operator by or on behalf of that Trading Party to the extent necessary for the purposes contemplated by the Market Terms and/or Market Arrangements Code.
- 11.2.4 The Market Operator shall be entitled to grant to any of its subcontractors, service suppliers or agents, for the purpose contemplated by the Market Terms and/or the Market Arrangements Code, and other persons and entities, sub-licences of the licence set out in Section 11.2.3.

- 11.2.5 All Intellectual Property Rights in the data submitted to the Market Operator shall remain the property of the party to which that data relates. All Intellectual Property Rights in the data and/ or any database created by the Market Operator, or its subcontractors, shall be the property of the Market Operator. Each Trading Party hereby assigns to the Market Operator by way of assignment of all present and future rights all Intellectual Property Rights it may have at any time in the data and/ or any database created by the Market Operator (except to the extent those rights are already owned by the Market Operator) and each Trading Party shall do all things and sign all documents or instruments reasonably necessary to enable the Market Operator to obtain, perfect and prove its rights in such data and/ or any database.
- 11.2.6 Parties shall not make use of or permit anyone else to make use of the registered or unregistered trademarks, trading names, brand names, devices, styles, emblems or other manifestations associated with other Parties (or any Affiliated Company thereof), or any element thereof, either alone or in combination with another word or device mark, where such use constitutes an infringement of that Party's, or such Affiliated Company's, registered trade mark or common law rights.

12. Liability

12.1 Liability of the Market Operator

- 12.1.1 The Trading Parties acknowledge that:
- (a) the Market Operator is not intended to make distributable profits or losses in any Year; and
 - (b) if any Trading Party were to make any claim against the Market Operator the financial consequences of such claim would be borne by the Trading Parties themselves.
- 12.1.2 Accordingly, and without prejudice to a Trading Party's right to refer an MO Dispute to an Expert in accordance with Section 18 (MO Dispute Process), the Trading Parties agree that they do not intend that any Trading Party or Trading Parties should be able to make any claim in damages or any other claim of a financial nature against the Market Operator; and, without prejudice to a Trading

Party's right to refer an MO Dispute to an Expert in accordance with Section 18 (MO Dispute Process), each Trading Party (to the fullest extent permitted by Law) waives any such claims against the Market Operator and releases the Market Operator from any such liability in respect of any breach by the Market Operator of their duties under the Market Terms, the Disputes Procedures and this Market Arrangements Code or in tort (including negligence) or otherwise.

12.1.3 A Trading Party may not refer an MO Dispute to an Expert under Section 18 (MO Dispute Resolution) if the amount of the Trading Party's loss resulting from the Inaccurate Settlement which is the subject of the MO Dispute is less than the greater of:

- (a) 1.0% of the aggregate value of the Primary Charges due to the relevant Undertaker Wholesale Business from the relevant Retailer Business for the relevant Area for the relevant Invoice Period; or
- (b) the net difference between the Primary Charges applicable before and after amendment is equal to or greater than £10,000.00 for each affected Invoice Period.

12.1.4 The aggregate liability of the Market Operator in respect of all MO Disputes shall in no event exceed £1,000,000 per Year.

12.1.5 The Market Operator shall take out and maintain in full force and effect professional indemnity insurance sufficient to meet any liability in respect of all MO Disputes.

12.1.6 Nothing in this Section 12.1 shall exclude or limit the liability of the Market Operator for fraud, or death or personal injury arising as a result of its negligence or the negligence of any of its officers, or any other liability that may not be excluded or limited as a matter of Law in England and Wales.

12.2 Liability of the Trading Parties

12.2.1 A Trading Party shall only be liable to any other Party in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising in connection with this Market Arrangements Code for direct losses. All other losses are expressly excluded (subject always to Sections 12.2.3 and 12.2.4).

12.2.2 Subject to Section 12.2.5, each Trading Party's liability resulting from negligence or any breach or non-performance of the Market Arrangements Code or any misrepresentation or other tort on the part of that Trading Party or its servants or agents shall be limited in any one (1) calendar year for any one (1) or more incidents or series of incidents whether related or unrelated in that calendar year to one million pounds sterling (£1,000,000). All conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this Section 12.2.2 are hereby expressly excluded (subject always to Sections 12.2.3 and 12.2.4).

12.2.3 Nothing in this Market Arrangements Code shall operate so as to exclude or limit a Trading Party's liability for:

- (a) fraud, or death or personal injury caused by its negligence or the negligence of any of its officers, or any other liability that may not be excluded or limited as a matter of Law in England and Wales;
- (b) payment of any amount properly due by it under the Market Arrangements Code;
- (c) any Costs awarded against, or incurred or paid by, the Market Operator and/or another Trading Party as a result of or in connection with any alleged or actual infringement by that Trading Party of:
 - (i) any third party's Intellectual Property Rights;
 - (ii) the confidentiality provisions in Section 14 (Confidentiality).

12.2.4 Save as otherwise expressly provided in the Market Arrangements Code, this Section 12.2 (insofar as it excludes or limits liability) shall override any other provision in the Market Arrangements Code provided that nothing in this Section 12.2 shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, duties and obligations of the Trading Parties hereto which are conferred or created by any Appointment or Licence or by any other Law.

12.2.5 Notwithstanding Section 12.2.2, each Trading Party's liability for any breach or non-performance of the Market Arrangements Code shall be addressed as follows:

- (a) where the breach or non-performance relates to a failure to meet any Market Performance Standard, the defaulting Undertaker Wholesale Business' or Retailer Business' liability shall be limited to the payment of any sum due to the Market Operator for such failure pursuant to Section 9.1.1; and
- (b) where the breach or non-performance relates to a failure to pay any amount payable by it in respect of Market Operator Charges, the defaulting Undertaker Wholesale Business' or Retailer Business' liability shall be limited to the aggregation of:
 - (i) payment of such amount to the Market Operator; and
 - (ii) payment of any amount to other Undertaker Wholesale Businesses or Retailer Business as described in Section 10.8.1(b).

12.2.6 Any liability under the Market Arrangements Code on the part of any Trading Party shall be reduced to the extent that another Party has itself caused or contributed to the same and in the event of liability to any third party, the Trading Party who has caused or contributed to that liability shall indemnify the other Parties in respect of the same.

12.2.7 The Parties agree to use reasonable endeavours to mitigate any loss, damage or injury to which they might be subject as a result of a breach of the Market Arrangements Code by a Trading Party.

13. ~~NOT USED~~ Termination of the Market Arrangements Code

~~13.1.1 The Market Arrangements Code shall terminate:~~

~~(a) if the Wholesale-Retail Code is terminated, automatically on the date the Wholesale-Retail Code is terminated; or~~

~~(b) by agreement in writing of all the Parties.~~

14. Confidentiality

14.1.1 Each Party (the "Receiving Party") shall procure that all confidential information which comes into its ownership, possession or control, or the ownership,

possession and control of any of its Affiliated Companies, pursuant to or in the course of the implementation or performance of the Market Arrangements Code relating to the affairs of any other Party or its operation or management, or otherwise in connection with or in anticipation of the performance of the Market Arrangements Code ("Confidential Information") shall not be disclosed to any third party except insofar as this may be required for the proper operation of the Market Arrangements Code (including disclosure to agents and sub-contractors) or except where disclosure is otherwise expressly permitted by the provisions of the Market Arrangements Code.

14.1.2 Where Confidential Information is disclosed by any Receiving Party as permitted under the Market Arrangements Code, the Receiving Party shall (subject to Section 14.1.3 and without prejudice to its obligations under this Section 14 (Confidentiality):

- (a) ensure that the person to whom the information is disclosed is aware of the Receiving Party's obligations under this Section 14 (Confidentiality) in relation thereto; and
- (b) take reasonable steps to ensure that the person to whom the information is disclosed does not use or disclose the information other than as is permitted of such Receiving Party in accordance with this Section 14 (Confidentiality).

14.1.3 The Receiving Party shall not use Confidential Information or permit the use of Confidential Information for any purpose other than as required for the purpose of the implementation or performance of the Market Arrangements Code or as otherwise expressly permitted by the Market Arrangements Code.

14.1.4 Nothing in this Section 14 (Confidentiality) shall apply:

- (a) to the disclosure or use by the Receiving Party of Confidential Information to which any other Party has consented in writing;
- (b) to any Confidential Information which:
 - (i) before it is obtained by the Receiving Party is in the public domain;or

- (ii) after it is obtained by the Receiving Party enters the public domain,
 - (iii) in either case otherwise than as a result of a breach by the Receiving Party of its obligations under this Section 14 (Confidentiality);
- (c) to the disclosure of any Confidential Information to any person (including the Market Operator) if and to the extent that the Receiving Party is required to make such disclosure in accordance with the Market Arrangements Code to such person;
- (d) to the disclosure of any Confidential Information:
 - (i) in compliance with the duties of the Receiving Party under the Water Industry Act 1991, the Water Act 2014 or any other requirement of a Relevant Authority;
 - (ii) in compliance with the conditions of any Appointment or Licence or any document referred to in any Appointment or Licence with which the Trading Party is required by virtue of the Water Industry Act 1991, the Water Act 2014 or any Appointment or Licence to comply;
 - (iii) in compliance with any other Law provided that, in deciding whether disclosure is required to comply with the Environmental Information Regulations 2004 (SI 2004 No. 3391), the Receiving Party shall comply with the consultation and other relevant requirement of the code of practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 issued from time to time by the Information Commissioner's Office;
 - (iv) in response to a requirement of any stock exchange or regulatory authority or the UK Panel on Takeovers and Mergers; or
 - (v) pursuant to any judicial or arbitral process or tribunal having jurisdiction in relation to the Receiving Party; or

(e) to the disclosure of any Confidential Information lawfully in the possession of the Receiving Party before the disclosure to it under or in connection with the Market Arrangements Code and not subject to any restriction on use or disclosure.

14.1.5 The confidentiality provisions of this Section 14 (Confidentiality) shall continue to bind each Party for a period of five (5) years after the relevant Party ceases to be bound by the Market Arrangements Code.

15. Data protection

15.1 Data Protection Act 1998

15.1.1 Each Party warrants that it has effected, and undertakes that so long as the Market Arrangements Code is in force in respect of that Party it will effect and maintain, all such notifications and registrations as it is required to effect and maintain under the Data Protection Act 1998 to enable it lawfully to perform the obligations imposed on it by the Market Arrangements Code.

15.1.2 Each Party undertakes to comply with its obligations under the Data Protection Act 1998 in the performance of its obligations under the Market Arrangements Code.

15.1.3 Each Party undertakes that, in any case where information to be disclosed by it under the Market Arrangements Code may lawfully be disclosed only with the prior consent of the individual to whom the information relates, it will use its reasonable endeavours to obtain such prior consents so as to enable it promptly to perform its obligations under or as envisaged by the Market Arrangements Code.

15.2 Data processors

15.2.1 Where a Party is acting as the data processor of another Party ("Data Processor"), the Data Processor agrees to comply with the obligations placed on the data controller by the seventh data protection principle ("the Seventh Principle") set out in the Data Protection Act 1998, namely;

- (a) to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the data controller by the Seventh Principle;
- (b) only to process personal data for and on behalf of the data controller, in accordance with the instructions of the data controller;
- (c) to allow the data controller to audit the Data Processor's compliance with the requirements of this Section 15.2 on reasonable notice and/or to provide the data controller with evidence of its compliance with the obligations set out in this Section 15.2; and
- (d) the Data Processor shall obtain the prior agreement of the data controller to transfer, store or process personal data sites outside the European Economic Area (comprising the countries of the European Community, Norway, Iceland and Liechtenstein as may change from time to time).

16. Force majeure

16.1.1 Subject to the remainder of this Section 16 (Force majeure), a Party (the "Non-Performing Party") shall not be liable to the other Parties where it is unable to perform its obligations under the Market Arrangements Code by reason of a Force Majeure Event provided that the Non-Performing Party shall use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which the obligations contained in the Market Arrangements Code may be performed.

16.1.2 The Non-Performing Party shall:

- (a) notify the other Parties of the Force Majeure Event as soon as reasonably practicable and in any event within two (2) Business Days of the Force Majeure Event occurring; and
- (b) upon request provide a report containing all relevant available information relating to the Force Majeure Event and details of the measures the Non-Performing Party is taking to overcome or circumvent such Force Majeure Event.

- 16.1.3 The Parties shall not be relieved by reason of a Force Majeure Event from any obligation to indemnify or make payment to another Party under the Market Arrangements Code.

17. Dispute resolution

17.1 General

- 17.1.1 Save to the extent that any dispute, application, determination, arbitration, appeal or equivalent right of referral to a third party is expressly provided for in:

- (a) the Water Industry Act 1991 or the Water Act 2014; or
- (b) any Licence or any Appointment; or
- (c) the rights, powers, duties, functions or obligations of the Authority or the Secretary of State under the Water Industry Act 1991, the Water Act 2014, any other Law, any Appointment, Licence or otherwise howsoever,

any Market Arrangements Code Dispute will be resolved in accordance with this Section 17.

17.2 Escalation of Market Arrangements Code Disputes

- 17.2.1 Where a Market Arrangements Code Dispute arises, a Disputing Party or potential Disputing Party that wishes to commence a Market Arrangements Code Dispute (the "Claimant") shall notify the other Disputing Parties in writing of the existence and subject matter of the Market Arrangements Code Dispute.

- 17.2.2 The Claimant shall organise a meeting in person or by conference call or video-conference of representatives of each of the Disputing Parties. Representatives of each of the Disputing Parties who have authority to resolve the Market Arrangements Code Dispute will meet in person or by conference call or video conference within ten (10) Business Days of receipt of the written notice referred to in Section 17.2.1 ("Initial Meeting"). At such Initial Meeting the Disputing Parties shall negotiate in good faith and shall use their respective reasonable endeavours to resolve such Market Arrangements Code Dispute.

- 17.2.3 Any Market Arrangements Code Dispute that cannot be resolved by the Disputing Parties within twenty (20) Business Days of receipt of the written notice

referred to in Section 17.2.1 shall be referred by any Disputing Party to a General Manager of each of the Disputing Parties who has authority to bind the relevant Disputing Party he or she respectively represents. The Claimant shall organise a meeting in person or by conference call or video-conference of General Managers of each of the disputing Parties and such General Managers shall meet in person or by conference call or video-conference within thirty (30) Business Days of receipt of the notice referred to in Section 17.2.1 and negotiate in good faith and shall use their reasonable respective endeavours to solve amicably the Market Arrangements Code Dispute within forty five (45) Business Days of receipt of the notice referred to in Section 17.2.1. Each of the Disputing Parties hereby agrees to provide its General Manager with all such information as its General Manager reasonably requires in order to enable him to resolve the Market Arrangements Code Dispute.

- 17.2.4 Any Market Arrangements Code Dispute that cannot be resolved by the Disputing Parties within forty five (45) Business Days of receipt of the written notice referred to in Section 17.2.1 shall be referred by any Disputing Party to a Board Director of each of the Disputing Parties who has authority to bind the relevant Disputing Party they respectively represent. The Claimant shall organise a meeting in person or by conference call or video-conference of such Board Directors and such Board Directors shall meet in person or by conference call or video-conference within fifty (50) Business Days of receipt of the notice referred to in Section 17.2.1 and negotiate in good faith and shall use their reasonable respective endeavours to solve amicably the Market Arrangements Code Dispute within sixty (60) Business Days of receipt of the written notice referred to in Section 17.2.1. Each of the Disputing Parties hereby agrees to provide its Board Director with all such information as he reasonably requires in order to enable him to resolve the Market Arrangements Code Dispute.
- 17.2.5 If the Disputing Parties have not resolved a Market Arrangements Code Dispute to the satisfaction of all Disputing Parties within sixty (60) Business Days of receipt of the notice referred to in Section 17.2.1 then the Market Arrangements Code Dispute may be referred to arbitration in accordance with Sections 17.3 to 17.9 inclusive.

17.3 Reference to arbitration

- 17.3.1 Subject to Section 17.2, all Market Arrangements Code Disputes shall be referred to arbitration pursuant to the arbitration rules of The London Court of International Arbitration ("LCIA" and "LCIA Rules") in force from time to time. The arbitration tribunal shall be constituted in accordance with the LCIA Rules.
- 17.3.2 Each Disputing Party shall advise the Market Operator promptly upon referring any Market Arrangements Code Dispute to arbitration pursuant to Section 17.3.1.

17.4 Arbitration tribunal

- 17.4.1 The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the LCIA Rules subject to the provisions of this Section 17.4.
- 17.4.2 Within fifteen (15) Business Days of the filing of the response pursuant to Article 2 of the LCIA Rules (the "Response"), the Disputing Parties shall jointly nominate an agreed proposed arbitrator to the LCIA in writing with a copy to all Disputing Parties.
- 17.4.3 In the event that the Disputing Parties fail to agree upon a sole proposed arbitrator within ten (10) Business Days of the filing of the Response, any of the Disputing Parties may apply in writing, with a copy to all Disputing Parties, to the Panel Chairman for the nomination of a sole arbitrator (the "Panel Request"). The Panel Chairman shall nominate a sole arbitrator in writing to the LCIA with a copy to all Disputing Parties within ten (10) Business Days of receipt of the Panel Request.
- 17.4.4 If the Respondent or Respondents to the arbitration proceedings should fail to file a Response, the Arbitration Claimant or in the event there is more than one Arbitration Claimant all of them jointly shall within ten (10) Business Days of the date on which the Response was due to be filed nominate an agreed proposed arbitrator to the LCIA in writing with a copy to all Disputing Parties.
- 17.4.5 If no nomination is transmitted to the LCIA under this Section 17.4 within twenty (20) Business Days of the filing of the Response pursuant to Article 2 of the LCIA Rules, the LCIA shall appoint the sole arbitrator in accordance with the LCIA

Rules. Such arbitrator shall have expertise in the provision of retail services in one or more utilities markets.

17.5 Law and seat of arbitration

- 17.5.1 Whatever the nationality, residence or domicile of any Disputing Party and wherever the dispute arose the Laws of England and Wales shall be the proper Law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be England or Wales as the case may be and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.
- 17.5.2 The language of the arbitration shall be English or Welsh, as the case may be.

17.6 Arbitration decision

- 17.6.1 The decision of the arbitration tribunal pursuant to a reference under Section 17.3 shall be final and binding on each of the Disputing Parties and the Disputing Parties shall comply with such decision provided that (for the avoidance of doubt) the arbitration tribunal shall not have the power to modify the Market Arrangements Code or impose any penalty of a financial nature on the Market Operator.
- 17.6.2 The Disputing Parties hereby waive any right to challenge or appeal any award of the arbitration tribunal to the full extent permitted by Law.

17.7 Related Disputes

- 17.7.1 The arbitration tribunal appointed in accordance with Section 17.4 shall have the powers referred to in Section 35 of the Arbitration Act 1996 in relation to the consolidation of related proceedings.
- 17.7.2 If a Dispute has been referred to an arbitration tribunal pursuant to Section 17.3 and a Related Dispute has also been so referred to an arbitration tribunal for determination any Disputing Party or the Market Operator may request the relevant arbitration tribunals to consolidate the Related Disputes.

- 17.7.3 Within ten (10) Business Days of receiving the request referred to in section 17.7.2, the first arbitration tribunal appointed in respect of any Related Dispute may, if it considers it appropriate, order consolidation some or all of the Related Disputes and shall in such circumstances have the authority and power referred to in Section 17.7.4. Any dispute between arbitration tribunals shall be referred to the LCIA for resolution.
- 17.7.4 In the event of the arbitration tribunal ordering consolidation of the Related Disputes in accordance with Section 17.7.3, the arbitration tribunal shall have the authority and power to direct that all matters arising in the relevant Related Disputes are consolidated in whatever manner the arbitration tribunal determines and the Disputing Parties shall thereafter abide by and implement such consolidation and any such direction.
- 17.7.5 In the event that the Related Disputes are consolidated the arbitration tribunal shall determine all the consolidated Related Disputes at the same time.

17.8 Notification of arbitration determinations

- 17.8.1 Each Disputing Party shall ensure that each of the Market Operator (where the Market Operator is not a Disputing Party) and the Authority receives a copy of the determination by an arbitration tribunal of any Market Arrangements Code Dispute in which the Disputing Party was a Claimant or a Respondent.

17.9 Interim Judicial Relief

- 17.9.1 By agreeing to arbitration, the Parties do not intend to deprive the courts of England and Wales of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of the courts of England and Wales, the arbitration tribunal shall have full authority to grant provisional remedies and to direct the Parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any Party to respect the arbitration tribunal's orders to that effect. In any such judicial action:

- (a) each of the Parties irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of England and Wales for the purpose of any interim injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings, and to the non-exclusive jurisdiction of such courts for the enforcement of any judgment on any award;
- (b) each of the Parties irrevocably waives, to the fullest extent they may effectively do so, any objection, including any objection to the jurisdiction based on the grounds of forum non conveniens on account of its place of incorporation or domicile or otherwise, which it may now or hereafter have to the bringing of any such action or proceeding in any courts in England and Wales; and
- (c) each of the Parties irrevocably consents to service of process to its registered office or, if its registered office is not in England, Wales or Scotland, to the address set out in the Schedule to the Framework Agreement (in respect of the Original Parties) or section 5 of the relevant Accession Agreement (in respect of Parties who became a Party to the Market Arrangements Code after the Effective Date) by first-class post with delivery confirmation or receipt (for example special delivery).

18. MO Dispute resolution

18.1 Escalation

- 18.1.1 If one or more Wholesaler or Retailer raises an MO Dispute pursuant to Section 5 Part E of the Market Terms, the Party or Parties raising the MO Dispute and the Market Operator shall be the MO Disputing Parties. The Wholesaler(s) and/or the Retailer(s), as appropriate, shall notify the Market Operator in writing of the existence and subject matter of the MO Dispute.
- 18.1.2 Representatives of the MO Disputing Parties who have authority to resolve the MO Dispute will meet in person or by conference call or video conference within twenty (20) Business Days of first receipt of the written notice referred to in Section 18.1.1.
- 18.1.3 At such meeting, conference call or video conference the MO Disputing Parties shall negotiate in good faith and shall use their respective reasonable

endeavours to seek to confirm the subject matter of the MO Dispute and to resolve the MO Dispute.

- 18.1.4 If the MO Disputing Parties are unable to resolve an MO Dispute within ten (10) Business Days of the meeting, conference call or video conference referred to in Section 18.1.2 above, or within such longer period as may be agreed between or among the MO Disputing Parties acting reasonably, then any of the MO Disputing Parties may refer the MO Dispute to an Expert for determination in accordance with Section 18.2 below.

18.2 Expert determination

Reference to the Expert

- 18.2.1 An MO Disputing Party wishing to refer an MO Dispute to an Expert for determination shall provide the other MO Disputing Party or MO Disputing Parties with:
- (a) notice of its intention to refer the MO Dispute to an Expert; and
 - (b) notice of a proposed Expert.
- 18.2.2 The MO Disputing Parties shall endeavour within five (5) Business Days of such notice to agree upon the selection of an Expert and may meet for this purpose. In the event of failure to reach such agreement, the Expert shall be appointed by reference to the Academy of Experts on the application of any of the MO Disputing Parties.
- 18.2.3 On selection of an Expert, the MO Disputing Party which instigated the referral shall forthwith provide the Expert with an "Expert Notification". An Expert Notification shall include the following:
- (a) the names of the MO Disputing Parties and a summary of the MO Dispute;
 - (b) a request that the Expert confirm within five (5) Business Days whether or not he is willing and able to accept the appointment;
 - (c) a request for certification of the Expert's scale of fees and expenses;

- (d) a statement that the Expert's fees and expenses will be paid;
- (e) a statement that the information disclosed in the Expert Notification (and any information subsequently disclosed to the Expert relating to the MO Dispute) is confidential and should be treated in accordance with section 16 of the Business Terms (Confidentiality) as if the Expert were a Party and that it should not be disclosed, copied or revealed whether the appointment is accepted or not;
- (f) a copy of this Section 18 (MO Dispute resolution) and of the Wholesale-Retail Code and a request for confirmation that the Expert is able and willing to act in accordance with the procedure set out herein; and
- (g) a request for confirmation that the Expert does not hold any interest or duty which would or potentially would conflict with the performance of his duties under his contract with the MO Disputing Parties, and that he will inform the MO Disputing Parties immediately in the event of any such conflict arising.

Determination by the Expert

- 18.2.4 Where an MO Dispute has been referred to an Expert by an MO Disputing Party, the MO Disputing Parties shall promptly provide to the Expert all information reasonably requested by such Expert relating to the MO Dispute.
- 18.2.5 The Expert shall be required by the MO Disputing Parties to use all reasonable endeavours to render his determination, with full reasons, within twenty five (25) Business Days following his receipt of the information requested, or if this is not possible as soon thereafter as may be reasonably practicable, and the MO Disputing Parties shall co-operate fully with the Expert to achieve this objective.
- 18.2.6 The Expert shall determine any MO Dispute referred to him as an Expert and not as an arbitrator or mediator.

Effect of Expert determination

- 18.2.7 The determination of the Expert shall be final and binding upon the MO Disputing Parties, save for in the case of fraud or manifest error. Except insofar as is necessary to give effect to the determination of the Expert, no MO Disputing

Party shall commence proceedings in respect of or refer to any court any finding by the Expert, whether made at any time after his appointment or in his determination, as to the MO Dispute or the construction of or otherwise in respect of the Market Terms.

Consequences of Expert determination

- 18.2.8 The Market Operator shall carry out any Dispute Settlement Run as required in order to implement the Expert's decision. Where the Expert determines that the cause or causes of the MO Dispute include any underlying errors or problems with the operation of the Market Operator Systems the Market Operator shall promptly agree a remediation plan with the Expert and shall implement such plan and provide the Panel with regular updates on progress against such plan. In such circumstances any Dispute Settlement Run may need to occur after implementation of the remediation plan. Where remediation of such errors or problems requires a change to the Wholesale-Retail Code, the Market Operator shall make the relevant Change Proposal.

18.3 Costs

- 18.3.1 The Expert shall provide the MO Disputing Parties with a breakdown of:

- (a) his fees; and
- (b) his reasonable expenses,

including without limitation to the generality of the foregoing, the fees of and reasonable expenses incurred by any technical or professional advisers.

- 18.3.2 The MO Disputing Parties shall share equally the fees and expenses of the Expert unless the Expert directs that they should be borne by the MO Disputing Parties in some other proportion. In the event that the Expert determines that one of the MO Disputing Parties ("Party A") is liable to pay a sum to another of the MO Disputing Parties ("Party B"), including, but not limited to, fees and expenses, Party A will, subject to whatever the Expert's determination may state, pay to Party B an amount equal to such sum together with interest thereon from such date as the Expert's determination may specify. Such interest will accrue from day to day at the rate of four per cent (4%) over the published base-lending rate from time to time of the Bank of England. The Parties acknowledge and

agree that the amounts set out in this Section 18.3.2 represent a substantial remedy under the Late Payment of Commercial Debts (Interest) Act 1998.

19. Assignment

19.1 No Trading Party may assign or transfer (whether outright or in security) any or all of its rights or obligations under this Market Arrangements Code.

20. Entire agreement

20.1 This Market Arrangements Code, the Framework Agreement and each Accession Agreement sets out the entire agreement among the Parties in respect of the subject matter hereof, and supersedes all prior representations, arrangements, understandings and agreements among the Parties (other than fraudulent misrepresentation) relating to such subject matter. No Party has relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Market Arrangements Code, the Framework Agreement and each Accession Agreement.

20.2 No variation of this Market Arrangements Code shall have effect unless it is made in accordance with Section 7 (Change process in respect of the Market Arrangements Code).

21. Waivers

21.1 No failure to exercise, nor any delay in exercising, on the part of a Party of any right, power or remedy under this Market Arrangements Code shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy prevent any further or other exercise thereof or the exercise of any other right, power or remedy.

22. No partnership

22.1 Nothing herein contained shall be construed as giving rise to the relationship of partnership or joint venture.

23. Illegality

23.1 In the event of any provision (or part of any provision) of this Market Arrangements Code being or becoming void, illegal or unenforceable in any respect under the Law of any jurisdiction in which this Market Arrangements Code is effective, the validity, legality and enforceability in that jurisdiction of the remainder of that provision (where appropriate) and of all other provisions of this Market Arrangements Code shall not be in any way affected or impaired thereby.

24. Notices

24.1 All notices to be given to a Party under the Market Arrangements Code shall be in writing and in English or Welsh, as the case may be, and shall be marked for the attention of the person, and delivered by hand (including courier) or sent by first class pre-paid post or e-mail to the address, detailed for the Party in the schedule to the Framework Agreement or in the Accession Agreement (as relevant) or as changed in accordance with this Section 24 (Notices).

24.2 A Party may change the details recorded for it in this Section 24 (Notices) by notice to the other Party in accordance with Section 24.1.

24.3 A notice shall be treated as having been received:

- (a) if delivered by hand (including courier) within Delivery Hours, when so delivered; and if delivered by hand outside Delivery Hours, at the next start of Delivery Hours;
- (b) if sent by first class pre-paid post guaranteed next day delivery, post with delivery confirmation or receipt (for example, special delivery) on the later of actual receipt and 9.00 am on the Business Day after posting if posted on a Business Day, and on the later of actual receipt and 9.00 am on the second Business Day after posting if not posted on a Business Day; and
- (c) if sent by e-mail, or any other electronic means during a Business Day it is received on that Business Day and if it is received outside of a Business Day it is received on the following Business Day.

24.3.2 In proving that a notice has been given it shall be conclusive evidence to demonstrate that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

Schedule 1

Market Arrangements Code

Principles and Definitions

1 Part A – Market Arrangements Code principles

1.1 Due regard shall be given to the following Market Arrangements Code Principles in relation to the construction and interpretation of the Market Arrangements Code.

Efficiency

1.1.1 To ensure the efficient discharge by each Retailer of its Licence obligations and by each Wholesaler of its obligations under its Appointment and their respective statutory duties to the extent impacted by the Market Arrangements Code;

1.1.2 To promote the efficient, economic and coordinated operation of the water and wastewater sector to the extent impacted by the Market Arrangements Code; and

1.1.3 To promote the efficient delivery of the role of the Market Operator.

Proportionality

1.1.4 The Market Arrangements Code should be proportionate to the size of the Competitive Market;

Transparency

1.1.5 The Market Arrangements Code should be concise, clearly expressed, well-structured and readily accessible to both existing and prospective Retailers;

Barriers to Entry

1.1.6 The Market Arrangements Code should not create barriers to entry in respect of the Competitive Market and should promote effective competition in the Competitive Market.

Non-Discrimination

- 1.1.7 The Market Arrangements Code should not unduly discriminate, or create undue discrimination, between and among Retailers.

Customer participation

- 1.1.8 The Market Arrangements Code and arrangements established by or under the Wholesale Contract should promote customer participation.

Seamless markets

- 1.1.9 The Market Arrangements Code should be developed in a manner that delivers a seamless customer experience in the Areas of Wholesalers and in Scotland.

No limit on upstream competition

- 1.1.10 The Market Arrangements Code or arrangements established by or under the Wholesale Contract should not place any constraint or limit on the introduction and development of competition in the upstream water and sewerage market.

2 Definitions and interpretation

- 2.1 In this Market Arrangements Code:

- 2.1.1 The Market Arrangements Code Principles form part of the Market Arrangements Code and references to the Market Arrangements Code include the Market Arrangements Code Principles;

- 2.1.2 references to "Sections" are to sections of the Market Arrangements Code and references to "Paragraphs" are to paragraphs in the Schedules to the Market Arrangements Code;

- 2.1.3 words imparting a gender include every gender and references to the singular include the plural and vice versa;

- 2.1.4 words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;

- 2.1.5 save as otherwise expressly provided references to time are to local time;

- 2.1.6 references to "writing" or "written" shall include email;
- 2.1.7 references to "day" and "calendar day" mean the same as one another;
- 2.1.8 references to the Market Arrangements Code or any other document are to this Market Arrangements Code or that document as in force for the time being and as amended, supplemented, varied, modified, renewed, replaced or extended from time to time in accordance with the requirements of this Market Arrangements Code or that document (as the case may be);
- 2.1.9 a reference to any body is:
- (a) if that body (statutory or otherwise) is replaced by another organisation, deemed to refer to that replacement organisation; and
 - (b) if that body (statutory or otherwise) ceases to exist, deemed to refer to that organisation which most substantially serves the same purposes as the original body;
- 2.1.10 a reference to a statute or statutory provision shall, unless otherwise stated, be construed as including:
- (a) a reference to any orders, regulations and subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under the statute or statutory provision whether before or after the effective date;
 - (b) a reference to that statute, statutory provision or subordinate legislation as in force at the effective date and as from time to time modified or consolidated, superseded, re-enacted or replaced (whether with or without modification) after the effective date;
- 2.1.11 references to a person shall, except where the context requires otherwise, include its successors in title and permitted assignees;
- 2.1.12 a reference to a particular condition of a Licence shall be construed at any particular time as including a reference to any modification of that condition in force at that time; and

2.1.13 any words or expressions used in the Water Industry Act 1991, or the Water Act 2014 shall, unless the contrary intention appears, have the same meaning when used in the Market Arrangements Code.

2.2 The headings and contents table in the Market Arrangements Code or any Schedule to it are for convenience only and do not affect its interpretation.

2.3 In the Market Arrangements Code, the words **"other"**, **"includes"**, **"including"** and **"for example"** do not limit the generality of any preceding words, and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.

2.4 In the Market Arrangements Code, the words **"for the time being"** mean at the relevant time now or in the future unless the context requires otherwise.

2.5 If there is any conflict between any of the following, the order of precedence shall be:

- (i) any Law other than an Appointment, a Licence, the Market Arrangements Code, the Wholesale-Retail Code, the Interim Supply Code, the Retail Exit Code and the Customer Protection Code of Practice;
- (ii) any Appointment or Licence;
- (iii) the Market Arrangements Code;
- (iv) the Wholesale-Retail Code;
- (v) the Interim Supply Code and the Retail Exit Code;
- (vi) the Customer Protection Code of Practice.

2.6 In this Market Arrangements Code, the following definitions apply.

"Accession Agreement"	means an agreement substantially in the form set out in Schedule 3 (Accession Agreement);
"Accession Date"	the meaning given in the Accession Agreement;

"Additional Panel Committee"	means a committee established by the Panel pursuant to Section 5.2.1(p) which for the avoidance of doubt shall not include the Trading Disputes Committee, the Market Performance Committee or the Market Incident Management Plan Committee;
"Additional Service"	the carrying out of any activity or providing any service or report by the Market Operator for an Undertaker Wholesale Business or a Retailer Business or any other party where such activity, service or report is not a requirement of the Market Terms;
"Additional Service Charge"	the charge that the Market Operator will apply to the provision of each Additional Service following consultation with the Panel and set out in the Market Operator's published list of Additional Service charges on its website;
"Affiliated Company"	in relation to a Party means a Subsidiary Undertaking or Parent Undertaking of that Party, or another Subsidiary Undertaking of such Parent Undertaking;
"Affiliated Member"	the meaning given in Section 5.4;
"Annual Market Performance Report"	the report prepared and published by the Market Operator which sets out the results of the implementation of the Market Performance Framework in the Year to which the report relates;
"Annual Outturn Costs"	the meaning given in Paragraph 4 of Schedule 6 (Market Operator Charges);
"applicable Date"	the meaning given in Paragraphs 2 and 3.1 (as relevant) of Schedule 6 (Market Operator Charges);
"applicable Month"	the meaning given in Paragraph 3.2 of Schedule 6 (Market Operator Charges);
"applicable Year"	the meaning given in Paragraphs 4 and 5 (as relevant) of Schedule 6 (Market Operator Charges);
"Applicable Law Change Proposal"	means a Change Proposal or Charging Change Proposal raised by a Proposer other than the Authority which the Authority decides is necessary to comply with or implement any Law and should be managed in accordance with a timetable and/or process provided by the Authority;
"Applicable Law Market Arrangements Code Change Proposal"	means a Market Arrangements Code Change Proposal raised by a Proposer other than the Authority which the Authority decides is necessary to comply with or implement any Law and should be managed in accordance with a timetable and/or process provided by the Authority;

"Applicant"	an organisation that is seeking to become a Trading Party but which has not yet satisfied all of the Trading Conditions, as described in CSD 0001 (Market Entry Assurance and Market Re-assurance);
"Appointment"	the instrument of appointment granted to an Undertaker under Section 6 of the Water Industry Act 1991;
"Approved Change"	any variation, amendment, addition to, deletion from or other change to the Wholesale-Retail Code, made by the Authority pursuant to Section 66DA and/or Section 117F of the Water Industry Act 1991;
"Arbitration Claimant"	the Party wishing to raise an arbitration under the LCIA Rules;
"Area"	any area for which an Appointment is held;
"Associated Retailers"	an Undertaker Retail Business or a Retailer who is an Affiliated Company of an Undertaker;
"Associated Retailer Members"	those members of the Market Operator that are Associated Retailers;
"Associated Retailer Panel Members"	those members of the Panel elected by Associated Retailer Members in accordance with Section 5.6;
"Authorised Person"	the meaning given in the Accession Agreement;
"Authority"	the Water Services Regulation Authority, also known as Ofwat, established by Section 1A of the Water Industry Act 1991;
"Authority Timetabled Change Proposal"	means a Change Proposal or Charging Change Proposal raised by the Authority which the Authority reasonably considers should be managed in accordance with a timetable and/or process provided by the Authority;
"Authority Timetabled Market Arrangements Code Change Proposal"	means a Market Arrangements Code Change Proposal raised by the Authority which the Authority reasonably considers should be managed in accordance with a timetable and/or process provided by the Authority;
"Board"	means the board of Directors of the Market Operator appointed in accordance with the provisions of Section 4.4;
"Board Director"	in respect of: <ul style="list-style-type: none"> (i) the Market Operator, a Director; (ii) a Trading Party, a member of that Trading Party's board of directors or, if the Trading Party is not a company, a person of equivalent authority and status

" Board Indicated Date "	the date fixed by the Market Operator Secretary in accordance with Section 4.4.3(b), which must: (i) occur as soon as possible after the Go Live Date; and (ii) not occur until at least four (4) Retailers have been granted Licences;
"Board Nomination Meeting"	a meeting the purpose of which is described in Section 4.4.3(a) which shall be held on the date as fixed by the Market Operator Secretary in accordance with Section 4.4.3(b);
"Business Day"	the period of 08:00 to 18:00 hours on any day other than a Saturday or Sunday, or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;
"Business Terms"	the procedures, principles, terms and conditions set out in Schedule 1, Part 2 of the Wholesale Contract;
"Business Terms Objectives"	the meaning given in the Objectives and Principles section of Schedule 1, Part 1 of the Wholesale Contract;
"CCWater"	the Consumer Council for Water established under Section 27A of the Water Industry Act 1991;
"Central Systems"	the central settlement system and the Supply Point Register;
"Cessation of Trading Conditions"	in the case of a Retailer that: <ul style="list-style-type: none"> (i) all Supply Point(s) Registered to that Retailer in the relevant Area(s) have been Transferred to one (1) or more Retailers in accordance with Part D (Market Design) of the Market Terms; (ii) all amounts payable or which may become payable by that Retailer to the Market Operator and to each Wholesaler have been paid in full; (iii) it would not be a breach of a Licence condition for that Retailer to cease trading; and (iv) all notices required by the Market Terms have been given. In the case of a Wholesaler that: <ul style="list-style-type: none"> (i) an Incoming Undertaker(s) has been appointed in relation to all of that Wholesaler's Area; (ii) to the extent that it is not already a Trading Party, the Incoming Undertaker has satisfied the Trading Conditions;

	<ul style="list-style-type: none"> (iii) a Volume Data Update for all Supply Points in the Area has been carried out in accordance with section 4.3.6 of the Market Terms; (iv) all amounts payable or which may become payable by that Wholesaler to the Market Operator have been paid in full; (v) all amounts payable or which may become payable by that Wholesaler to the Market Operator have been paid in full; (vi) all notices required by the Market Terms have been given;
"Chairman"	chairman of the Market Operator Board or any person performing that role in terms of Section 4.4.1;
"Change Proposal"	a proposal with regards to a change to the Wholesale-Retail Code other than a Charging Change Proposal which is under consideration pursuant to the Market Arrangements Code or by virtue of any consultation by the Authority pursuant to section 66DB or section 117G of the Water Industry Act 1991 or which has been approved by the Authority following such consultation but which has not yet been issued by the Authority in the form of a revised Wholesale-Retail Code pursuant to section 66DA or section 117F of the Water Industry Act 1991;
"Charging Change"	a change to a Wholesale Tariff Document to provide for a modified or new charging method or structure where that method or structure is not yet catered for within the Central Systems (but excluding any change in value of any existing tariff);
"Charging Change Proposal"	a proposal in respect of a change to the Wholesale-Retail Code required in order to facilitate a Charging Change, made in accordance with Section 6 (Change process in respect of the Wholesale-Retail Code);
"Charging Guidance"	any guidance issued by the Secretary of State under Section 66ED or 177M of the Water Industry Act 1991;
"Charging Rules"	the rules made by the Authority under Section 66E or 177I of the Water Industry Act 1991;
"Chief Executive Officer" or "CEO"	the chief executive officer of the Market Operator from time to time;
"Claimant"	the meaning given in Section 17.2.1;

"Code Subsidiary Documents" or "CSD"	the detailed processes that further describe and facilitate the performance of duties under the Market Terms as set out in Schedule 1, Part 5 of the Wholesale Contract;
"Commission"	the Water Industry Commission for Scotland, the body established under Section 1 of the Water Industry (Scotland) Act 2002;
"Companies Act"	means the Companies Act 2006;
"Competitive Market"	the market in the provision of Retail Services;
"Confidential Information"	the meaning given in Section 14.1.1;
"Corrective Settlement Run"	any settlement run carried out following agreement by the relevant Trading Parties that there is a material error in a Settlement Report as set out in Section 4.13.4(d) of the Market Terms;
"Costs"	liabilities, losses, charges, damages, costs and expenses (including legal and other professional costs and out of pocket disbursements properly incurred), and including any tax thereon in each case of whatever nature;
"Customer Protection Code of Practice"	the code of practice issued by the Authority entitled Customer Protection final Code of Practice for non-household retailers dated May 2016 as amended or updated or reissued from time to time and as referred to in the standard conditions of the Water Supply Licences and/or Sewerage Licences (known as WSSLs).
"Customer Representative"	the individual nominated by the Authority from time to time to represent the views of Non-Household Customers, which may be an individual from CCWater or any successor organisation to CCWater;
"Data Item"	each of the data items listed in CSD 0301 (Data Catalogue);
"Data Owner"	in relation to each Registered SPID or SPID to be created, the relevant Wholesaler or Retailer responsible for each item of data listed in the Data Catalogue;
"Data Transaction"	each of the data transactions listed and numbered in the Data Catalogue;
"Data Catalogue"	the list of Data Transactions and Data Items set out in CSD 0301 (Data Catalogue);

"Default Market Operator Charges"	the charges levied on an Undertaker Wholesale Business or a Retailer Business by the Market Operator to recover unpaid Market Operator Charges calculated in accordance with Section 10.8;
"Delivery Hours"	means 09:00 to 17:00 on a day which is not a Saturday or Sunday or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;
"Director"	any individual appointed as a director of the Market Operator in accordance with Section 4.4;
"Disputes Settlement Report"	a Settlement Report issued by the Market Operator following any Dispute Settlement Run;
"Dispute Settlement Run"	any settlement run carried out following the resolution of an MO Dispute or a Trading Dispute;
"Disputes Procedure"	the procedures and processes for resolving any Dispute or any MO Dispute as set out in sections 17 to 19 of the Business Terms and Sections 17 and 18 and Schedule 9 of the Market Arrangements Code;
"Disputing Parties"	the Parties to a Market Arrangements Code Dispute;
"Effective Date"	[to be developed in light of when the Wholesale Retail Code is to be made following the Authority's statutory consultation];
"Eligibility Guidance"	<p>(a) any guidance issued by the Authority under paragraph 10(1) of Schedule 2A or paragraph 4 of Schedule 2B of the Water Industry Act 1991 in relation to the factors that are, or are not, to be taken into account in determining the extent of any particular premises; and/or</p> <p>(b) any regulations made by the Secretary of State or the Welsh Ministers (as appropriate) under Section 17C (3) of the Water Industry Act 1991 as to the circumstance or factors which relate to the use of any premises; and/or</p> <p>(c) together with any further guidance as to the identification or designation of a customer and/or premises which the Secretary of State or the Welsh Ministers (as appropriate), the Authority or the Market Operator may issue from time to time;</p>
"Eligible Premises"	premises other than Household Premises and which may be identified as eligible premises in light of any Eligibility Guidance;

"Employment Tribunal"	means an employment tribunal established in accordance with regulation 4 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013,
"Entry Change of Use"	any reconfiguration or relevant change in circumstances pertaining to eligibility at any Eligible Premises such that Water Services and/or Sewerage Services are to be provided to a New Supply Point(s) where no such Supply Point(s) is Registered in the Supply Point Register;
"Exit Regulations"	any exit regulations made under Section 42 of the Water Act 2014 from time to time;
"Expert"	a person with appropriate qualifications and experience to resolve an MO Dispute, appointed in accordance with Section 18;
"Expert Notification"	the meaning given in Section 18.2.3;
"Final Settlement Report"	the final Settlement Report provided by the Market Operator in relation to any Year save for any Disputes Settlement Report;
"Final Report"	the report described in Section 6.3.5 in respect of a Change Proposal or Charging Change Proposal and described in Section 7.2.5 in respect of a Market Arrangements Code Change Proposal;
"Force Majeure Event"	<p>in relation to any Party, any event or circumstances (or combination of events or circumstances) not reasonably foreseeable by such Party which is beyond the reasonable control of the Party and which results in or causes the failure of that Party to perform any of its obligations under the Market Arrangements Code, but:</p> <p>(i) a strike, lockout or other industrial action by a Party's own employees (unless forming part of a United Kingdom wide strike) shall not be a Force Majeure Event; and</p> <p>(ii) the act or omission of any agent or contractor of a Party shall not be a Force Majeure Event unless such act or omission is caused by or results from events and/or circumstances which would be Force Majeure Event within the meaning of this definition if such person were the affected Party;</p>
"Form"	those forms and notices which are related to the processes set out in the Operational Terms and which are contained in Schedule 1, Part 6 of the Wholesale Contract;

"Framework Agreement"	the agreement entered into or to be entered into by the Original Parties in the form set out in Schedule 2 (Framework Agreement);
"Gap Site"	any Eligible Premises which is in receipt of Water Services and/or Sewerage Services where no Supply Points or insufficient Supply Points are Registered in relation to such Eligible Premises in the Supply Point Register;
"General Manager"	the general manager appointed by each Disputing Party, having a level of seniority above the representative of the Disputing Party referred to in Section 17.2.2 but below a Board Director, for the purposes of seeking to resolve a Market Arrangements Code Dispute escalated to them by such representative;
"Go Live Date"	1 April 2017 or such other date as may be determined by the Authority;
"Household Premises"	premises in any part of which, a person has his home and whose principal use is a home and which may be identified as such in light of any Regulations or Eligibility Guidance;
"Indemnified Party"	the meaning given in Section 5.11.1;
"Independent Directors"	any director appointed pursuant to Section 4.4.4;
"Independent Panel Members"	those members of the Panel appointed by the Panel Chairman in accordance with Section 5.6.10;
"Initial Meeting"	the meaning given in Section 17.2.2;
"Initial Suspension Period"	the period of twelve (12) months commencing on the Go Live Date;
"Intellectual Property Rights"	means any and all intellectual property or industrial rights of any description anywhere in the world including without limitation to the foregoing generality any patents, trademarks, domain names, registered designs, copyright (including without limitation to the foregoing generality rights in computer software, object and source code), rights in the nature of copyright, database rights, semi-conductor topography rights, unregistered design rights, rights in and to trade names, business names, product names and logos, inventions, databases, discoveries, specifications, formulae, processes, know how, trade secrets, confidential information and any analogous or similar right in any jurisdiction (whether any such rights referred to in this definition are registered, unregistered, registerable or not and any applications or rights to apply for registration of any of them together with any registered rights resulting from any such applications or rights to apply for

	registration);
"Interim Supplier Allocation Process"	the process by which the Market Operator shall allocate Interim Duty Supply Points Registered to a Retailer to Opted-in Retailers in accordance with Section 4.3.9 of the Market Terms, as further set out in CSD 0004 (Interim Supplier Allocation Process);
"Interim Supply Code"	the code of that name issued by the Authority under sections 63AF or 110O of the Water Industry Act 1991, including any revisions to that code issued by the Authority from time to time;
"Invoice Period"	a Month or (where the Business Terms require) part of a Month;
"Law"	(i) any and all applicable laws, statutes, orders, rules, regulations, directives, edicts, bye-laws, schemes, warrants, other instruments made under any statute, any exercises of the royal prerogative and mandatory guidelines which have legal effect, whether local, national, international or otherwise existing from time to time, together with any other similar instrument or provision having legal effect or any binding decisions or judgments of a court or regulatory body (except to the extent that the Party is unable to comply with such judgment during the process of any relevant appeal) in the relevant circumstances; and (ii) rules, codes and regulations of any competent regulatory authority or other similar instrument or provision (as may be amended, supplemented or replaced from time to time);
"LCIA"	The London Court of International Arbitration;
"LCIA Rules"	the rules of The London Court of International Arbitration;
"Licence"	a licence granted under either Section 17A or Section 17BA of the Water Industry Act 1991;
"Licensee"	the holder of a Licence;
"Market Arrangements Code"	this document as amended from time to time;
"Market Arrangements Code Approved Change"	means any variation, amendment, addition to, deletion from or other change to the Market Arrangements Code approved by the Authority;
"Market Arrangements Code Change Proposal"	a proposal in respect of a change to the Market Arrangements Code made in accordance with Section 7 (Change process in respect of the Market Arrangements Code);

"Market Arrangements Code Dispute"	any dispute between or among: (i) any two or more Trading Parties; (ii) the Market Operator and any one or more Trading Party, in respect of any act or omission of a Trading Party arising under, out of or in connection with this Market Arrangements Code;
"Market Arrangements Code Principles"	the meaning given in Part A of Schedule 1 (Market Arrangements Code Principles and Definitions);
"Market Audit Reports"	reports prepared by the Market Auditor and made available to the Trading Parties and the Panel following any audit carried out under Section 4.18 of the Market Terms;
"Market Auditor"	the person or persons appointed to audit the operation of the market in terms of Section 4.18 of the Market Terms;
"Market Entry Assurance"	the processes administered by the Market Operator that an Applicant must complete in order to trade under the Market Terms and in certain other circumstances in accordance with CSD 0001 (Market Entry Assurance and Market Re-assurance);
"Market Entry Assurance Plan"	a document agreed between the Market Operator and an Applicant and which describes the scope and timetable of activities that will be followed to undertake a Market Entry Assurance process in respect of that Applicant;
"Market Incident Management Plan Committee"	the committee established by the Panel pursuant to Section 5.2.1(o);
"Market Operator"	the company established to exercise certain central market functions in relation to the participation of Trading Parties in the Competitive Market;
"Market Operator Board"	the board of Directors of the Market Operator appointed in accordance with Section 4.4;
"Market Operator Budget"	the annual budget for the Market Operator prepared in terms of Section 10 (Cost recovery for the Market Operator's costs);
"Market Operator Charges"	the charges levied on Undertaker Wholesale Businesses and Retailer Businesses in order to fund the Market Operator Budget;
"Market Operator Custodian"	has the meaning set out in Paragraph 1 of Schedule 5 (Market Operator escrow arrangements);

"Market Operator Escrow Agreement"	has the meaning set out in Paragraph 1 of Schedule 5 (Market Operator escrow arrangements);
"Market Operator Material"	has the meaning set out in Paragraph 2 of Schedule 5 (Market Operator escrow arrangements);
"Market Operator Secretary"	the person appointed as secretary to the Market Operator in accordance with Section 4.3;
"Market Performance Standards Peer Comparison Report"	the monthly reports produced by the Market Operator pursuant to CSD 0002 (Market Performance Framework) which are based on the Market Performance Standards;
"Market Performance Committee"	the committee established by the Panel pursuant to Section 5.2.1(m);
"Market Performance Framework"	the assurance processes and methods set out in CSD 0002 (Market Performance Framework) to promote compliance with the Market Terms and Operational Terms and enable appropriate action to resolve identified performance issues;
"Market Performance Operating Plan"	the plan developed by the Market Operator each Year with input from the Panel and the Market Performance Committee, and in consultation with the Trading Parties that sets the market performance-related focus, priorities and activities of the Market Operator, the Panel and the Market Performance Committee for the following Year;
"Market Performance Standards"	the performance standards set out in Table 1 of CSD 0002 (Market Performance Framework) which are used for the purposes of monitoring Trading Party performance and calculating Market Performance Standard Charges;
"Market Performance Standard Charges"	the financial charges that a Trading Party must pay to the Market Operator in the event of a failure to meet one or more of the Market Performance Standards as calculated by the Market Operator in accordance with CSD 0002 (Market Performance Framework) and invoiced by the Market Operator on an Undertaker Wholesale Business or a Retailer Business in accordance with Section 10.4.2 and 10.4.3;
"Market Re-assurance"	the processes that a Trading Party may be required to complete in certain circumstances in order to assure that its continued operation is in accordance with the requirements of the Market Terms and CSDs in accordance with CSD 0001 (Market Entry Assurance and Market Re-assurance);

"Market Re-assurance Plan"	a document agreed between the Market Operator and a Trading Party and which describes the scope and timetable of activities that will be followed to undertake a Market Re-assurance process in respect of that Trading Party;
"Market Terms"	the procedures, principles, terms and conditions set out in Schedule 1, Part 4 of the Wholesale Contract and, where the context requires, any or all of the Code Subsidiary Documents;
"Market Terms Objectives"	the meaning given in the Objectives and Principles sections of Schedule 1, Part 1 of the Wholesale Contract-;
"Materiality Threshold"	the threshold used to determine whether an Unplanned Settlement Run may be carried out, as further described in Section 4.13.4(c) of the Market Terms;
"Member"	a member of the Market Operator;
"MO Dispute"	has the meaning given in Section 5.3 of the Market Terms;
"MO Disputing Party"	the Parties to an MO Dispute;
"Month"	a calendar month;
"New Supply Point"	a Supply Point that requires to be created: (i) in relation to the circumstances set out in Section 4.4.2 of the Market Terms; or (ii) on any first Registration of a Supply Point made pursuant to an Entry Change of Use or in relation to a Gap Site;
"Nominations Committee"	has the meaning given in means the committee constituted in accordance with Article [] of the Articles of Association of the Market Operator from time to time;
"Non-Household Customer"	a person who may be identified as the customer of a Retailer for any Eligible Premises in light of any relevant Eligibility Guidance;
"non-paying Party"	the meaning given in Section 10.8.1;
"Non-Performing Party"	the meaning given in Section 16.1.1;
"Non-Primary Charge"	any Wholesale Charges which are not Primary Charges and to avoid doubt this includes all charges that relate to the provision of one off or discrete services performed pursuant to the Operational Terms or as otherwise set out in the Wholesale Tariff Document in relation to specific circumstances or events;

"Objectives"	the Business Terms Objectives, the Operational Terms Objectives and the Market Terms Objectives;
"Operational Terms"	the procedures, principles, terms and conditions set out in Schedule 1, Part 3 of the Wholesale Contract and, where the context requires, any or all of the Forms;
"Operational Terms Objectives"	the meaning given in the Objectives and Principles section of Schedule 1, Part 1 of the Wholesale Contract;
"Opted In Retailer"	the meaning given in Schedule 1, Part 1 of the Wholesale Contract;
"Original Party"	an initial party to the Framework Agreement as listed in the schedule of the Framework Agreement;
"Panel"	the panel whose composition, role and proceedings are described in Section 5 (The Panel);
"Panel Chairman"	the person appointed in accordance with Section 5.3.2;
"Panel Indicated Date"	the date fixed by the Panel Secretary in accordance with Section 5.6.2, which must: (i) occur as soon as possible after the Go Live Date; and (ii) not occur until at least four (4) Retailers have been granted Licences;
"Panel Members"	the members of the Panel from time to time appointed in accordance with Sections 5.6 <u>and</u> , 5.7 and 5.8;
"Panel Nomination Meeting"	a meeting the purpose of which is described in Section 5.6.1, which shall be held on the date as fixed by the Panel Secretary in accordance with Section 5.6.2;
"Panel Request"	the meaning given in Section 17.4.3;
"Panel Secretary"	the meaning given in Section 5.5;
"Parent Undertaking"	has the meaning given in section 1162 of the Companies Act 2006;
"Part"	one of the six (6) numbered parts of Schedule 1 to the Wholesale Contract which are listed in the contents pages of the Wholesale-Retail Code;
"Party"	all parties to the Market Arrangements Code including all Original Parties and any parties that accede pursuant to Section 2 (Becoming a Party);
"Party A"	the meaning given in Section 18.3.2;

"Party B"	the meaning given in Section 18.3.2;
"Performance Rectification Plan"	a plan determined by the Market Performance Committee or Panel setting out the remedial steps that a Trading Party must take in order to address a performance issue escalated to the Market Performance Committee or Panel in accordance with CSD 0002 (Market Performance Framework);
"Planned Settlement Run"	the provisional run, the first second and third run, any fourth run if applicable, and the Final Settlement Run performed for each Invoice Period as specified in CSD 0201 (Settlement Timetable and Reporting);
"Post RF Settlement Report"	any report provided by the Market Operator pursuant to Section 4.14.3 of the Market Terms;
"Post RF Settlement Run"	any settlement run carried out pursuant to Section 4.13.4 of the Market Terms;
"Primary Charges"	<p>all those charges in the Wholesale Tariff Document that relate to the supply of Water Services and the supply of Sewerage Services both on an enduring or temporary basis, and including:</p> <ul style="list-style-type: none"> (i) fixed and volumetric charges and allowances; (ii) any other charges set out in the Wholesale Tariff Document in relation to specific circumstances or events, <p>but excluding,</p> <ul style="list-style-type: none"> (iii) all charges that relate to the provision of one off or discrete services performed pursuant to the Operational Terms <p>together with all such charges calculated in relation to a Special Agreement by reference to the relevant Factor(s) and Tariff(s) as set out in the Special Agreements Register;</p>
"Principles"	the meaning given in the Objectives and Principles Section of Schedule 1, Part 1 of the Wholesale Contract;
"Proposer"	the person or entity making a Change Proposal, Charging Change or a Market Arrangements Code Change Proposal;
"Qualified"	in respect of an individual, being an appropriate expert with relevant experience of similar market operator functions and/or utilities markets and having the requisite skill and experience to perform the role envisaged;
"Qualifying Majority"	such number of Panel Members as indicated in Section 5.10.2;

"R1 Settlement Run"	the first Settlement Run, the Settlement Reports for which will be issued four (4) Business Days after the end of the Invoice Period to which the Settlement Report relates;
"Receiving Party"	has the meaning given in Section 14.1.1;
"Registration"	the registration of information relating to Eligible Premises, Service Categories, Service Components and meters for each Supply Point in the Supply Point Register and the linkage between a Supply Point and a Retailer and a Wholesaler and all relevant meters at any point in time in the Supply Point Register, and "Register", "Registering" and "Registered" shall be construed accordingly;
"Registration Application"	an application in the form prescribed by the Market Operator from time to time to Register a Supply Point;
"Related Dispute"	an Market Arrangements Code Dispute which has been referred to arbitration and which, in the reasonable opinion of the arbitration tribunal or a Disputing Party should be consolidated with one or more other Market Arrangements Code Disputes because all of such Market Arrangements Code Disputes present significant issues of law or fact in common or relate to the same, or a substantially similar, Market Arrangements Code Dispute;
"Relevant Authority"	any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or any part of the United Kingdom, or of the European Union, and includes the Authority;
"Relevant Date"	means in respect of any Relevant Employee, the date of a Relevant Transfer from the departing Market Operator to the Successor Market Operator;
"Relevant Employees"	means those employees of the departing Market Operator entity or of any of its subcontractors, who are wholly or substantially engaged in carrying out the duties of the Market Operator entity under the Market Terms immediately prior to the Relevant Date;
"Relevant Invoice"	any invoice or statement issued under Sections 10.4.2, 10.4.3 or 10.10.4;
"Relevant Transfer"	a relevant transfer for the purpose of the TUPE Regulations or the Acquired Rights Directive 77/187 (as amended, re-enacted or extended from time to time);

"Reports"	all reports (including Settlement Reports) that are required to be provided by the Market Operator pursuant to the Market Terms including CSD 0201 (Settlement Timetable and Reporting) and CSD 0302 (Standing Reports and Data Extracts);
"Respondent"	a party to an arbitration that is not the Arbitration Claimant;
"Response"	the meaning given in Section 17.4.2;
"Retail Authorisation"	an authorisation either of the type described in; (i) for Wholesalers operating wholly or mainly in England, paragraph 3 of schedule 2A or paragraph 1 of schedule 2B of the Water Industry Act 1991, i.e. an authorisation to use an Undertaker's system for the purpose of enabling the Licensee to provide Sewerage Services or provide water in respect of certain premises; or (ii) for Wholesalers operating wholly or mainly in Wales paragraph 6 of schedule 2A of the Water Industry Act 1991, i.e. an authorisation to use an Undertaker's system for the purpose of enabling the Licensee to provide water in respect of certain premises; as the context requires;
"Retail Exit Code"	the code of that name issued by the Authority under regulation 30 of the Water and Sewerage Undertakers (Exit from Non-Household Retail Market) Regulations 2016, including any revisions to that code issued by the Authority from time to time;
"Retail Services"	Water Retail Services and/or Sewerage Retail Services as the context requires;
"Retailer"	a Water Retailer and/or Sewerage Retailer as the context requires;
"Retailer Business"	a Retailer or an Undertaker Retail Business;
"Retailer Credited Market Performance Standard Charges"	those Performance Standard Charges identified as being "Retailer Credited" in Table 1 of CSD 0002 (Market Performance Framework);
"Retailer Director"	the non-executive Director appointed by the Retailer Members in accordance with Section 4.4.3;
"Retailer Market Operator Charges"	the meaning given in Section 10.3.1(b);
"Retailer Members"	those members of the Market Operator which are Retailers;

"RF Settlement Run"	the final Settlement Run performed by the Market Operator in relation to any Invoice Period;
"Scottish Market Code"	the market code designated by the Commission for the purposes of the Water Services (Codes and Services) Directions 2007;
"Scottish Operational Code"	the operational code designated by the Commission for the purposes of the Water Services (Codes and Services) Directions 2007;
"Scottish Template WSA"	the template Wholesale Services Agreement for the provision of wholesale services by Scottish Water to a licensed provider, published by the Commission;
"Section 66D Agreement"	the meaning given in Section 66D(9) of the Water Industry Act 1991;
"Section 117E Agreement"	the meaning given in Section 117E(9) of the Water Industry Act 1991;
"Settlement Reports"	the reports to be provided by the Market Operator to a Wholesaler and a Retailer in accordance with the settlement timetable set out in CSD 0201 (Settlement Timetable and Reporting) and as summarised in Section 4.13.1 of the Market Terms in relation to any Planned Settlement Runs and any Settlement Reports provided following any Agreed Settlement Runs or any Unplanned Settlement Runs;
"Settlement Run"	any Planned Settlement Run or Unplanned Settlement Run as the context requires;
"Seventh Principle"	the meaning given in Section 15.2.1;
<u>"Sewerage Retailer"</u>	<u>a Licensee who provides Sewerage Retail Services;</u>
<u>"Sewerage Retail Services"</u>	<u>any or all of those services provided by a Licensee under an authorisation of the type described in paragraph 1 of schedule 2B of the Water Industry Act 1991;</u>
"Sewerage Services"	any or all of those services provided by a Wholesaler in connection with its duties under Sections 117A and 117B of the Water Industry Act 1991;
"SPID"	a unique identifier allocated to each Supply Point by the Market Operator;
"SPID Data"	for any Supply Point, the data applicable to all of the Water Services or all of the Sewerage Services at the Supply Point, to be provided by each Data Owner for each Supply Point as specified in the Data Catalogue;

"Subsidiary Undertaking"	has the meaning given in Section 1162 of the Companies Act 2006 (and "subsidiary" shall be construed accordingly);
"Successor Market Operator"	means any body appointed to assume the role of Market Operator replacing the first or any subsequent Market Operator;
"Supply Point"	<p>subject always to Section 4.2.2(c) and (d) of the Market Terms, in relation to any Eligible Premises, the point at which Water Services or Sewerage Services are provided and (to avoid doubt):</p> <p>(a) any Eligible Premises that receives both Water Services and Sewerage Services shall have two (2) Supply Points; and</p> <p>(b) any Eligible Premises that receives either Water Services or Sewerage Services only shall have one (1) Supply Point;</p>
"Supply Point Register"	the database (and any related business processes) which is operated and maintained by the Market Operator to facilitate the Registration of Supply Points to Retailers and the Transfer of Supply Points from a Retailer to any other Retailer and which holds the data required to comply with CSD 0003 (Volume Transfer and Volume Data Update); CSD 0004 (Interim Supplier Allocation Process); CSD 0005 (Gap Site Allocation Process); CSD 0101 (Registration: New Supply Points); CSD 0102 (Registration: Transfers); CSD 0103 (Registration: Cancellations and Erroneous Transfers); CSD 0104 (Maintain SPID Data); CSD 0105 (Error Rectification and Retrospective Amendments); CSD 0106 (Non-Market Meters); CSD 0202 (Meter Read Submission: Process); CSD 0203 (Meter Read Submission: Validation); CSD 0206 (Trade Effluent Processes); CSD 0208 (Creation and update of Wholesaler Tariff Data) and CSD 0301 (Data Catalogue);
"Supply Point Share"	the meaning given in Paragraphs 2 and 3.2 (as relevant) of Schedule 6 (Market Operator Charges);
"TD Procedures"	the meaning given in Paragraph 2.10.1 of Schedule 9 (Trading Disputes Committee);
"TDC Terms of Reference"	the meaning given in Paragraph 2.4.1 of Schedule 9 (Trading Disputes Committee);
"Total Costs"	the meaning given in Section 10.2.1;

"Trading"	the meaning given in Section 3.1 of Schedule 6 (Market Operator Charges);
"Trading Application"	means the form of that name published by the Market Operator from time to time;
"Trading Conditions"	that a Wholesaler and/or a Retailer as appropriate: <ul style="list-style-type: none"> (i) has applied to be admitted to trading by completing and delivering an accurate Trading Application to the Market Operator; (ii) holds an Appointment or a Licence; (iii) has completed the Market Entry Assurance Process; (iv) has become a member of the Market Operator; (v) has entered into an Accession Agreement; and (vi) in the case of a Retailer only, has entered into a Wholesale Contract(s) in relation to the Area(s) in which it intends to trade;
"Trading Dispute"	the meaning given in Paragraph 1.2.1 of Schedule 9 (Trading Disputes Committee);
"Trading Dispute Deadline"	the meaning given in Paragraph 3.2.2 of Schedule 9 (Trading Disputes Committee);
"Trading Disputes Committee"	that committee established by the Panel pursuant to Section 5.2.1(k);
"Trading Disputes Committee Chairman"	the meaning given in Paragraph 2.5.1 of Schedule 9 (Trading Disputes Committee);
"Trading Disputes Committee Member"	the meaning given in Paragraph 2.3.1 of Schedule 9 (Trading Disputes Committee);
"Trading Party"	all Retailers and Wholesalers that are Parties to the Market Arrangements Code and that have satisfied the Trading Conditions ;
"Transfer"	the completion of any Transfer Registration Application for any Supply Point such that the Supply Point becomes Registered to a different Retailer and "Transferred" and "Transferring" shall be construed accordingly;
"Transfer Payment"	means a payment to be made by a Successor Market Operator to a departing Market Operator as provided for in Paragraphs 1.5.1 and 1.5.2 of Schedule 4 (Market Operator Exit Plan and Transfer Provisions);

"Transfer Registration Application"	a Registration Application made in connection with a Transfer;
"Transitional Charges"	the meaning given in Section Error! Reference source not found.;
"Transitional Services"	the meaning given in Paragraph 1.4 of Schedule 4 (Market Operator Exit Plan and Transfer Provisions);
"TUPE Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI2006/246) as amended, re-enacted or extended from time to time;
"Unassociated Retailers"	a Retailer who is not an Affiliated Company of an Undertaker;
"Unassociated Retailer Members"	those members of the Market Operator that are Unassociated Retailers;
"Unassociated Retailer Panel Members"	those members of the Panel elected by Unassociated Retailer Members in accordance with Section 5.6;
"Undertaker"	a company appointed under section 6 of the Water Industry Act 1991;
"Undertaker Retail Business"	all the activities, assets and liabilities of an Undertaker, which are associated with the performance of activities which would, if carried on by a Licensee, fall within the scope of its Retail Authorisation;
"Undertaker Wholesale Business"	all the activities, assets and liabilities of an Undertaker, other than those associated with its Undertaker Retail Business;
"Unplanned Settlement Run"	a Corrective Settlement Run, a Post RF Settlement Run or a Disputes Settlement Run as the context requires which in each case shall be specific to the Trading Parties affected and the SPIDs and Data Items affected by the re-calculation;
"User Forum"	the industry forum whose membership, role and proceedings are described in Section 8 (User Forum);
"Volume Data Update"	the updating of data in the Supply Point Register in the circumstances set out in Section 4.3.8 of the Market Terms;
<u>"Water Retailer"</u>	<u>a Licensee who provides Water Retail Services;</u>
<u>"Water Retail Services"</u>	<u>any or all of those services provided by a Licensee under an authorisation of the type described in paragraph 3 or in paragraph 6 of schedule 2A of the Water Industry Act 1991;</u>

"Water Services"	any or all of those services provided by a Wholesaler in connection with its duties under Sections 66A and 66AA of the Water Industry Act 1991;
"Wholesale Charges"	the charges which a Wholesaler applies in accordance with its Wholesale Tariff Document;
"Wholesale Contract"	a contract between a Wholesaler and a Retailer that constitutes: (a) a Section 66D Agreement; or (b) a Section 117E Agreement; or (c) both a Section 66D Agreement and a Section 117E Agreement, and which, in each case, is in the form prescribed in the Wholesale-Retail Code;
"Wholesale-Retail Code"	the code of that name issued by the Authority under Sections 66DA and 117F of the Water Industry Act 1991 including, without limitation, the Wholesale Contract, the Business Terms, the Operational Terms and the Market Terms and any Approved Change from time to time;
"Wholesale Services"	Water Services and/or Sewerage Services as the context requires;
"Wholesale Tariff Document"	the document published by the Contracting Wholesaler from time to time setting out its current Wholesale Charges together with all Primary Charges calculated in relation to a Special Agreement by reference to the relevant Factor(s) and Tariff(s) as set out in the Special Agreements Register;
"Wholesaler"	an Undertaker;
"Wholesaler Director"	the non-executive Director appointed by the Wholesaler Members in accordance with Section 4.4.3;
"Wholesaler Market Operator Charges"	the meaning given in Section 10.3.1(a);
"Wholesaler Members"	those members of the Market Operator that are Wholesalers;
"Wholesaler Panel Members"	those members of the Panel elected by Wholesaler Members in accordance with Section 5.6; and

"Working Procedures"	the best practice guidance for various working practices and processes in relation to the Market Terms developed and issued by the Market Operator from time to time following consultation with the Contracting Wholesaler, the Contracting Retailer and other Trading Parties;
"Year"	1 April to 31 March.

Schedule 2

Framework Agreement

THIS DEED is made on

Between the persons whose names and principal offices are set out in the schedule hereto.

WHEREAS

- (A) Pursuant to a condition of every Licence granted pursuant to section 17A or section 17BA of the Water Industry Act 1991 (the "Act"), all Licensees are required to be a party to this Framework Agreement and to comply with the Market Arrangements Code;
- (B) Pursuant to a condition of the Appointment issued to an Undertaker under section 6 of the Act, all Undertakers are required to be a party to this Framework Agreement and to comply with the Market Arrangements Code; and
- (C) The Parties are entering into this Framework Agreement for the purpose of giving effect to and binding themselves by the Market Arrangements Code.

NOW IT IS AGREED as follows: -

1 Interpretation

1.1 In this Framework Agreement the following words and expressions shall, except where otherwise expressly stated, have the following meanings: -

"Accession Agreement"	means the agreement entered into from time to time between an Applicant, who intends to be bound by the terms of this Framework Agreement, and the Market Operator;
"Applicant"	has the meaning provided for in the Accession Agreement;
"Appointment"	the instrument of appointment granted to an Undertaker under section 6 of the Act;

"Discontinuance Date"	means the date when a Discontinuing Party will cease to be a Party to this Framework Agreement;
"Discontinuing Party"	means a Party to this Framework Agreement who will cease to be a Party to this Framework Agreement with effect from the Discontinuance Date;
"Effective Date"	{means:- (a) with respect to each of the Original Parties, the Go Live Date the date of this Framework Agreement as stated at the beginning of it; and (b) with respect to any Applicant who is admitted as a new Party and (as respects such Applicant or Successor Market Operator) the other Parties, the date of the relevant Accession Agreement;}
"Framework Agreement"	means this agreement including the recitals and schedule annexed hereto;
"Licence"	means a licence granted under either section 17A or section 17BA of the Act;
"Licensee"	means the holder of a Licence;
"Market Arrangements Code"	means the code to be adhered to by Undertakers in accordance with the standard conditions of their Appointment and to be adhered to by Licensees in accordance with the standard conditions of their Licence;
"Market Operator"	has the meaning given to it in the Market Arrangements Code;
"Original Parties"	means the persons whose names are set out in the schedule hereto and the term "Original Party" shall be construed accordingly;
"Party"	means, subject as provided in paragraph 3 of this Framework Agreement, the Original Parties and each new party which enters into an Accession Agreement; and
"Undertaker"	a company appointed under section 6 of the Water Industry Act 1991.

1.2 There is annexed to this Framework Agreement a schedule which shall be construed as one with this Framework Agreement and references in this Framework Agreement and in the schedule to "this Framework Agreement" shall be construed as including references to the said schedule.

2 **New Parties**

2.1 An Applicant may be admitted as a new Party to this Framework Agreement and the Market Arrangements Code in accordance with Section 2 of the Market Arrangements Code (Becoming a Party).

2.2 A Successor Market Operator may be admitted as a new Party to this Framework Agreement and the Market Arrangements Code in accordance with Section 3.2.2 of the Market Arrangements Code (Removal of Market Operator).

2.3 Upon execution and delivery of an Accession Agreement in accordance with Section 2 of the Market Arrangements Code (Becoming a Party), the Applicant shall become a Party.

2.4 Upon execution and delivery of an Accession Agreement in accordance with Section 3.2.2(b) of the Market Arrangements Code (Removal of Market Operator), the Successor Market Operator shall become a Party.

3 **Discontinuing Parties**

A Party which becomes a Discontinuing Party shall with effect from the Discontinuance Date cease to be a Party, but without prejudice to any provision of the Market Arrangements Code as to the continuance in force of any of its provisions as respects, or any rights, obligations and liabilities accrued by, any such Party or (as respects such Party) any other Party.

4 **Market Arrangements Code**

4.1 The Market Arrangements Code is hereby given effect between and made binding upon each Party with effect from the Effective Date.

4.2 With effect from the Effective Date, each Party undertakes to each other Party to comply with and to perform its obligations in accordance with and subject to the Market Arrangements Code.

5 **Severance**

5.1 In the event of any provision (or part of any provision) of this Framework Agreement being or becoming void, illegal or unenforceable in any respect under the Law of any jurisdiction in which this Framework Agreement is effective, the validity, legality and enforceability in that jurisdiction of the remainder of that provision (where appropriate) and of all other provisions of this Framework Agreement shall not be in any way affected or impaired thereby.

6 **Third party rights**

6.1 Subject to paragraph 6.2, a person who is not party to this Framework Agreement may not enforce any term of this Framework Agreement under the Contracts (Rights of Third Parties) Act 1999.

6.2 **Exceptions**

Proposed new Parties

6.3 Paragraph 2 contains terms expressly for the benefit of proposed new Parties. Each proposed new Party may, under the Contracts (Rights of Third Parties) Act 1999, enforce the terms of paragraph 2.

6.4 Paragraph 2 may not be changed unless each proposed new Party with the right to enforce that paragraph at the time of the change:

6.4.1 would not suffer any material adverse impact; or

6.4.2 gives written consent.

7 **Governing Law**

7.1 This Framework Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.

7.2 Each of the Parties hereby submits to the exclusive jurisdiction of the Courts of England and Wales.

Executed by the Original Parties as a Deed and delivered on the date appearing at the beginning of this Deed:

Executed as a Deed for and on behalf of the **Market Operator**

by

a Director/the Secretary/Authorised

Signatory at

on theday ofDirector/Secretary/Authorised Signatory

20[]

in the presence of the following witness:-

Witness.....

Full Name.....

Address.....

.....

Executed as a Deed for and on behalf of **[Insert name of Original Party]**

by

a Director/the Secretary/Authorised

Signatory at

on theday ofDirector/Secretary/Authorised Signatory

20[]

in the presence of the following witness:-

Witness.....

Full Name.....

Address.....

.....

Schedule

[Market Operator]

[insert Market Operator's

Address:

E-mail:

Facsimile No:

Attention:]

[Undertakers]

[insert Undertakers'

Address:

E-mail:

Facsimile No:

Attention:]

[Licensees]

[insert Licensees'

Address:

E-mail:

Facsimile No:

Attention:]

Schedule 3

Accession Agreement

THIS Deed is made on

BETWEEN:

- (1) [The Market Operator on its own behalf and on behalf of all the other Parties to the Framework Agreement (the "**Authorised Person**"); and
- (2) [*Insert name of person wishing to be admitted to the Market Arrangements Code*] (the "**Applicant**") whose principal office is at [*insert address*].] OR
- (1) [*Insert name of person nominated to enter into Accession Agreement in accordance with Section 3.2.2(b) of Market Arrangements Code*] on its own behalf and on behalf of all the other Parties to the Framework Agreement (the "**Authorised Person**"); and
- (2) [*Insert name of the Successor Market Operator*] (the "**Applicant**") whose principal office is at [*insert address*]].

WHEREAS:

- (A) By the Framework Agreement dated [*insert date*] made between the Original Parties named therein and as now in force between the Parties by virtue of any Accession Agreement entered into by any new Party before the date of this Accession Agreement (the "Framework Agreement"), the Parties agreed to give effect to and be bound by the Market Arrangements Code; and
- (B) The Applicant wishes to be admitted as a Party to the Framework Agreement and the Market Arrangements Code.

NOW IT IS AGREED as follows:

1. In this Accession Agreement, words and expression defined in or for the purposes of the Framework Agreement (and not otherwise defined in this Accession Agreement) shall have the meaning given in the Framework Agreement.

2. The Authorised Person (acting on its own behalf and on behalf of each of the other Parties) hereby admits the Applicant as an additional Party under the Framework Agreement with effect from the date of this Accession Agreement (the "Accession Date").
3. The Applicant hereby accepts its admission as a Party to the Framework Agreement and undertakes with the Authorised Person (acting on its own behalf and on behalf of each of the other Parties) to perform and to be bound by the terms and conditions of the Framework Agreement as a Party as from the Accession Date.
4. For all purposes in connection with the Framework Agreement the Applicant shall as from the Accession Date be treated as if it had been a signatory of the Framework Agreement, and as if this Accession Agreement were part of the Framework Agreement, from the Accession Date, and the rights and obligations of the Parties shall be construed accordingly.
5. All notices to be given to the Applicant under this Accession Agreement shall be given in accordance with Section 24 of the Market Arrangements Code (Notices). The address, facsimile number and email for the Applicant are as follows:

Address:

E-mail:

Facsimile No:

Attention:
6. This Accession Agreement and the Framework Agreement shall be read and construed as one document and references (in or pursuant to the Framework Agreement) to the Framework Agreement (howsoever expressed) should be read and construed as reference to the Framework Agreement and this Accession Agreement.
7. In the event of any provision (or part of any provision) of this Accession Agreement being or becoming void, illegal or unenforceable in any respect under the Law of any jurisdiction in which this Accession Agreement is effective, the validity, legality and enforceability in that jurisdiction of the remainder of that provision (where

appropriate) and of all other provisions of this Accession Agreement shall not be in any way affected or impaired thereby.

8. A person who is not party to this Accession Agreement may not enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999. The parties may rescind or change any term of this Accession Agreement without the consent of a person who is not party to this Accession Agreement.
9. This Accession Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.
10. Each of the parties hereby submits to the exclusive jurisdiction of the courts of England and Wales, as the case may be.

Executed as a Deed and delivered on the date appearing at the beginning of this Deed:

Executed as a Deed for and on behalf of the **[Market Operator] OR [Insert name of Authorised Person if not the Market Operator]**

by

a Director/the Secretary/Authorised Signatory

at

on theday ofDirector/Secretary/Authorised Signatory

20[]

in the presence of the following witness:-

Witness.....

Full Name.....

Address.....

.....

Executed as a Deed for and on behalf of **[insert name of Applicant]**

by

a Director/the Secretary/Authorised

Signatory at

on theday ofDirector/Secretary/Authorised Signatory

20[]]

in the presence of the following witness:-

Witness.....

Full Name.....

Address.....

.....

Schedule 4

Market Operator exit plan and transfer provisions

1 **General**

1.1 In the event of the replacement of any Market Operator in accordance with Section 3.2.2, that departing Market Operator shall co-operate with the Trading Parties and the Successor Market Operator to ensure that a smooth handover and continuation of the Market Operator's duties under the Market Terms and Market Arrangements Code takes place.

1.2 Where a Market Operator is at the Authority's direction to be replaced by a Successor Market Operator and thereafter shall cease to be the Market Operator then, subject to settlement of all liabilities of such entity, the Trading Parties shall exercise their rights as Members to procure that the balance of assets and any liabilities of such entity (if any) shall be transferred to the Successor Market Operator in accordance with the Articles of Association of the departing Market Operator and the remaining provisions of this Schedule 4 shall apply.

1.3 **Transfer of services, responsibilities and assets**

1.3.1 Where a Market Operator is to be replaced by a Successor Market Operator the departing Market Operator shall:

- (a) transfer to the Successor Market Operator all ownership and/or licences of Intellectual Property Rights (including all information in its possession) relevant to carrying out its duties under the Market Terms and/or the Market Arrangements Code, including those relating to the Central Systems;
- (b) transfer to the Successor Market Operator all assets belonging to the Market Operator which are required by the Successor Market Operator

to carry out its duties under the Market Terms and/or the Market Arrangements Code;

- (c) in respect of any third party software required to enable the Successor Market Operator to undertake its obligations set out in the Market Terms and/or the Market Arrangements Code, assign to the Successor Market Operator its licences to use such third party software, or shall make reasonable endeavours to procure that the owner of the Intellectual Property Rights in such third party software grants to the successor Market Operator a non-exclusive, perpetual and irrevocable licence to use such third party software;
- (d) provide to the Successor Market Operator any of the data in its possession (including all archived and other historical records of trading under the Market Terms) in a format nominated by the Successor Market Operator, together with all training manuals, code, materials, reports, working papers, algorithms and other related documentation relevant to carrying out its duties under the Market Terms and/or the Market Arrangements Code and any other information and all copies thereof;
- (e) cease to use the data and, at the request of the Successor Market Operator, shall destroy all copies of the data then in its possession;
- (f) make reasonable endeavours to assign or novate in favour of the Successor Market Operator any contracts, licences, equipment leases and maintenance agreements which are required by the Successor Market Operator to operate the Central Systems or otherwise carry out its duties under the Market Terms and/or the Market Arrangements Code;
- (g) be responsible for all emoluments and outgoings in respect of the Relevant Employees (including, without limitation, all wages, holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and otherwise) arising prior to the Relevant Date and shall indemnify and keep indemnified the Successor Market Operator against all Costs arising in connection with such emoluments

or outgoings, or a failure by the departing Market Operator to discharge them. For the avoidance of doubt the departing Market Operator will not be responsible for emoluments and outgoings in respect of the Relevant Employees arising on or after the Relevant Date;

- (h) in so far as the TUPE Regulations apply to the transfer of the Relevant Employees from the departing Market Operator to the Successor Market Operator, comply with its obligations as a 'transferor' under such; and if and to the extent that, for any reason, the TUPE Regulations do not apply to all or any of the Relevant Employees, use reasonable endeavours to procure that the Relevant Employees shall nonetheless transfer to the employment of the Successor Market Operator;
- (i) indemnify the Successor Market Operator from and against:
 - (i) all Costs arising in connection with any claim against the Successor Market Operator by any Relevant Employee arising from any act, fault or omission of the departing Market Operator or its sub-contractors or their staff (as the case may be) prior to the Relevant Date, including any claim for breach of contract, redundancy, unfair dismissal, sex, race or disability discrimination, or any other claim within the jurisdiction of an Employment Tribunal or arising at common Law, in tort or otherwise (in all cases whether arising under domestic or European Law);
 - (ii) all Costs incurred by the Successor Market Operator arising in connection with or from any claim or proceedings by any trade union, elected employee representative or staff association in respect of any Relevant Employee and which arises from or is connected with any failure by the departing Market Operator or any of its sub-contractors to comply with their legal obligations in relation thereto under Regulation 13 of the TUPE Regulations; and
 - (iii) all Costs arising in connection with any claim or proceedings against the Successor Market Operator by any Relevant

Employee or by any trade union, elected employee representative or staff association in respect of any Relevant Employee which arises from or is connected with the departing Market Operator's provision or failure to provide any retirement and death benefits in terms of the TUPE Regulations as interpreted by the European Court of Justice cases of Beckmann v Dynamo Whicheloe Macfarlane Ltd and Martin & Others v South Bank University;

- (j) transfer or make available to the Successor Market Operator all assets (excluding heritable and leasehold property), equipment, facilities, documentation and Transitional Services which are required by the Successor Market Operator to operate the Central Systems;
- (k) render all reasonable assistance to the Successor Market Operator if requested by the Successor Market Operator in order to effect an orderly assumption by the Successor Market Operator of the duties carried out by the departing Market Operator under the Market Terms and/or the Market Arrangements Code;
- (l) without prejudice to its obligations under the TUPE Regulations, 3 months prior to the Relevant Date or as soon as reasonably practicable thereafter, to the extent permitted by Law, supply to the Successor Market Operator all information reasonably required by the Successor Market Operator as to the identity, date of commencement of employment, date of birth, job title, accrued holiday entitlement and terms and conditions of employment of any Relevant Employee and as to any liabilities, claims or disputes or potential liabilities, claims or disputes arising in connection with the employment of any Relevant Employee of which the departing Market Operator or its relevant sub-contractor is aware and shall warrant that such information is true, complete and accurate in all material respects;
- (m) not, and shall procure that any relevant sub-contractor shall not, from and after the date upon which the departing Market Operator is aware that it is or is likely to be replaced, materially amend the rates of remuneration or hours to be worked or any other terms and conditions of

employment of any Relevant Employee or increase or decrease the number of Relevant Employees or give notice to terminate the employment of any Relevant Employee without the written consent of the Successor Market Operator, such consent not to be unreasonably withheld or delayed; and

- (n) use reasonable endeavours to comply with any reasonable request by the Successor Market Operator to facilitate a meeting between it and any Relevant Employee prior to the Relevant Date.

1.4 **Transitional Services**

1.4.1 For a period of three (3) Months from the date from which the departing Market Operator is to be replaced, the departing Market Operator shall, where required by the Trading Parties or the Successor Market Operator, provide or procure the provision of:

- (a) training and systems support for the Successor Market Operator;
- (b) parallel running of systems with the Successor Market Operator;
- (c) the moving, relocation or delivery of assets referred to in Paragraph 1.4; and
- (d) any relevant practical and procedural information to the Successor Market Operator not already covered by Paragraph 1.4,

(together the "Transitional Services").

1.5 **Asset transfer costs**

1.5.1 In the event that the Market Operator is to be replaced by a Successor Market Operator and subject always to:

- (a) any outstanding liabilities of the departing Market Operator under the Market Terms and/or Market Arrangements Code; and
- (b) the satisfactory provision by the departing Market Operator of any Transitional Services required under Paragraph 1.5,

the departing Market Operator shall be entitled to receive a Transfer Payment from the Successor Market Operator.

- 1.5.2 Such Transfer Payment shall comprise of such other costs as is reasonably or necessarily incurred in relation to those assets to be transferred and which are equivalent to the market value of those assets at the date of their transfer from the departing Market Operator to the Successor Market Operator.

Schedule 5

Market Operator escrow arrangements

- 1 No later than the Go Live Date the Market Operator shall enter into and deliver an escrow agreement (the "Market Operator Escrow Agreement") in a form to be approved by the Board with a reputable escrow agent (the "Market Operator Custodian"). The Market Operator Escrow Agreement shall provide for:
 - 1.1 the Authority to have access to the latest version of the materials set out below for the purposes of transferring such materials to the Successor Market Operator in the event of the removal of the existing Market Operator; and
 - 1.2 the Successor Market Operator to have the right to make use of such materials.
- 2 Forthwith upon entering into the Market Operator Escrow Agreement the Market Operator shall deposit with the Market Operator Custodian to the extent then in existence (and, if not in existence, as soon as practicable after it comes into existence):
 - 2.1 a copy of all the source code, object code and load (machine executable) modules relevant to carrying out its duties under the Market Terms and/or Market Arrangements Code including those relating to the Central Systems beneficially owned by it together with all job control language and licensed software system tables, each in a machine readable form and the source code and relevant job control language in a hard copy form;
 - 2.2 a copy of all related manuals and other associated documentation including:
 - 2.2.1 any user requirement documents together with all associated authorised change requests;
 - 2.2.2 any functional specification documents associated with those documents described in Paragraph 2.1. above, together with all authorised change requests associated with the relevant functional specification;

- 2.2.3 to the extent available to the Market Operator, any design specification documents associated with those documents described in Paragraph 2.1. above, together with all authorised change requests associated with the relevant design specification;
- 2.2.4 any program and/or user guides prepared to assist in the day to day operation and future development of the computer programs (including records of test cases together with the associated test input and output data used for validation purposes);
- 2.2.5 any relevant test strategy schedules and acceptance test schedules as specified for functional and operational end to end testing;
- 2.2.6 any relevant test acceptance certificates and reports for all tests recording comments and observations made on the appropriate tests where such tests are commissioned by the Market Operator;
- 2.2.7 any relevant acceptance certificates and Market Audit Reports, together with any reports recording such acceptance and the Market Auditor's observations and comments on the tests;
- 2.2.8 any relevant compilation or detailed operating procedures required in connection with any of the relevant provisions in this Paragraph 2;
- 2.2.9 all software licences relevant to carrying out the Market Operator's duties under the Market Terms and/or Market Arrangements Code, including those related to any Central Systems licensed to the Market Operator; and
- 2.2.10 a copy of all historical data (including all transaction, reference and audit data and changes to standing data) relating to the Central Systems operations of the Market Operator over the preceding [eighteen (18) Months] except in so far as a valid Dispute or MO Dispute is ongoing and in so far as not inconsistent with any legal obligation to retain data for any longer period, as may be required by HMRC in accordance with taxation legislation or regulation, or as may be required in accordance with the Companies Act or any other statutory, regulatory or legal obligation or, if shorter, over the period from the Effective Date.

- 2.3 All the material referred to above is hereafter together referred to in this Schedule 5 (Market Operator escrow arrangements) as the "Market Operator Material".
- 3 The Market Operator shall ensure that the Market Operator Material deposited with the Market Operator Custodian is kept fully up-to-date in accordance with the terms of and subject to the conditions of the Market Operator Escrow Agreement.

Schedule 6

Market Operator Charges

- 1 This Schedule 6 (Market Operator Charges) sets out the methods for calculating:
 - 1.1 each Undertaker Wholesale Business' share of the Wholesaler Market Operator Charges;
 - 1.2 each Retailer Business' share of the Retailer Market Operator Charges;
 - 1.3 in relation to each Year, the adjustment in respect of the amounts payable by each Undertaker Wholesale Business, its liability for any shortfall and its entitlement to any surplus; and
 - 1.4 in relation to each Year, the adjustment in respect of the amounts payable by each Retailer Business, its liability for any shortfall and its entitlement to any surplus.
- 2 The amount of the Wholesaler Market Operator Charges payable by each Undertaker Wholesale Business in respect of each Month shall be calculated in accordance with that Undertaker Wholesale Business' share of the total registered Supply Points in the market (the Undertaker Wholesale Business' "Supply Point Share") at the date when the Market Operator produces the invoice in respect of the relevant Month in accordance with Section 10.4 (the "applicable Date") as follows:

$$\left(\frac{A}{B}\right) \times C$$

- A = the aggregate number of Supply Points Registered to the Undertaker Wholesale Business in the Supply Point Register as at the applicable Date;

B = the aggregate number of all Supply Points Registered to all Undertaker Wholesale Businesses in the Supply Point Register as at the applicable Date;

C = the Wholesaler Market Operator Charges.

3 The amount of the Retailer Market Operator Charges payable by each Retailer Business in respect of each Month shall be the cumulative total of the amounts calculated in accordance with (3.1), (3.2) and (3.3) as follows:

3.1 In respect of the fixed fee, two hundred and fifty pounds sterling (£250) payable by each Retailer Business that is "Trading" at the date when the Market Operator produces the invoice in respect of the relevant Month in accordance with Section 10.4 (the "applicable Date"). For the purpose of this Section 3.1, "Trading" means where a Retailer Business has at least one Supply Point registered to them in the Central System;

3.2 In respect of the Supply Point Share, an amount calculated in accordance with that Retailer Business' share of the total Registered Supply Points in the market (the Retailer Business' "Supply Point Share") at the applicable Date as follows:

$$\left(\frac{D}{E}\right) \times \left(\frac{1}{3}\right) \times \left(\frac{F}{12} - G\right)$$

D = the aggregate number of Supply Points Registered to the Retailer Business in the Supply Point Register as at the applicable Date;

E = the aggregate number of all Supply Points Registered to all Retailer Businesses in the Supply Point Register as at the applicable Date.

F = the Retailer Market Operator Charges for the Year; and

G = the cumulative total of the Fixed fees payable by all Retailer Businesses in respect of the relevant Month, as determined in accordance with 3.1 above;

3.3 In respect of the market share, an amount calculated in accordance with that Retailer Business' market share as determined based on the Primary Charges levied during the most recent full calendar Month that has passed prior to the

applicable Date (the "applicable Month") as shown in the R1 Settlement Run relevant to the applicable Month as follows:

$$\left(\frac{H}{I}\right) \times \left(\frac{2}{3}\right) \times \left(\frac{F}{12} - G\right)$$

H = the Primary Charges levied on the relevant Retailer Business by all Undertaker Wholesale Businesses during the applicable Month;

I = the aggregate Primary Charges levied by all Undertaker Wholesale Businesses on all Retailer Businesses during the applicable Month;

F = as above;

G = as above.

4 Without prejudice to Section 10.8, in relation to each Year (the "applicable Year"), the Undertaker Wholesale Businesses collectively shall be liable for half of any shortfall between the Market Operator Charges recovered by the Market Operator and the Market Operator's outturn costs as shown in its audited accounts for the applicable Year (the "Annual Outturn Costs"). The Market Operator shall carry out a reconciliation of each Undertaker Wholesale Business' share of the Annual Outturn Costs by:

4.1 allocating the aggregate Undertaker Wholesale Businesses' share of the Annual Outturn Costs to each Month such that the share of the Annual Outturn Costs for each Month are proportional to the number of days in each Month; and

4.2 calculating each Undertaker Wholesale Business' liability for the Annual Outturn Costs for each Month by applying the Undertaker Wholesale Business' Supply Point Share for each Month, as originally determined in accordance with Paragraph 2 of this Schedule, to the aggregate Undertaker Wholesale Businesses' share of the Annual Outturn Costs for that Month.

4.3 Each Undertaker Wholesale Business is liable to pay any shortfall between the sum of the Market Operator Charges paid by that Undertaker Wholesale Business for each Month of the applicable Year and the sum of its liability for the Annual Outturn Costs as determined above.

- 4.4 Subject to Section 10.10.2, each Undertaker Wholesale Business shall be entitled to reimbursement of any surplus between the sum of the Market Operator Charges paid by that Undertaker Wholesale Business and the sum of its liability for the Annual Outturn Costs as determined above.
- 5 Without prejudice to Section 10.8, in relation to each Year (the "applicable Year"), the Retailer Businesses collectively shall be liable for half of any shortfall between the Market Operator Charges recovered by the Market Operator and the Annual Outturn Costs. The Market Operator shall carry out a reconciliation of each Retailer Business' share of the Annual Outturn Costs by:
- 5.1 allocating the aggregate Retailer Businesses' share of the Annual Outturn Costs to each Month such that the share of the Annual Outturn Costs for each Month are proportional to the number of days in each Month; and
- 5.2 calculating each Retailer Business' liability for the Annual Outturn Costs for each Month by taking the amount paid by each Retailer Business for each Month, as originally determined in accordance with Paragraph 3 of this Schedule, as a percentage of the Retailer Businesses' Market Operator Charges for that Month and applying this percentage to the aggregate Retailer Businesses' share of the Annual Outturn Costs for that Month.
- 5.3 Each Retailer Business is liable to any shortfall between the sum of the Market Operator Charges paid by that Retailer Business for each Month of the applicable Year and the sum of its liability for the Annual Outturn Costs as determined above.
- 5.4 Subject to Section 10.10.2, each Retailer Business shall be entitled to reimbursement of any surplus between the sum of the Market Operator Charges paid by that Retailer Business and the sum of its liability for the Annual Outturn Costs as determined above.

Schedule 7

Proposal forms

Part A

Wholesale-Retail Code Change Proposal / charging change Proposal		Form version 1	
Change Proposal/Charging Change Proposal reference (To be completed by the Panel Secretary)		Version No.	
Submission			
Title of Change Proposal/ Charging Change Proposal			
General Details of the Proposer			
Name of Proposer			
Capacity (for Change Proposals - on behalf of a Trading Party, as a Panel Member, as the Customer Representative or on behalf of the Authority; for Charging Change Proposals – on behalf of a Wholesaler).			
Contact Email; Tel./Mob.	name@example.com 0xxxx xxxxxx		
Authorised signature			

Related Documents

Reference of any associated Change Proposal/ Charging Change Proposal

Documents accompanying form

Proposed urgency

Urgent / Non-urgent

Reasons for urgency

The Panel will review this information and make a decision as to whether to take this Change Proposal / Charging Change Proposal forward as urgent

Change Proposal / Charging Change Proposal details

Description of (i) the enhancement, issue or defect which this Change Proposal seeks to address, or (ii) the modified or new charging method or charging structure required pursuant to this Charging Change Proposal

Required under Market Arrangements Code Section 6.2.1(b)

Description of the Change Proposal / Charging Change Proposal, its nature and purpose and (for Change Proposals only) how it is consistent with the Principles and falls within the Objectives noted below

Required under Market Arrangements Code Section 6.2.1(c)

General Description

--

Principles and Objectives

Principles	Affected (Y/N)	Description
Efficiency		
Proportionality		
Transparency		
Simplicity, cost-effectiveness and security		
Barriers to entry		
Non-discrimination		
Customer participation		
Customer contact		
Seamless markets		
No limit on upstream competition		
Objectives		

Business Terms Objectives		
Operational Terms Objectives		
Market Terms Objectives		
Description of the impact of the Change Proposal / Charging Change Proposal on the following items. Required under Market Arrangements Code Section 6.2.1(e), (g) and (h)		
Configured Item	Impacted (Y/N)	Description
Wholesale-Retail Code, Part 1 (Objectives, Definitions and Principles)		
Wholesale-Retail Code, Part 2 (Business Terms)		
Wholesale-Retail Code, Part 3 (Operational Terms)		
Wholesale-Retail Code, Part 4 (Market Terms)		
Wholesale-Retail Code, Part 5 (CSDs)		
Wholesale-Retail Code, Part 6 (Operational Forms)		
Appointment		
Licence		
Any other industry code, agreement or document (e.g. the Wholesale Contract or the Market Operator Articles) (please specify)		

Central System		
Trading Party systems which interface with Central System		
Scottish Core Industry Documents		

Impact Assessment:	
General Comment	
Cost Estimate	
Financial Benefit Estimate (Low: < £10K, Medium: £10K to £100K, High: > £100K)	
Description of any discussions on the topic of the Change Proposal / Charging Change Proposal at the User Forum Required under Market Arrangements Code Section 6.2.1(i)	
Further comments	

Part B

Market Arrangements Code Change Proposal		Form version 1	
Market Arrangements Code Change Proposal reference (To be completed by the Panel Secretary)		Version No.	
Submission			
Title of Market Arrangements Code Change Proposal			
General Details of the Proposer			
Name of Proposer			
Capacity (For Change Proposals - on behalf of a Trading Party, as a Panel Member, as the Customer Representative or on behalf of The Authority; for Charging Change Proposals – on behalf of a Wholesaler).			
Contact Email; Tel./Mob.	name@example.com 0xxxx xxxxxx		
Authorised signature			
Related Documents			
Reference of any associated Market Arrangements Code Change Proposal			

Documents accompanying form		
Proposed urgency	Urgent / Non-urgent	
Reasons for urgency		
The Panel will review this information and make a decision as to whether to take this Market Arrangements Code Change Proposal forward as urgent		
Market Arrangements Code Change Proposal details		
Description of the enhancement, issue or defect which this Market Arrangements Code Change Proposal seeks to address Required under Market Arrangements Code Section 7.1.2(b)		
Description of the Market Arrangements Code Change Proposal, its nature and purpose and how it is consistent with the Market Arrangements Code Principles Required under Market Arrangements Code Section 7.1.2(c)		
Principles	Affected (Y/N)	Description
Efficiency		
Proportionality		
Transparency		

Barriers to entry		
Non-discrimination		
Customer participation		
Seamless markets		
No limit on upstream competition		
Description of any consultation carried out in advance of the Market Arrangements Code Change Proposal being made (if any) Required under Market Arrangements Code Section 7.1.2(f)		
Impact Assessment:		
General Comment		
Cost Estimate		
Financial Benefit Estimate (Low: < £10K, Medium: £10K to £100K, High: > £100K)		

Further comments

Schedule 8

Integrated Wholesaler and Retailer Businesses

Pursuant to Condition R4 of its appointment, each Undertaker shall put in place written arrangements in relation to any activities between its Undertaker Wholesale Business and its Undertaker Retail Business which are, as far as is reasonably practicable, consistent with the requirements of paragraph 1 of Condition R4.

In applying the terms of the Wholesale-Retail Code between the Undertaker Wholesale Business and the Undertaker Retail Business, the Wholesale-Retail Code shall be read and construed in accordance with the remaining terms of this Schedule 8 as follows:

a) in Part 1 the interpretation of the Wholesale-Retail Code to be used for these written arrangements;

(b) in Part 2 the derogations which set out the differential application of the Wholesale-Retail Code to these written arrangements and which are applicable to a group of Undertakers; and

(c) in Part 3 the derogations which set out the differential application of the Wholesale-Retail Code to the written arrangements of a specific Undertaker.

Part 1 - Interpretation of the Wholesale-Retail Code

The following rules of interpretation shall apply to written arrangements which, in accordance with condition R4 of the Appointment of an Undertaker, have been put in place between its Undertaker Wholesale Business and its Undertaker Retail Business.

Objectives, Principles and Definitions	Interpretation
---	-----------------------

Objectives, Principles and Definitions	Interpretation
<p><u>Definitions of the following terms:</u> Parties, Contracting Retailer; Retailer and Other Retailer; Contracting Wholesaler; Wholesaler and Other Wholesaler</p>	<p>These <u>definitions of these</u> terms shall be read as referring to an Undertaker Retail Business or an Undertaker Wholesale Business as the context requires.</p>
<p><u>Definitions of A</u>all service related definitions- terms including Water Services; Sewerage Services; Retail Services; Wholesale Services and definitions where such services definitions are used, e.g. Supply Points; Service Components and Service Categories</p>	<p>These <u>definitions of these</u> terms shall be read as relating to <u>services provided by an Undertaker Retail Business or an Undertaker Wholesale Business (as the context requires)</u> which are the equivalent of to services provided under sections 66A, 66AA, 117A and 117B of the Water Industry Act 1991 or provided by the Undertaker Retail Business to Non-Household Customers.</p>
<p><u>Definition of Wholesale Contract</u></p>	<p>This definition <u>References to the Wholesale Contract-</u> (when applied to the <u>relationship between the</u> Undertaker Wholesale Business and the Undertaker Retail Business of the Undertaker) shall be read as refer<u>ring</u> ences to the written arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business required by Condition R4 <u>of the Undertaker's Appointment.</u></p>
<p><u>Definitions of A</u>all charge related <u>related terms</u> definitions including Wholesale Tariff Document, Wholesale Charges, Primary Charges; Non-Primary Charges, Special Agreements and references to allowances, incentives and other payments</p>	<p>These <u>definitions of these</u> terms shall be read as relating to the equivalent charge and payment arrangements <u>in place</u> between the Undertaker Retail Business and Undertaker Wholesale Business and set out in their written arrangements;</p>
<p><u>Rule of interpretation regarding references to</u> Retailer or Wholesaler agreement, acceptance and consent, determination, rejection and/or challenge</p>	<p>Throughout the Wholesale Retail Code, rReferences to the Retailer or the Wholesaler providing each other with agreement or consent or other similar action shall be construed as references to the Undertaker Retail Business and the Undertaker Wholesale Business providing each other with such agreement, consent or other action.</p>

Objectives, Principles and Definitions	Interpretation
<p><u>Definition of Trading Conditions</u></p>	<p>The definition of Trading Conditions, as it applies to an <u>Undertaker Retail Business and Undertaker Wholesale Business</u>, is amended as follows:</p> <ul style="list-style-type: none"> • <u>The Undertaker Retail Business shall not be required to hold a Licence under condition (ii).</u> • <u>Conditions (iv) and (v) shall be met by the Undertaker acceding to the Market Arrangements Code, and becoming a member of the Market Operator, on behalf of both its Undertaker Wholesale Business and Undertaker Retail Business.</u> • <u>The Undertaker Retail Business and Undertaker Wholesale Business must, as an additional Trading Condition, provide evidence of written arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business as required by Condition R4.</u>
<p><u>Definition of Cessation of Trading Conditions</u></p>	<p><u>Condition (iv) shall not apply to an Undertaker Retail Business</u></p>

Wholesale Contract/Business Terms	Interpretation
<p>Part D of Business Terms – credit cover and payment terms</p>	<p>References in Part D of the Business Terms Where these terms refer to invoicing between a Wholesaler and Retailer, they shall be read as relating to the payment arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business.</p> <p>Where these terms refer to credit support requirements, they shall be read as relating to credit support arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business.</p>
<p>Third Party rights for Market Operator for the orderly operation of the market</p>	<p>The Undertaker must accord the Market Operator the rights it is given under the Wholesale Retail Code for the purpose of securing the orderly participation of Trading Parties, including the Undertaker, in the market.</p>
<p>Notices</p>	<p>The timing and method of serving notices and communications shall be construed as references to the Undertaker Retail Business and Undertaker Wholesale Business providing each other with such notices and communications.</p>

<p><u>Part H of Business Terms –</u> Information exchange and confidentiality of other contracting Party’s information and of customers’ information</p>	<p>References to the Retailer or the Wholesaler providing each other with information shall be construed as references to the Undertaker Retail Business and the Undertaker Wholesale Business providing each other with such information and observing such confidentiality obligations.</p>
<p>Multi-party dispute resolution</p>	<p>The Undertaker will comply with the multi-party dispute resolution and trading disputes resolution processes to the extent it is involved in any dispute that involves any other Trading Party and/or the Market Operator.</p>

Operational Terms	Interpretation
<p><u>All processes:</u> Separate action <u>required</u> from the Wholesaler and from the Retailer</p>	<p>To avoid doubt <u>Where any process or part of a process requires steps to be taken or imposes obligations</u>, the Undertaker Retail Business <u>must take the steps and perform the obligations on the Retailer as set out in the Operational Terms</u> and <u>the</u> Undertaker Wholesale Business must take the steps and perform the obligations <u>on the Wholesaler as set out in the Operational Terms, each</u> independently as a wholesaler and retailer.</p>
<p><u>Processes concerning provision of notices:</u> Wholesaler receipt of notice from Non-Household Customer</p>	<p>to avoid doubt, a <u>A</u> statutory notice served on the Undertaker by a Non-Household Customer may be <u>is</u> validly served <u>on the Undertaker when</u> whether or not it is first received by <u>either</u> the Undertaker Retail Business and or <u>the</u> Undertaker Wholesale Business.</p>

Market Terms	Interpretation
<p>Trading Conditions</p>	<p>the Trading Conditions for an Undertaker Retail Business shall apply save that they shall:</p> <ul style="list-style-type: none"> • not require that the Undertaker Retail Business holds a Licence and shall recognise that the Undertaker Retail Business holds an Appointment • recognise that the Undertaker requires to be a member of the Market Operator and to accede to the Market Arrangements Code on behalf of both its Undertaker Wholesale Business and Undertaker Retail Business and • require evidence of written arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business as required by Condition R4. <p>The Trading Conditions for an Undertaker Wholesale Business shall apply save that they shall:</p> <ul style="list-style-type: none"> • recognise that the Undertaker requires to be a member of the Market Operator and to accede to the Market Arrangements Code on behalf of both its Undertaker Wholesale Business and Undertaker Retail Business and • require evidence of written arrangements between the Undertaker Retail Business and Undertaker Wholesale Business as required by Condition R4.
<p>Cessation of Trading Conditions</p>	<p>The Cessation of Trading Conditions for an Undertaker Retail Business shall recognise that the Undertaker Retail Business does not hold a Licence but that it does hold an Appointment.</p>
<p><u>Obligations concerning</u> <u>interfacing and</u> <u>communicating with the</u> <u>Market Operator</u></p>	<p>To avoid doubt, t The Undertaker Wholesale Business and the Undertaker Retail Business must communicate and interface with the Market Operator independently as wholesaler and retailer using the relevant interfaces provided by the Market Operator and separate identifiers. The Undertaker Wholesale Business and the Undertaker Retail Business will also participate in Market Entry Assurance and Market Re-assurance independently as wholesaler and retailer. <u>Neither the Undertaker Wholesale Business nor the Undertaker Retail Business may perform any of these actions on behalf of the other.</u></p>

Market Terms	Interpretation
<p><u>Section 4.3: Volume transfers - planned</u></p>	<p>The volume transfer process set out in Sections 4.3.5 and 4.3.6 of the Market Terms and CSD 0003 (Volume Transfer and Volume Data Update) will also apply where the Undertaker makes an application in relation to retail exit to the Secretary of State pursuant to any Exit Regulations and that application is approved.</p> <p>The volume processes set out in Sections 4.3.5 to 4.3.8 of the Market Terms and CSD 0003 (Volume Transfer and Volume Data Update) will also apply where the Undertaker (that has remained legally integrated) is to cease to hold an Appointment in relation to all or part of its Area:</p> <ul style="list-style-type: none"> • due to a sale, merger or other transaction affecting all or part of its business; or • on the making of any special administration order; or • on the appointment of another Undertaker in relation to all or part of the Undertaker's Area. <p>The Volume Transfer process will be applied to update all data to refer to the new Retailer and/or Wholesaler as appropriate.</p>

Part 2 – Derogations which provide for differential application of the Wholesale-Retail Code – applicable to more than one Undertaker

Where written arrangements have been put in place by an Undertaker, in accordance with condition R4 of its Appointment, between its Undertaker Wholesale Business and its Undertaker Retail Business, the application of the Wholesale-Retail Code to such written arrangements shall comply with, and be subject to, the following derogations.

Business Terms	Interpretation
<p><u>Part D</u></p>	<p><u>Provisions relating to credit support requirements shall not apply to arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business.</u></p>

<p><u>Part 1: Multi-party dispute resolution</u></p>	<p>The Undertaker will comply with the multi-party dispute resolution and trading disputes resolution processes to the extent it is involved in any dispute that involves- <u>The multi-party dispute resolution and trading disputes resolution processes shall not apply to any dispute between the Undertaker Wholesale Business and the Undertaker Retail Business which does not involve</u> any other Trading Party and/or the Market Operator.</p>
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Market Terms	Interpretation
<p><u>Section 4.3.9: Interim supplier allocation and transfer process</u></p>	<p>Section 4.3.9 shall not apply to Tthe Undertaker Retail Business is not licensed and therefore cannot be an Opted in Retailer for the purposes of the Interim Supplier Allocation Process.</p>
<p><u>Sections 4.4.9 and 4.4.10: Gap site allocation</u></p>	<p>Subject to the following paragraphs sections 4.4.9 and 4.4.10 do not apply and As the Undertaker has not exited the retail market, the Undertaker is- remains the default supplier for Non-Household Customers within its Area pursuant to its aAppointment. Accordingly, the provisions of the Wholesale-Retail Code Gap Site Allocation process do not apply.</p> <p>Where a Gap Site is identified by the Undertaker, the Undertaker will <u>shall</u> register the relevant Supply Points with the Market Operator by notifying the Market Operator of the Supply Points for which that Undertaker's Retail Business will initially be Registered as the Retailer at the point of Registration and will also provide all the information required for those Supply Points as set out in CSD 0101 (Registration: New Supply Points) such that the Supply Point can be made Tradeable.</p> <p>Where a Gap Site is identified by a Retailer, the Undertaker will <u>shall</u> register the relevant Supply Points with the Market Operator by notifying the Market Operator of the Supply Points, identify the said Retailer as the retailer for those Supply Points and by providing all the information required for those Supply Points as set out in CSD 0101 (Registration: New Supply Points).</p>

Part 3 – Derogations which provide for differential application of the Wholesale-Retail Code – applicable to only one Undertaker

Where written arrangements have been put in place by an Undertaker, in accordance with condition R4 of its Appointment, between its Undertaker Wholesale Business and its

Undertaker Retail Business, the application of the Wholesale-Retail Code to such written arrangements shall comply with, and be subject to, the following additional derogations.

<u>[Wholesale Contract/Schedule 1 Parts 1 to 6]</u>	<u>Derogation</u>

Schedule 9

Trading Disputes Committee

1 Trading Disputes

1.1 Introduction

1.1.1 This Schedule 9 (Trading Disputes Committee) sets out arrangements for resolving Trading Disputes and the effect of resolution of Trading Disputes.

1.2 Definition of Trading Disputes

1.2.1 For the purposes of the Wholesale-Retail Code and this Schedule 9 (Trading Disputes Committee):

- (a) subject to Paragraph 1.2.1(iii) and Paragraph 1.2.2, a "Trading Dispute" is any query, difference or dispute of whatsoever nature and howsoever arising under the Wholesale-Retail Code as to the existence, nature or effect of any errors in (including omissions from) any Data Item;
- (b) an "affected Settlement Run" or "affected Settlement Report" shall mean a Settlement Run or Settlement Report in respect of which an error in a Data Item has, or is alleged to have, occurred; and
- (c) a Trading Dispute shall not include any dispute or difference in respect of Non-Primary Charges.

1.2.2 For the purposes of Paragraph 1.2.1(i) references to errors in Data Items are to non-conformance with any requirement of the Wholesale-Retail Code including CSD 0301 (Data Catalogue) or the requirements of any other CSD in respect of a Data Item. For the avoidance of doubt, a Trading Dispute may affect one or more Trading Parties and one or more Wholesale Contracts.

1.3 Resolution of Trading Disputes

1.3.1 Save to the extent that any dispute, application, determination, arbitration, appeal or equivalent right of referral to a third party is expressly provided for in:

- (a) the Water Industry Act 1991 or the Water Act 2014; or
- (b) any Licence or any Appointment; or
- (c) the rights, powers, duties, functions or obligations of the Authority or the Secretary of State under the Water Industry Act 1991, the Water Act 2014, any other Law, any Appointment, Licence or otherwise howsoever,

all Trading Disputes shall be raised, dealt with and (subject to Paragraph 3.7 and Sections 18 and 19 of the Business Terms) decided in accordance with this Schedule 9 (Trading Disputes Committee).

1.3.2 Each Trading Party and the Market Operator hereby agrees that:

- (a) all Trading Disputes shall be raised and dealt with initially under Sections 18.2.1, 18.2.2 and 18.2.3 of the Business Terms) and then decided in accordance with this Schedule 9 (Trading Disputes Committee); and
- (b) no Trading Party may refer a Trading Dispute to arbitration unless the Trading Dispute has first been so raised and dealt with in accordance with the provisions of this Schedule 9 (Trading Disputes Committee).

1.3.3 Each Trading Party and Disputing Party hereby waives to the fullest extent possible any rights, remedies or procedures which it may have or which may be available to it for the resolution of a Trading Dispute other than as provided in Paragraph 1.3.2 and the parties waive to the extent allowed by applicable Law any rights they may have to challenge the award in judicial proceedings or otherwise save as provided herein.

1.3.4 No Trading Dispute may be referred to arbitration unless the Trading Party referring it to arbitration has within twenty (20) Business Days of receiving (or if earlier, deemed receipt) the written decision of the Trading Disputes Committee from the Market Operator under Paragraph 3.6.4 below:

- (a) notified the Market Operator (as secretary to the Trading Disputes Committee) in writing that it does not agree with the decision of the Trading Disputes Committee;

- (b) notified any other affected Trading Parties (of which it is aware) and the Market Operator that it is referring the Trading Dispute to arbitration; and
- (c) made the referral of the Trading Dispute to arbitration.

2 **The Trading Disputes Committee**

2.1 **Establishment**

2.1.1 The Panel shall establish a Trading Disputes Committee in accordance with the provisions of this Paragraph 2.

2.2 **Functions**

2.2.1 The principal functions of the Trading Disputes Committee are to:

- (a) investigate and resolve all Trading Disputes in accordance with the provisions of this Schedule 9 (Trading Disputes Committee), and in relation to one or more Wholesale Contracts, consistently with the provisions of the Wholesale-Retail Code;
- (b) monitor the operation of and recommend modifications to the Code Subsidiary Documents which support the procedures for resolving Trading Disputes; and
- (c) submit recommendations to the Panel for the Panel to consider in respect of modification of the Wholesale-Retail Code including any Code Subsidiary Documents arising out of the activities of the Trading Disputes Committee under this Schedule 9 (Trading Disputes Committee).

2.2.2 The Trading Disputes Committee shall have no power to decide any matter and no competence to discharge any function or to exercise any power, other than as expressly provided in this Schedule 9 (Trading Disputes Committee) or assigned to it by the Panel pursuant to this Schedule 9.

2.2.3 The Panel shall not delegate any powers, functions or responsibilities of the Panel to the Trading Disputes Committee under the Wholesale-Retail Code which do not relate to the resolution of Trading Disputes (but without prejudice

to the functions and responsibilities expressly assigned to the Trading Disputes Committee under this Schedule 9 (Trading Disputes Committee).

2.3 **Constitution**

2.3.1 The Trading Disputes Committee shall be composed (as the Panel shall decide) of 10 members (each a "Trading Disputes Committee Member"), having such experience and expertise in the water and sewerage industry as the Panel decides in its sole discretion is appropriate.

2.3.2 Each Trading Disputes Committee Member shall act impartially and independently of the interests of his employer and of any person or class of persons and, in exercising his functions under this Schedule 9 (Trading Disputes Committee), shall not be bound by or follow the instructions of any person save as set out expressly herein.

2.4 **TDC Terms of Reference**

2.4.1 The Panel shall determine terms of reference ("TDC Terms of Reference") for the Trading Disputes Committee, which shall address at least the following matters:

- (a) rules and requirements as to the proceedings and conduct of the business of the Trading Disputes Committee including any appropriate pro-forma documentation and the frequency of the meetings of the Trading Disputes Committee;
- (b) rules and requirements for a Trading Party to raise a Trading Dispute for determination by the Trading Disputes Committee and the required timetable for the resolution of any such Trading Dispute;
- (c) the restrictions which the Panel considers appropriate on the disclosure of data by the Trading Disputes Committee (including in particular requirements for a Trading Disputes Committee Member not to disclose to his employer information obtained as a Trading Disputes Committee Member);

- (d) the identification and declaration of, and steps to be taken in the case of, any conflict of interest of a Trading Disputes Committee Member in relation to a Trading Dispute;
- (e) circumstances in which other individuals (including experts) may be or should be invited to attend meetings of the Trading Disputes Committee, and any requirements that individuals so invited should sign undertakings of confidentiality;
- (f) the functions of the Trading Disputes Committee Chairman;
- (g) the maintenance and availability to Trading Parties of a register of decisions of the Trading Disputes Committee, and the extent to which the Trading Disputes Committee is to have regard to such previous decisions in deciding any Trading Dispute;
- (h) the extent to which any confidential or commercially sensitive information should be redacted from any decision made available to Trading Parties;
- (i) requirements (as the Panel considers appropriate) for the Trading Disputes Committee Chairman and Trading Disputes Committee Members to confirm or acknowledge in writing that they will act in accordance with this Schedule 9 (Trading Disputes Committee) and the TDC Terms of Reference.

2.4.2 The TDC Terms of Reference shall be published by the Market Operator on the Market Operator's website.

2.5 **Chairman**

2.5.1 The Market Operator shall from time to time appoint an individual with appropriate seniority to act as the independent chairman of the Trading Disputes Committee (the "Trading Disputes Committee Chairman"), and may remove and replace such individual so appointed from time to time in its sole discretion.

2.5.2 The Trading Disputes Committee Chairman or such substitute as may be designated from time to time by the Trading Disputes Committee Chairman in

his sole discretion shall chair the meetings of the Trading Disputes Committee. The Trading Disputes Committee Chairman shall have such additional functions in connection with the conduct of the business of the Trading Disputes Committee as the Panel shall assign to him.

2.5.3 The Trading Disputes Committee Chairman shall not be a member of the Trading Disputes Committee and shall not have a vote at meetings of the Trading Disputes Committee.

2.6 **Authority and Market Auditor representatives**

2.6.1 The following persons may attend any meeting of the Trading Disputes Committee and shall be entitled to receive all notices and documentation relating to such meetings:

- (a) a representative of the Market Auditor appointed from time to time by the Market Auditor and notified to the Market Operator (the Market Operator acting as disputes secretary); and
- (b) a representative of the Authority appointed from time to time by the Authority and notified to the Market Operator (the Market Operator acting as disputes secretary).

2.6.2 Each person so appointed shall be entitled to attend and speak at any such meeting, but shall have no voting rights and shall not be a member of the Trading Disputes Committee.

2.7 **Additional attendees**

2.7.1 Subject to the TDC Terms of Reference, the Trading Disputes Committee Chairman may (and if such terms so require shall) invite any individual to attend a meeting of the Trading Disputes Committee in order to speak to particular items on the agenda.

2.7.2 Any such individual shall be entitled to attend and speak to such particular items at the relevant meeting but shall have no vote and shall not be a member of the Trading Disputes Committee.

2.7.3 Save where the Trading Disputes Committee Chairman invites a Trading Party to attend a meeting of the Trading Disputes Committee, a Trading Party shall have no right to attend any meeting of the Trading Disputes Committee.

2.8 **Meetings of the Trading Disputes Committee**

2.8.1 Meetings of the Trading Disputes Committee shall be convened and its business conducted in accordance with the TDC Terms of Reference.

2.8.2 Unless otherwise provided in (and subject to requirements as to quorum in) the TDC Terms of Reference, any resolution at a meeting of the Trading Disputes Committee and any decision of a Trading Dispute by the Trading Disputes Committee shall be decided by a simple majority of the Trading Disputes Committee Members present and voting.

2.8.3 The Market Operator (as disputes secretary) shall ensure that the agendas for the meetings of the Trading Disputes Committee (including high level details of Trading Disputes raised) are published on the Market Operator's website in advance of meetings, in accordance with the TDC Terms of Reference.

2.8.4 The Market Operator (as disputes secretary) shall ensure that minutes of the meetings of the Trading Disputes Committee (including decisions and the failure to make a decision in relation to a Trading Dispute) are taken and circulated to Trading Disputes Committee Members, the Market Auditor and the Authority, in accordance with the TDC Terms of Reference; provided that, while the outcome in respect of a Trading Dispute may be minuted, the discussion in respect of individual Trading Disputes shall not be minuted.

2.8.5 The Market Operator (as disputes secretary) shall ensure that minutes of the meetings of the Trading Disputes Committee (including decisions, the failure to make a decision in relation to a Trading Dispute and the reason for such failure) are published on the Market Operator's website within thirty (30) days of such meeting taking place.

2.9 **Postponing meetings and deferring decisions**

2.9.1 The Trading Disputes Committee Chairman may not postpone a meeting of the Trading Disputes Committee or defer a decision on any Trading Dispute if the

circumstances giving rise to the Dispute are likely to recur until a decision is reached by the Trading Disputes Committee.

2.10 **TDC Procedures**

2.10.1 The Trading Disputes Committee shall create procedures for the resolution of Trading Disputes including without limitation in respect of timescales, information and assistance ("TD Procedures") and any such procedures shall be published by the Market Operator on the Market Operator's website.

2.11 **The Market Operator**

2.11.1 The Market Operator shall provide the Trading Disputes Committee with such support and facilities as the Trading Disputes Committee may reasonably require for the proper exercise of its functions pursuant to this Schedule 9 (Trading Disputes Committee) including providing a secretarial function for the Trading Disputes Committee.

2.11.2 Neither the Market Operator nor any person attending meetings of the Trading Disputes Committee to provide a secretarial service shall be a member of the Trading Disputes Committee or have a vote at meetings of the Trading Disputes Committee.

2.12 **Annual report**

2.12.1 The Trading Disputes Committee shall prepare an annual report for the Panel concerning Trading Disputes, setting out the following information in respect of the preceding year ended 31 March:

- (a) information on the number and type of Trading Disputes considered including details of outstanding and pending work of the Trading Disputes Committee;
- (b) procedures agreed by the Trading Disputes Committee for use in the future resolution of Trading Disputes; and
- (c) any other matter the Trading Disputes Committee deems appropriate.

2.12.2 If approval of such report at a meeting of the Trading Disputes Committee is not unanimous, the views of any dissenting Trading Disputes Committee Members present at the meeting shall be reflected in the report.

3 **The Trading Disputes decision making process**

3.1 **Introduction**

3.1.1 For the purposes of this Schedule 9 (Trading Disputes Committee) in relation to a Trading Dispute, references to "affected" Trading Parties in relation to a Trading Dispute are to such Trading Party or Trading Parties as the Trading Disputes Committee (or, before the Trading Disputes Committee has considered the matter, the Market Operator as disputes secretary) considers from time to time in its sole discretion to be affected by the Trading Dispute or a Trading Party that notifies the Market Operator under Paragraph 3.3.2 below.

3.1.2 The Trading Disputes Committee shall not act as an expert or an arbitrator and the Arbitration Act 1996 shall not apply to the resolution of any Trading Dispute by the Trading Disputes Committee under this Schedule 9 (Trading Disputes Committee).

3.1.3 The Trading Disputes Committee shall not consider and decide matters relating to a Trading Dispute unless the relevant Trading Dispute has been validly raised by a Trading Party in accordance with Paragraph 3.2.1 below.

3.2 **Raising a Trading Dispute**

3.2.1 A Trading Party may raise a Trading Dispute in respect of an affected Data Item by giving notice of such Trading Dispute to the Market Operator (as disputes secretary) no later than the Trading Dispute Deadline.

3.2.2 With respect to a Trading Dispute, the "Trading Dispute Deadline" is twenty eight (28) calendar months after the date of publication of the final Settlement Report in which the error in the Data Item occurred save that, following receipt of the Post RF Settlement Report, if the Contracting Wholesaler or the Contracting Retailer considers that there is still an inaccuracy in a Data Item and that the amounts set out in the Post RF Settlement Report are therefore not accurate, it may, within twenty (20) Business Days of receipt of the report, refer

the matter as a Trading Dispute in accordance with this Schedule 9 (Trading Disputes Committee) and the TD Procedures.

3.2.3 Each Trading Dispute shall be treated in accordance with the TD Procedures.

3.2.4 A Trading Party who has raised a Trading Dispute shall complete and comply with the process for dispute resolution in accordance with the TD Procedures.

3.3 **Publishing details**

3.3.1 The Market Operator (as disputes secretary) shall publish the fact of the Trading Dispute having been raised on its website within seven (7) Business Days of receiving the notice referred to in Paragraph 3.2.1 above and such include within such publication sufficient details for any Trading Party to assess whether it may be affected.

3.3.2 A Trading Party that considers that it is, or will be, affected by the Trading Dispute shall notify the Market Operator within seven (7) Business Days of the publication referred to in Paragraph 3.3.1 above and the Trading Disputes Committee shall be entitled to take account of the affected Trading Party in making its decision.

3.3.3 A Trading Party referred to in Paragraph 3.3.2 above shall complete and comply with the process for dispute resolution in accordance with the TD Procedures.

3.3.4 The Market Operator (as disputes secretary) shall publish the fact of a decision in accordance with Paragraph 3.6.4 below and other detailed information about the decision as directed by the Trading Disputes Committee.

3.4 **Duties of Trading Parties**

3.4.1 Each Trading Party shall:

- (a) provide to the Market Operator (subject to Paragraph 3.4.2) in accordance with the TD Procedures (including format) such data, reports and other information as may reasonably be required by the Trading Disputes Committee, for the purposes of fulfilling its functions set out in this Schedule 9 (Trading Disputes Committee); and

- (b) otherwise co-operate with the Market Operator and the Trading Disputes Committee with a view to the resolution of any Trading Dispute as quickly and efficiently.

3.4.2 A Trading Party shall be entitled to withhold documentation requested from it which such Trading Party could not be compelled to produce in civil proceedings in any court in England or Wales or to withhold any information which such Trading Party could not be compelled to give in evidence in any such proceedings.

3.5 **Trading Dispute referral to the Trading Disputes Committee**

3.5.1 The Market Operator (as disputes secretary) shall refer the Trading Dispute to the Trading Disputes Committee within seven (7) Business Days of receipt from the Trading Party of all documents required to be submitted in accordance with the TD Procedures. The Trading Disputes Committee shall consider the Trading Dispute at the first meeting of the Trading Disputes Committee scheduled to take place following the receipt of the information referred to in Paragraph 3.5.2 below.

3.5.2 Where a Trading Dispute is referred to the Trading Disputes Committee for resolution, the Market Operator (as disputes secretary) shall subject to and in accordance with any relevant TD Procedures:

- (a) collate all relevant information, documentation and reports sent by the Trading Parties to the Market Operator in respect of the Trading Dispute; and
- (b) include the Trading Dispute on the agenda for the next meeting (or next practicable meeting, allowing for completion of the matters in paragraphs (i) and (ii)) of the Trading Disputes Committee.

3.5.3 If the Trading Disputes Committee resolves that a Trading Dispute raised by a Trading Party is of a vexatious or frivolous nature, the Trading Disputes Committee may (subject to and in accordance with any relevant TD Procedures) require such Trading Party to pay to the Market Operator (as disputes secretary) an amount (as from time to time approved by the Panel) towards the cost of administration of any such Trading Dispute, and such

Trading Party shall pay such amount within seven (7) Business Days of notification by the Market Operator (as disputes secretary).

3.6 **Consideration and decision by the Trading Disputes Committee**

3.6.1 In considering a Trading Dispute, the Trading Disputes Committee may (subject to and in accordance with any relevant TD Procedures):

- (a) make such enquiries as it sees fit; and/or
- (b) request the Market Operator to procure such additional information or data as it reasonably requires to enable it to decide the Trading Dispute

3.6.2 The Trading Disputes Committee may decide, subject to Paragraph 2.9 above and any relevant TD Procedures, to defer a decision in respect of a Trading Dispute to enable further information to be provided.

3.6.3 In relation to each Trading Dispute, having considered all relevant material available to them and any representations made (and evidence submitted) in accordance with this Schedule 9 (Trading Disputes Committee) and the provisions of any TD Procedures, the Trading Disputes Committee shall:

- (a) decide what Trading Parties are affected by the Trading Dispute;
- (b) decide whether the relevant Trading Dispute was raised by the Trading Dispute Deadline; and
- (c) where it decides that the Trading Dispute was raised by the Trading Dispute Deadline, decide:
 - (i) whether there was an error in any Data Item; and
 - (ii) if so, what changes in data are appropriate to correct the Data Item(s); and
 - (iii) once the Data Item(s) has been changed, whether the next Planned Settlement Run is appropriate to correct the affected Settlement Report or, if not, whether any Dispute Settlement Run is necessary to correct the affected Settlement Report.

3.6.4 The Market Operator (as disputes secretary) shall, within seven (7) Business Days following the making of a decision by the Trading Disputes Committee in respect of a Trading Dispute, notify each affected Trading Party and the Market Auditor of the identities of all affected Trading Parties and of the decision made (and the provision of the reasons given by the Trading Disputes Committee), or where the Trading Disputes Committee failed to reach a majority decision in relation to the Trading Dispute, of that fact and publish the decision or the fact of the failure to make a decision on the Market Operator's website.

3.6.5 If an affected Trading Party does not agree with the decision of the Trading Disputes Committee, it may refer the Trading Dispute to arbitration under and in accordance with Paragraph 3.7 below. If any Trading Dispute is not referred to arbitration within twenty (20) Business Days of receipt (or if earlier, deemed receipt) of notice from the Market Operator pursuant to Paragraph 3.6.4 above, then the decision of the Trading Disputes Committee shall be final and binding on all Trading Parties, and each Trading Party shall comply with such decision.

3.7 **References to arbitration**

3.7.1 Subject to Paragraph 3.7.2, where:

- (a) a Trading Party disagrees with the decision of the Trading Disputes Committee; or
- (b) the Trading Disputes Committee has sought but failed to reach a majority decision in respect of a Trading Dispute,

the Trading Party may refer the matter to arbitration in accordance with section 19 of the Business Terms.

3.7.2 A reference by a Trading Party to arbitration under Paragraph 3.7.1 above shall be made no later than twenty (20) Business Days after the notification to the Trading Party by the Market Operator (as disputes secretary) under Paragraph 3.6.4, failing which:

- (a) the decision of the Trading Disputes Committee shall become final and binding on all Trading Parties, or

- (b) where the Trading Disputes Committee failed to reach a decision, no further step or action may be taken by any Trading Party in relation to the Trading Dispute.

4 Corrections and adjustments following decision

4.1 Correction following decision of Trading Disputes Committee

4.1.1 Subject to Paragraph 4.1.2 below, each Trading Party shall take such steps as are necessary or requisite to correct each Data Item in accordance with any decision of the Trading Disputes Committee and in accordance with CSD 0105 (Error Rectification and Retrospective Amendments) and to initiate and complete such correction as soon as reasonably practicable.

4.1.2 If a Trading Party notifies the Market Operator (as disputes secretary) in writing within twenty (20) Business Days of receiving a written decision of the Trading Disputes Committee that such Trading Party intends to refer the Trading Dispute to arbitration in accordance with section 19 of the Business Terms it shall not be required to correct data pursuant to Paragraph 4.1.1 above.

4.2 Adjustments following agreed resolution by Trading Disputes Committee

4.2.1 If the Trading Dispute has not been referred to arbitration within twenty (20) Business Days of receipt (or if earlier, deemed receipt) of notice from the Market Operator pursuant to Paragraph 3.6.4 or if the affected Trading Parties have advised the Market Operator (as disputes secretary) that they are willing to abide by the Trading Dispute Committee's decision then Paragraph 4.2.2 to 4.2.5 below (inclusive) shall apply.

4.2.2 Subject to Paragraph 4.1.2 above and 4.2.3 below, following a decision of the Trading Disputes Committee, in respect of a Trading Dispute that there was an error in a Data Item and following correction of the Data Item in accordance with Paragraph 4.1, the Trading Disputes Committee shall require the Market Operator to take one of the following steps:

- (a) undertake the next Planned Settlement Run in the usual way after the twenty (20) Business Days referred to in Paragraph 4.2.1 above have expired; or

- (b) where there is no further Planned Settlement Run, undertake a Dispute Settlement Run; or
- (c) where the period to the next Planned Settlement Run (considered together with the materiality of the Trading Dispute) is such that the Trading Disputes Committee believes that a Dispute Settlement Run is justified, undertake a Dispute Settlement Run; or
- (d) where a Trading Dispute is not decided until after the relevant final Settlement Run to take no further action.

4.2.3 Following a decision of the Trading Disputes Committee in respect of a Trading Dispute that there was an error in a Data Item, then in cases where it is less than the Materiality Threshold specified in section 4.13.4(c) of the Market Terms the Market Operator shall not be required to undertake any Dispute Settlement Run.

4.2.4 The Trading Disputes Committee shall not require the Market Operator to take any step decided under Paragraph 4.2.2 until it is known whether any reference is to be made to arbitration under Paragraph 3.7 above or the deadline for referring the Trading Dispute to arbitration within the timescale under Paragraph 3.7.2 above has passed without the Market Operator receiving notice that the Trading Dispute has been referred to arbitration.

4.2.5 The Trading Disputes Committee shall allocate the costs of a Dispute Settlement Run as part of its decision and the relevant Trading Parties shall pay such costs to the Market Operator as directed by the Trading Disputes Committee.

4.3 **Correction following arbitration**

4.3.1 Each Trading Party shall take such steps as are necessary or requisite to correct each Data Item in accordance with any arbitration decision pursuant to section 19 of the Business Terms and in accordance with CSD 0105 (Error Rectification and Retrospective Amendments) and to initiate and complete such correction as soon as reasonably practicable.

4.4 **Adjustments following arbitration**

4.4.1 Subject to Paragraph 4.4.2 below, if the arbitrator determines in respect of a Trading Dispute that there was an error in a Data Item the arbitrator shall require the Market Operator to take one of the following steps following correction of the Data Item in accordance with Paragraph 4.3 above:

- (a) correct the error in the next Planned Settlement Run occurring after the arbitration decision was issued; or
- (b) where the period to the next Planned Settlement Run (considered together with the materiality of the Trading Dispute) is such that the arbitrator believes that a Dispute Settlement Run is justified, undertake a Dispute Settlement Run; or
- (c) where a Trading Dispute is not determined until after the relevant final Settlement Run, to take no further action.

4.4.2 Following a decision of the arbitrator, in respect of a Trading Dispute that there was an error in a Data Item, then in cases where it is less than the Materiality Threshold specified in section 4.13.4(c)) of the Market Terms the Market Operator shall not be required to undertake a Dispute Settlement Run.

4.4.3 The arbitrator shall allocate the costs of a Dispute Settlement Run as part of his determination and the relevant Trading Parties shall pay such costs to the Market Operator as directed by the arbitrator.

Schedule 10

Market Performance Committee

Rationale for the Market Performance Committee

- 1 The Panel shall establish a dedicated standing committee (comprising expert members appointed from within the Trading Party community) to assist the Panel in the administration of the Market Performance Framework in accordance with the provisions of CSD 0002 (Market Performance Framework) and the Market Performance Operating Plan. The rationale for requiring the Panel to establish this committee is as follows:
 - 1.1 increased overall focus on market performance;
 - 1.2 development of specialised expertise - allows a body of knowledge and experience to be built up and maintained over time;
 - 1.3 level of detail, frequency and workload in relation to market performance may be greater than that envisaged for the Panel; and
 - 1.4 allows for different/wider membership and attendance and may also include Market Auditor involvement.

Market Performance Committee role and functions (delegated by the Panel)

- 2 The role and functions of the Market Performance Committee shall include:
 - 2.1 such functions in relation to the Market Entry Assurance and Market Re-assurance processes as the Panel may delegate to it from time to time;
 - 2.2 providing expert input to the annual Market Performance Operating Plan;
 - 2.3 receiving reports on the administration and implementation of the Market Performance Framework;

- 2.4 providing expert input to the Annual Market Performance Report;
- 2.5 determining an Initial Performance Rectification Plan in respect of any Trading Party that is escalated to the Market Performance Committee as part of the performance resolution process;
- 2.6 making recommendations to the Panel that the Wholesale-Retail Code (including any Code Subsidiary Document) be modified in order to enhance the Market Performance Framework; and
- 2.7 such other role and functions as the Panel may delegate to it from time to time.

Other Market Performance Committee requirements

- 3 The Panel shall determine terms of reference for the Market Performance Committee. The terms of reference shall include provisions to ensure the independence of its members, including that a member shall be required to remove themselves from any consideration of relevant matters in relation to its own employer (or any affiliate).
- 4 Any meetings of the Market Performance Committee where confidential information will be considered (e.g. in relation to the performance of a particular Trading Party) shall be held in confidence, but the Market Performance Committee may invite such Trading Party to send a representative to attend the relevant part of such meeting. Market Performance Committee members shall not disclose confidential information received in that capacity.
- 5 The Market Performance Committee shall have the right at any time and from time to time to delegate or procure the delegation of all or any part of the day-to-day administration of the Market Performance Committee functions to the Market Operator.

Schedule 11

Market Incident Management Plan Committee

- 1 Membership
 - 1.1 Members of the Market Incident Management Plan Committee will include:
 - 1.1.1 representatives of the Authority;
 - 1.1.2 the Directors;
 - 1.1.3 the Market Operator's business continuity plan and disaster recovery plan managers, or deputies; and
 - 1.1.4 Trading Party Contract Managers, or deputies, supported by appropriate business continuity plan and disaster recovery plan managers, or deputies (as and when required).
 - 1.2 The Panel shall determine terms of reference for the Market Incident Management Plan Committee.
 - 1.3 The Market Operator will provide secretariat support to the Market Incident Management Plan Committee, which role will involve taking the minutes of any meetings of the Market Incident Management Plan Committee and maintaining any actions list produced at a meeting of the Market Incident Management Plan Committee during and after the period of Invocation.

Schedule 12

Additional Panel Committees

Membership

- 1 Any Additional Panel Committee shall be composed of such persons of suitable experience and qualifications as the Panel shall decide and as shall be willing to serve thereon.
- 2 The members of an Additional Panel Committee may include inter alia any Panel Member, an employee or other nominee of any Party, and any employee of the Market Operator or third parties with experience relevant to the scope and remit of the Additional Panel Committee.
- 3 It is expected that each Trading Party shall, to a reasonable level, make available suitably qualified personnel to act as members from time to time of Additional Panel Committees.
- 4 The Authority shall be entitled to receive notice of, and to appoint one or more representatives to attend and speak, but not to vote, at any meeting of any Additional Panel Committee.

Duties and terms of reference of Additional Panel Committees

- 5 Section 5.7 shall apply in relation to each member of any Additional Panel Committee and the Panel may (but shall not be required to) obtain confirmation from any member of an Additional Panel Committee and/or the employer of any such member in terms equivalent to those required by Section 5.7.1(c)(i) and 5.7.1(c)(ii) respectively.
- 6 The Panel shall provide written terms of reference to each Additional Panel Committee and may modify such terms of reference as the Panel shall determine.

Proceedings of Additional Panel Committees

- 7 The Panel may prescribe the manner in which the proceedings and business of any Additional Panel Committee shall be conducted or the Panel may prescribe that any such matter shall be determined by the Additional Panel Committee itself.
- 8 To the extent to which the Panel does not prescribe (in accordance with Paragraph 7 of this Schedule) the manner in which the proceedings and business of any Additional Panel Committee shall be conducted, the provisions of Sections 5.8 to 5.10 shall apply, mutatis mutandis, in relation to that Additional Panel Committee.

Decisions of Additional Panel Committee

- 9 Where pursuant to the Market Arrangements Code or the Wholesaler-Retail Code (including any Code Subsidiary Document) a decision of the Panel as to any matter is to have binding effect on any Party or Parties, a decision of an Additional Panel Committee as to that matter shall be binding on such Party or Parties only to the extent that:
- 9.1 the Panel has expressly delegated to the Additional Panel Committee the relevant decision making powers; or
- 9.2 the Panel has approved the decision of the Additional Panel Committee.
- 10 For the purposes of Paragraph 9.1 of this Schedule, a decision to delegate relevant decision-making powers to an Additional Panel Committee shall be made by a Qualifying Majority of the Panel.
- 11 Where (pursuant to Paragraph 9 of this Schedule) a decision of an Additional Panel Committee is binding on any Party or Parties, that decision shall not be capable of being referred to the Panel unless the Panel so determined when delegating its decision-making powers to the Additional Panel Committee.
- 12 For the avoidance of doubt, the delegation to an Additional Panel Committee of any decision-making powers of the Panel shall not relieve the Panel of its general responsibility to ensure that such powers are exercised in accordance

with the Market Arrangements Code or Wholesale-Retail Code (including the Code Subsidiary Documents).