

# Market Arrangements Code

## Change History

Version Number	Date of Issue	Reason For Change	Change Control Reference	Sections Affected
V2.0	3 <sup>rd</sup> July 2017	Change Proposal Form Updates	CPM001	Sections 5.2.1 h) 6.2.1 7.1.1 7.2.2 20.2 Schedule 1 Schedule 7
V3.0	15 <sup>th</sup> September 2017	Board Nomination Process Extension	CPM004	Section 4.4.3 (b)
V4.0	1 <sup>st</sup> December 2017	Revised MIMP Committee Composition	CPM003	Section 5.2.1 5.2.2 Schedule 11
V5.0	16 <sup>th</sup> March 2018	Board Nomination Process Extension	CPM009	Section 4.4.3 (b)
V6.0	30 <sup>th</sup> March 2018	GDPR and Data Protection Provisions Updates	CPM007	Schedule 1 Schedule 13 Section 15
V7.0	31 <sup>st</sup> July 2018	Amendments to the Retailer Board Nomination Process & MOSL invoices and payment terms	CPM010 & CPM011	Sections 2.6 4.24.3 4.4 4.5 4.7 10.4.2 10.4.3 10.5.1
V8.0	29 March 2019	Redistribution of Market Performance Standard (MPS) Charges	CPM008	Sections 9.1.3 9.1.4 9.1.5 9.1.6 9.1.7
V9.0	1 April 2019	Operational Performance Standards	CPM012	Section 9, 9.2, 10.4.2, 10.6, 10.8

Version Number	Date of Issue	Reason For Change	Change Control Reference	Sections Affected
V10.0	26 July 2019	Market Performance Standards Charges Redistribution Clarification	CPM014	Section; 9.1.3 9.1.5
V11.0	23 August 2019	Panel Voting Majorities	CPM016	Section 5.10.1 5.10.2 Schedule 12.10
V12.0	06 September 2019	Adding the Customer Rep as a Voting Panel Member	CPM013	Sections 5.3.1 5.3.3 5.4 5.6.11 5.7.1 6.1.1 Schedule 1 – 2.6
V13.0	1 January 2020	Treatment of Market Performance Standard Charges and Operational Performance Standard Charges	CPM018	Sections 3.1.1 4.6.2(a) 5.2 9.1 9.2 9.3 9.4 9.5 12.2.5 Schedule 1 - definitions
V14.0	23 March 2020	Suspension of Performance Standard Charges	CPM023/ CPW090	Sections 10.4.2(c) 10.4.2(d) 10.4.3(c) 10.5.3

Version Number	Date of Issue	Reason For Change	Change Control Reference	Sections Affected
V15.0	1 April 2020	Urgent Housekeeping alignment of CPM020 with CPM023, Priority Performance Regime Changes for April 2020	CPM024, CPM020	Sections 10.4.2(c) 10.4.2(d) 10.4.3(c)  For CPM020 only: 10.4.2(f) 10.4.3(e)
V16.0	8 April 2020	Introducing a process for Urgent Change Proposals	CPM006	Sections 5.8.2(b) 5.8.4 5.8.5 5.9.1 5.10.1 6.2.1(d) 6.3.1(a,c,d) 7.1.2(d) 7.2.1(a,c,d) 7.2.2 7.2.4(b) Schedule 1 Section 2.6
V17.0	1 June 2020	Extending Suspension of Performance Charges	CPM027	10.4.2(c) 10.4.2(d) 10.4.3(c) 10.5.3
V18.0	1 July 2020	Suspension of Performance Standard Charges following an Interim Supply Event	CPM025	10.4.3(c) 10.5.4 Schedule 1 Section 2.6
V19.0	1 August 2020	Unwinding temporary Covid19 arrangements in the business retail market	CPM031	10.4.2(c) 10.4.2(d) 10.4.3(c) 10.5.3
V20.0	28 August 2020	Market Incident Management Plan Committee Revisions	CPM017	5.2.1 5.2.2 5.11.1 5.11.3 Schedule 1 Schedule 11

Version Number	Date of Issue	Reason For Change	Change Control Reference	Sections Affected
		Panel Chair and Alternate	CPM026	5.3.1(e) 5.3.2 5.3.3 5.6.12 5.7.1(c) 5.7.2 5.8.5 5.9.1 5.10.1 Schedule 1
V21.0	1 September 2020	Aligning MOSL Board Governance with the Articles of Association	CPM028	4.4.1 4.4.3 4.4.6 4.5 4.6.3
V22.0	9 September 2020	Interim Supply Process Amendments	CPM032	Schedule 1 Section 2.6
V23.0	7 October 2020	Reducing Panel Quorum	CPM022	Section 5.9.2
V24.0	6 November 2020	GDPR Data Security Standards	CPM019	Schedule 13 - E1.2
		Gender Neutrality in the Market Codes	CPM030	4, 5, 6.3, 7.2, 8, 17, 18.2 Schedule 1 Section 2.6 Schedule 9 Sections 2, 4
V25.1	13 November 2020	Unified Disputes Process and Committee	CPM029	5.2 5.11 12.1 17 18 Schedule 1 Schedule 9

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V26.0	28 January 2021	Provision to vary the term of Panel Members	CPM036	5.6.2 5.6.9
V27.0	1 February 2021	Retailer Panel Member Changes	CPM034	Sections 5.6 5.6.5(e) 5.6.7 5.9.1 5.9.2 Schedule 1
V28.0	14 May 2021	Improved process for managing Data Subject Rights Request	CPM033	Schedule 1 Section 2.6 Schedule 13 Part A Section 2 Part D Section 2
		Housekeeping changes to correct typographical errors and enhance standardisation	CPM037	9.4.2 10.5.1 (b) Schedule 13 Part D Section 1.3 c
V29.0	1 September 2021	Clarification and removal of redundant clauses in the Unified Disputes Process	CPM038	5.2.1 (l,o), 17.2.3, 17.3.1, 17.3.2 (b), 17.3.3, 17.3.4, 17.3.5, 17.3.8, 17.3.9 (b), 17.3.10, 17.3.11, 17.3.12, 17.3.13, 17.4.2, 17.4.4, 17.4.5, 17.4.7, 17.4.8, 17.4.9 (b), 17.4.13, 17.4.14, 17.5 (Subheading), 17.5.2, 17.5.3, 17.5.5, 17.5.6, 18.1.1, 18.1.2, 18.7.1(c)(ii), Schedule 9: 1.4.1 (b,d,f,g), 1.5.4, 1.8.1, 1.8.2, 1.9.1, 1.12.1
		Revisions to Panel Composition	CPM039	Schedule 14

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		MAC and WRC Principles	CPM040	5.8.7 Schedule 1
V30.0	22 September 2021	Bilateral Interfaces Solution	CPM043a	Section 5.2.1 (j) Schedule 1, Section 2.6 Schedule 9, Section 1.2.1 (c) Schedule 10, Section 2.6 Schedule 12, Sections 9, 12
V31.0	5 November 2021	Dormant Trading Party Provisions	CPM042	Sections 4.2.1 4.2.4 4.4.2 Schedule 1 Schedule 6
V32.0	17 November 2021	Management of the Ofwat Innovation Fund	CPM044	3.1.1(g) 3.1.3 Schedule 1 1.11 2.6 Schedule 15
V33.0	14 January 2022	Extending the right of the Market Operator to raise Change Proposals	CPM045	6.1.1 6.1.2 6.4.3
		Change to Panel Quorum	CPM047	Schedule 14 12.3, 12.3.1, 12.3.2, 12.3.3
V34.0	1 March 2022	Revisions to Panel Composition	CPM039	5, 6, 7, 8.1.1, 8.3.2, 8.4.1, 8.5.1, 8.5.2 Schedule 1 Schedule 9 1.2.1 Schedule 10 2.6 Schedule 14

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V35.0	3 March 2023	MAC Housekeeping changes	CPM049	5.2.1 (k), 5.8.2 (b), 5.8.5, 10.3.4 (b), 10.4.2 (c,d), 10.4.3 (c), 10.8.1, 10.8.3, 10.8.5, 10.8.6, 10.8.7, 10.8.8, 18.5.3, 18.7.1 (c) (ii), 18.8.3, Schedule 1: 2.1.2, 2.1.10, 2.6, Schedule 2: Whereas, 1.1, Schedule 8: Part 1, Part 2, Schedule 9: 1.2.1 (a), Schedule 13: Part A, 2.2 (a), Part D, 2.6, Schedule 14: 1.9.5
V36.0	22 May 2023	Data Cleanse Funding	CPM050	10.2.11, Schedule 1, Schedule 16
V37.0	18 December 2023	Change Process Improvements	CPM053	5.2.1(a,h,t), 5.6.2, 5.6.12, 5.8.1, 5.8.2(b), 6, 6.1.1, 6.1.3, 6.2.1, 6.2.2, 6.3.1, 6.3.2, 6.4, 6.4.1, 6.4.3, 6.4.4, 6.5, 6.6, 6.7, 6.8, 7, 8.1.1, 8.3.2, 8.4.1, 8.5.1, 8.5.2, 9.4.1 (a,b), 20.2, Schedule 1 2.6 Schedule 14 1.2.1, 1.2.3, 1.7.4, 1.9.1, 1.9.2(b), 1.9.4, 1.13.1, Schedule 16 1.2,

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V38.0	16 February 2024	CMOS Data Escrow	CPM055	Schedule 5: 2.2.7 2.2.9 2.2.10
V39.0	4 April 2024	Resource support for industry groups	CPM056	3.1.4 Schedule 1: 2.6 Schedule 17
		Late Payment of MO Charges	CPM057	10.7.1, 10.7.2
V40.1	26 June 2024	MPF Reform Part A - Governance Transition Arrangements	CPM058a	Schedule 18
V41.0	21 November 2024	MPF Reform Part A - Governance Post-Transition Arrangements	CPM058a	4.6.2(b), 5.2.1(m,n,p,s,t), 5.2.2(c), 5.11.1, 5.11.3, 6.8.3, Schedule 1: 2.6 Schedule 9: 1.7.1 Schedule 10 Schedule 18
		MPF Reform Part B - Non-Financial Tools	CPM058b	5.2.1(c,d), Schedule 1: 2.6, Schedule 5: 2.2.7 Schedule 9: 1.6 Schedule 10: 1.2.1(e)
V42.0	6 December 2024	MAC and MOSL Articles duplication	CPM059	3.2.3, 4.1, 4.2, 4.4, 4.5, 4.6, 4.7.3, 5.3.2, 5.6, 10.2.9, Schedule 1: 2.6, Schedule 5: 1

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V43.0	1 December 2025	MPF Reform Part C	CPM058c	5.2.1(a), 6.1.2, 6.8.3, 9, 10.4, 10.5, 10.6, 10.8.1 (c), 10.9.1, 10.12, 12.1.4, 12.2.5(a), 17.4.11(c)(iii), Schedule 1, Schedule 10: 1.2.1, Schedule 14: 1.13.1, Schedule 15: 2
V44.0	5 January 2026	MO Admin of Authority Funds	CPM065	3.1.3 Schedule 1: 2.6 Schedule 15
<u>V45.0</u>	<u>30 January 2026</u>	<u>MO Admin of Ministry Funds</u>	<u>CPM066</u>	<u>3.1.3,</u> <u>Schedule 1: 2.6,</u> <u>Schedule 18</u>

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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.

## 1 Commencement and term

1.1.1 This Market Arrangements Code will come into force on the 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.

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 Company 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 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;
- f) carry out any additional role and activities as requested of it by the Panel in accordance with Section 9.6 and the Project Selection and Governance Document; and
- g) save as set out in the Market Arrangements Code, 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.

3.1.3 In addition to the above, the Market Operator may be appointed by the Authority, ~~or any (or all) of the Trading Parties, or any UK Government Department~~ to collect funds, hold funds as trustee and manage the settlement, distribution and payment process for, and carry out any other administrative functions as the ~~Authority appointing party~~ may require or permit, in relation to the Authority Directed Funds ~~or Government Department Funds, in accordance with Schedule 18~~. The Market Operator may enter into any arrangements with the Authority, Trading Parties, ~~UK Government Department~~ or third parties as are reasonably necessary or appropriate to give effect to this function.

3.1.4 The Market Operator is able to provide additional support to an Industry Group in accordance with the provisions of Schedule 17.

## 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 3.2.2b).
- 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, then the Trading Parties shall exercise their rights as Members to comply with any request from the Market Operator 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 Market Operator Board;
- c) the role of the Market Operator Board;
- d) guidance as to the proceedings of the Market Operator Board; and
- e) various ancillary matters relating to the Market Operator 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, subject to Section 4.2.4.

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 Market Operator Board under this Market Arrangements Code to the maximum extent permissible provided always that no Director shall be obliged by this Section 4.2.3e) 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 Each Wholesaler and each Retailer, which has, for a period of at least twelve (12) continuous months at any point from the commencement of their becoming a Member of the Market Operator, not had at least one (1) Supply Point registered to them in the Central Systems, shall be deemed a Dormant Member. Upon registering at least one Supply Point in the Central Systems, a Dormant Member shall then no longer be deemed a Dormant Member.

4.2.5 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 Company Secretary**

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

### **4.4 The Market Operator Board**

The Market Operator Board shall be appointed in accordance with the Articles of Association of the Market Operator.

### **4.5 Not used**

### **4.6 Role of the Market Operator Board**

4.6.1 The Market Operator 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 Market Operator 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;
  - (v) setting the salaries and compensation of the Market Operator's management team; and
  - (vi) any activity or role performed by the Market Operator at the request of the Panel in accordance with Section 9.6 and the Project Selection and Governance Document.

- b) appoint, remove and remunerate the Market Operator Auditor following 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 summary minutes of the Market Operator 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 them 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 their 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 Chair) together with the CEO and/or the Market Operator Company Secretary against any and all Costs properly incurred or suffered by them in relation to the Market Operator Board or their office as Director, CEO or as Market Operator Company Secretary or the due exercise by them of their 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 A panel shall be established 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).

5.1.2 Notwithstanding any other provision of this Section 5, the Trading Parties acknowledge and agree that, at the Go Live Date, the first 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 Section 6. For the avoidance of doubt, the Panel shall delegate powers to carry out all or part of this activity to the Code Change Committee, subject to exercising such oversight as is necessary to fulfil this activity;
- b) keep the contents of the Market Arrangements Code under review. For the avoidance of doubt, the Panel shall delegate powers to carry out all or part of this activity to the Code Change Committee, subject to exercising such oversight as is necessary to fulfil this activity;
- c) work with the Market Operator to develop the scope and audit plan for Trading Party Audits;
- d) review and comment on any Trading Party 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). For the avoidance of doubt, the Panel shall delegate powers to carry out all or part of this activity to the Code Change Committee, subject to exercising such oversight as is necessary to fulfil this activity;
- i) approve all forms and supporting documents that the Market Operator is required to produce under the Code Subsidiary Documents from time to time. For the avoidance of doubt, the Panel shall delegate powers to carry out all or part of this activity to the Code Change Committee, subject to exercising such oversight as is necessary to fulfil this activity;
- j) receive and consider Reports from the Market Operator on performance by Trading Parties or any other matters as specified in the Market Terms;
- k) establish a Disputes Committee on a standing basis in accordance with the provisions of Schedule 9 (Disputes Committee), to investigate and resolve any types of Disputes as considered under Section 17 Dispute resolution;
- l) perform the role and functions of the Panel in relation to a Dispute, as described in Schedule 9 (Disputes Committee);
- m) establish a Performance Assurance Committee on a standing basis in accordance with the provisions of Schedule 10 (Performance Assurance Committee) and delegate such of its role and functions to the Performance Assurance Committee as required in order to give effect to the market performance processes and methods described in CSD 0002 (Market Performance Framework);
- n) oversee the administration of the Market Performance Framework in accordance with the provisions of CSD 0002 (Market Performance Framework);

- o) without prejudice to Sections 5.2.1k) and 5.2.1m), 5.2.1r), 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;
- p) report to the Authority on the activities of the Panel, the Disputes Committee, the Performance Assurance Committee and any Additional Panel Committee;
- q) take any actions and decisions as are necessary in accordance with Section 9.6 to establish, maintain and implement a governance framework for the use of any Key Performance Indicator Charges collected to fund other activities;
- r) establish a Code Change Committee on a standing basis in accordance with the provisions of Schedule 14 (Code Change Committee), to undertake any activities delegated to the Code Change Committee by the Panel;
- s) consider, vote on and, where appropriate, make recommendations on transposing the strategic direction set out by the Authority and the Defra (or any successor thereof) for the UK water and sewerage market, into actions and programmes for work for inter alia the Market Operator and its Members, relative to the Competitive Market; and
- t) actively seek effective engagement with Trading Parties and other stakeholders and experts in such manner as the Panel consider is appropriate in the circumstances.

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 Disputes Committee, in order to perform its role and functions as set out in Schedule 9 (Disputes Committee);

- c) the Performance Assurance Committee, in order to perform its role and functions as set out in CSD 0002 (Market Performance Framework); and
- d) any Additional Panel Committee established in accordance with Section 5.2.1o), in order to perform the role and functions delegated to that Additional Panel Committee by the Panel; and
- e) the Code Change Committee, in order to perform its role and functions as set out in Schedule 14 (Code Change Committee).

### 5.3 Composition of the Panel

5.3.1 The Panel shall comprise the following Panel Members:

- a) the Panel Chair;
- b) two (2) Retailer Panel Members;
- c) two (2) Wholesaler Panel Members;
- d) three (3) Independent Panel Members (one of whom may also be appointed to additionally act as the Panel Deputy Chair); and
- e) one (1) Customer Representative Panel Member.

Provided always that where there are insufficient nominations to become Retailer Panel Members or insufficient Retailer Panel Member nominees with the relevant skills and experience, additional Wholesaler Panel Members may be appointed, or where there are insufficient nominations to become Wholesaler Panel Members or insufficient Wholesaler Panel Member nominees with the relevant skills and experience additional Retailer Panel members may be appointed, provided that the total number of Wholesaler Panel Members and Retailer Panel Members does not exceed four (4) in total. Only one (1) Trading Party Panel Member may be appointed from any one Trading Party.

5.3.2 The Panel Chair shall be appointed by the Panel. A Panel Chair Nomination Committee, with the support of the Market Operator, will be responsible for leading the process of appointing a Panel Chair and shall propose a recommendation(s) to the Panel to approve the appointment. The Panel Chair Nomination Committee shall advise the Market Operator Board and shall consult with the Authority, prior

to the appointment of any Panel Chair. The appointment shall be in accordance with Section 5.10.1. For the avoidance of doubt, a vote for the removal of the Panel Chair shall be in accordance with Section 5.10.2. The term of office of the Panel Chair will be for a period of three (3) years. The Panel Chair may hold more than one term of office, but not more than two terms in aggregate. The Panel Chair must not have been recently employed by, and must be sufficiently independent of, any Wholesaler Member, Retailer Member, or an associated company of these. The Panel Chair shall, at all times, and in accordance with Section 5.7.1a), act impartially, in the best interests of the market as a whole and shall be guided by the Principles and Objectives.

- 5.3.3 The Panel Chair shall be entitled to designate any one of the Independent Panel Members to act as their Panel Deputy Chair and they may change this designation at any time. If the Panel Chair is unable to be present at a meeting of the Panel, then the Panel Deputy Chair shall act as the Panel Chair for the duration of that meeting of the Panel. Where both the Panel Chair and Panel Deputy Chair are unavailable, the Panel Members in attendance shall appoint a Panel Chair for the relevant Panel Meeting from the remaining Independent Panel Members, or their alternates. Any Panel Member acting temporarily as the Panel Chair shall both count as the Panel Chair for quorum purposes and be entitled to vote as the Panel Chair.
- 5.3.4 The Retailer Panel Members and Wholesaler Panel Members shall be appointed in accordance with Section 5.6.5 below. The Independent Panel Members shall be appointed in accordance with Section 5.6.11 below. The Customer Representative Panel Member shall be appointed in accordance with Sections 5.6.12 below.

## 5.4 Attendees

The meetings of the Panel shall be held in open forum except to the extent that commercially sensitive business or personal privacy matters arise. The CEO of the Market Operator (or an alternate appointed by the CEO of the Market Operator), representative(s) from the Authority and Defra shall be entitled to attend and speak at all meetings of the Panel but not to vote (each an "Affiliated Member"). Observers may attend a meeting of the Panel. Observers may speak at meetings of the Panel if invited to do so by the Panel Chair, but will not be entitled to vote.

## 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

Retailer Members and Wholesaler Members shall nominate parties to be the two (2) Retailer Panel Members and two (2) Wholesaler Panel Members (subject to the proviso to Section 5.3.1 above). The two (2) Retailer Panel Members and two (2) Wholesaler Panel Members (subject to the proviso to Section 5.3.1 above) shall be appointed from the nominees as follows:

- 5.6.1 **Panel Nominations Committee and the Purpose of the Panel Nomination Meeting** - The Panel Nomination Committee shall be convened by the Authority. The Authority shall nominate the members of the Panel Nomination Committee, which may include a minimum of one each from the Authority and the Market Operator, one optional representative from Defra, and may also include as an optional member the Panel Chair. On behalf of the Panel and the Authority, the Panel Secretary shall convene a meeting of the Panel Nominations Committee. All members of the Panel Nominations committee who are not optional members shall attend (and optional members may attend) the Panel Nomination Meeting with a view to appointing the Trading Party Panel Members for the following two-yearly period.
- 5.6.2 **Date of the Panel Nomination Meeting** - The Panel Secretary shall, in consultation with the Panel Nominations Committee fix the date of each Panel Nomination Meeting and shall give each Trading Party not less than twenty (20) Business Days' notice in writing of the date of such meeting, together with a request for nominations. A Panel Nomination Meeting shall be held on the request of the Panel when a vacancy on the Panel arises, and the process may be repeated as often as is required until the vacancy has been filled. This paragraph is subject to the Authority's decision in relation to the extension of Panel Members' terms. If the Authority decides to extend all or any of the Panel Members' terms under paragraph 5.6.9, such that there is no need for a Panel Nomination Meeting to occur on its intended date, then that meeting will be postponed and reconvened in accordance with the timing of the extension of the Panel Members' terms.

5.6.3 **Method of attendance** - All members of the Panel Nominations Committee who are not optional members shall attend (and optional members may attend) each Panel Nomination Meeting. Where a member of the Panel Nominations Committee representing the Authority or the Market Operator is not available to attend the Panel Nomination Meeting in person, the Authority or the Market Operator shall arrange for that member or an alternative suitably authorised representative to participate in the Panel Nomination Meeting in person (if an alternative) or by way of a conference telephone call (in either case) 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 member of the Panel Nominations Committee 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 Trading Party shall be entitled, by notice to the Panel Secretary given no earlier than twenty (20) Business 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 individual(s) to be a Trading Party Panel Member (either a Retailer Panel Member or Wholesaler Panel Member). Such nomination to be submitted by a named individual of the Trading Party. Individuals nominated pursuant to this Section 5.6.4 shall be employed by a Trading Party and shall have the requisite skills and experience, which shall be defined on a case by case basis having regard to the relevant vacancy and the existing membership. Nominations made pursuant to this Section 5.6.4 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 they are aware of the nomination and would be prepared to serve as a Trading Party Panel Member if appointed, setting out their skills and experience and explanation of why they are suitable to be a Trading Party Panel Member. The Trading Party nominating the individual (or their employer if a different Trading Party) shall also provide a letter confirming their consent to the individual acting as a Trading Party Panel Member if appointed.

5.6.5 Conduct of the Panel Nomination Meeting

- a) The Panel Secretary shall circulate to each member of the Panel Nominations Committee a list of the names of all of the individuals nominated to serve as Trading Party Panel Members, together with the written statements setting out their skills and experience and explanation of why they are suitable to be Trading Party Panel Members no earlier than five (5) Business Days before the stated commencement time for the Panel Nomination Meeting. At the same time, the names of all of the individuals nominated to serve as Trading Party Panel Members shall also be published or circulated to all Trading Party Members, together with details of the Trading Party (and individual) who has made the nomination and a summary of the nominee's skills and experience and explanation of why they are suitable to be a Trading Party Panel Member;
- b) Not used;
- c) Each member of the Panel Nominations Committee shall return a list of the nominated individuals which the member considers to be suitable to hold a post of Trading Party Panel Member to the Panel Secretary by email no later than one (1) Business Day in advance of the stated commencement time for the Panel Nomination Meeting;
- d) Any member of the Panel Nominations Committee 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 such member of the Panel Nominations Committee has submitted their list of suitable nominated individuals to the Panel Secretary in accordance with this Section 5.6.5; and
- e) Subject to all members of the Panel Nominations Committee present at the relevant Panel Nomination Meeting, being satisfied that the individuals nominated to serve as Trading Party Panel Members are employed by a Trading Party and have the requisite skills and experience, the members of the Panel Nominations Committee shall discuss and agree the candidates to progress to the next stage, and thereafter undertake a selection process (which may include scheduling interviews with the nominated individuals), and re-convene the Panel Nominations Meeting to deliberate on the outcome of the selection process and reach final

agreement on which (if any) of the nominated individuals are to be appointed as Trading Party Panel Members. The agreed upon Trading Party Panel Members shall be appointed for the two-year period commencing on the date of the next occurring Panel Meeting. In the event that the number of agreed upon nominated individuals is less than the required number of Trading Party Panel Members, the nomination and appointment process shall be repeated at such intervals as may be set by the Panel.

5.6.6 Not Used

5.6.7 Not used

5.6.8 **Term of appointment** – Trading Party Panel Members appointed in accordance with Section 5.6.5e) shall be appointed for a fixed term not exceeding two (2) years and shall be eligible for re-appointment for one further term following expiry of their initial term.

5.6.9 **Extension to term of appointment** – Notwithstanding 5.6.8 above the Panel may request an extension to any Trading Party Panel Member's appointment term, by way of a written request made to the Authority. Such an extension of a Trading Party Panel Members' appointment may be sought by the Panel at its discretion, including where a Panel Nomination Meeting is unable to be held or insufficient nominations are received for a Trading Party Panel Member appointment. The Panel shall do this by holding a vote to approve a specific extension request of the Authority, such vote to be in accordance with Section 5.10.2. If the Panel votes in favour of the extension then it must request the extension of appointment to the Authority in writing, providing at least twenty (20) Business Days' notice of the expiry of the fixed term. The Panel's extension request shall detail the reason for the extension, expiration of the fixed term, whether the extension will be time bound (in which case stating the end-date) or event bound, and which Trading Party Panel Member(s) it relates to. If the Authority approves the request and communicates its decision to the Panel, by the date of the expiry of the Trading Party Panel Member(s) fixed term, then the Trading Party Panel Member(s) fixed term shall be deemed extended accordingly, as outlined in the Authority's decision, otherwise it shall expire.

- 5.6.10 **Commencement of appointment** - The appointment of any person to be a Trading Party Panel Member in accordance with Section 5.6.10 shall take effect from the date of the next occurring Panel Meeting.
- 5.6.11 **Independent Panel Members** - Independent Panel Members shall be appointed by the Panel Nominations Committee. The Market Operator shall, on behalf of the Panel Nominations Committee engage with a recruitment search company to invite applications from suitably Qualified individuals. The Panel Secretary shall convene a meeting of the Panel Nominations Committee to review any applications. Subject to all members of the Panel Nominations Committee being satisfied that the individuals nominated or applying to serve as Independent Panel Members are suitably Qualified, the members of the Panel Nominations Committee shall undertake a selection process (which may include scheduling interviews with the nominated individuals), and re-convene the Panel Nominations Meeting to deliberate on the outcome of the selection process and reach final agreement on which (if any) of the applicants are to be appointed as Independent Panel Members. 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 for one further term following expiry of their initial term.
- 5.6.12 **Customer Representative Panel Member** – The Customer Representative Panel member shall be a Qualified individual nominated by CCW, or any successor organisation, and, in consultation with the Panel, appointed by the Panel Chair. The Customer Representative Panel Member shall be appointed for a fixed term not exceeding three (3) years and shall be eligible for re-appointment for one further term following expiry of their initial term.
- 5.6.13 **Replacing Panel Members** - A person shall cease to hold office as a Panel Member if:
- a) they resign their office by notice delivered to the Panel Secretary; or
  - b) the Panel resolves that they 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 appointed as appropriate in accordance with Section 5.6 or Section 5.7 or Section 5.3.2 as appropriate, or appointed in accordance with 5.6.11 or nominated in accordance with 5.6.12. Once elected, appointed or nominated, a new Panel Member shall take office with immediate effect, save where otherwise agreed.

## 5.7 Role of a Panel Member

5.7.1 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 company, body or person by whom they are employed by (if the Panel Member is a Trading Party Panel Member), or by whom they were nominated or appointed to be a Panel Member; and
- c) shall not be appointed or nominated as a Panel Member unless they shall have first:
  - (i) confirmed in writing to the Market Operator for the benefit of all Trading Parties that they agree 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 their employer (if applicable) agreeing that they may act as a Panel Member and that the requirements in Section 5.7 shall prevail over their 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 Chair (on the application of a Panel Member) agrees in advance in writing, a Panel Member may appoint a person to be their 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 them is not present. Such alternate shall cast one (1) vote for the Panel Member by whom they were appointed in addition to any vote which they may hold if they are also a Panel Member. All alternates must act in accordance with the provisions of Section 5.7.1. This Section 5.7.2 shall not apply to the Panel Chair, for whom Section 5.3.3 shall instead apply. The Panel Deputy Chair, or other Independent Panel Member, who is appointed as Panel Chair for the relevant Panel meeting, pursuant to Section 5.3.3, shall be entitled to additionally appoint an alternate for the duration of that meeting.

## 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, or by way of a conference telephone call provided each Panel Member is able to speak to each of the others and to be heard by each of the others simultaneously. 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 may also convene a meeting of the Panel before the next regular meeting if required in order to consider any Change Proposal or Charging Change Proposal (which may in the reasonable opinion of the Code Change Committee have a potential impact or association with a strategic programme as set out by the Panel), which has been referred for the Panel's view on whether the Change Proposal should be encompassed into an existing programme or action, or whether it merits its own distinct work programme by the Code Change Committee, to allow a response to such referral prior to the next Code Change Committee meeting.

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

- 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 or method 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) if an Urgent Panel Meeting is required to consider (i) any urgent strategic issue; and/or (ii) any Change Proposal or Charging Change Proposal (which in the reasonable opinion of the Code Change Committee may have a potential impact or association with a strategic programme as set out by the Panel), which has been referred for the Panel's view on whether the Change Proposal should be encompassed into an existing programme or action, or whether it merits its own distinct work programme by the Code Change Committee and that the Proposer has indicated should be given urgent status, (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 Chair the requirements of Section 5.8.2 may be waived or modified.

5.8.4 In the case of Urgent Panel Meetings, where:

- a) the Panel Chair, in seeking to convene an Urgent Panel Meeting, reasonably considers that it will not be possible to achieve a quorum at such Urgent Panel Meeting; or
- b) at the time of an Urgent Panel Meeting it transpires that the Urgent Panel Meeting is not quorate and the Panel Chair reasonably considers that there is insufficient time to re-arrange the Urgent Panel Meeting
- c) the Panel Chair shall follow the Urgent Panel Meeting Contact Method Guidance in order to contact each Panel Member individually in order to obtain such Panel Member's vote. Any matter to be decided shall be decided by a simple majority of those Panel Members who so cast a vote. No matter shall be decided unless, as a minimum, the Panel Chair has contacted and further consulted with at least two Panel Members, one of which must be a Trading Party Panel Member.

5.8.5 The measures to be undertaken by the Panel Chair under Section 5.8.4 shall be undertaken by the Panel Deputy Chair, in the absence of the Panel Chair, and in

the absence of both of them, by a Panel Member nominated for the purpose, and in accordance with 5.3.3, by the Panel after consultation with the Authority.

- 5.8.6 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.
- 5.8.7 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 Market Arrangements 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, unless it is an Urgent Panel Meeting where the steps under 5.8.4 should be followed. A quorum shall be a minimum of the Panel Chair (or the Panel Deputy Chair, or other appointed Panel Chair nominated by the Panel under Section 5.3.3), two (2) Trading Party Panel Members, two (2) other Panel Members (whether two Independent Panel Members or an Independent Panel Member and the Customer Representative Panel Member (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. Where any matter (save for those matters considered under Sections 5.8.4 and 5.10.2) is put to a vote of Panel Members, such a vote shall be decided by a simple majority of those votes cast at the meeting by Panel Members (and an abstention shall not be counted as a cast vote). All Panel Members, including the Panel Chair, and any Independent Panel Member appointed to also act as Panel Deputy Chair, are entitled to a single vote.

5.10.2 Determinations to remove a Panel Member under Section 5.6.13(b) 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 seven 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 Disputes Committee, members of the Performance Assurance Committee, members of the Code Change 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 their office under this Market Arrangements Code, or in what they in good faith believe to be the proper exercise and discharge of their 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 their appointment as a Panel Member, member of the Disputes Committee, member of the Performance Assurance Committee, member of the Code Change 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 them in relation to the Panel, the Disputes Committee, the Performance Assurance Committee, the Code Change Committee or any Additional Panel Committee or their office as a member of the same or the due exercise by them of their 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

- 6.1.1 This Section 6 (Change Process) sets out the change process in respect of the Market Arrangements Code and the Wholesale-Retail Code. A change may be made under this Section 6 by means of:
- a) a Change Proposal (which includes a Market Arrangements Code Change Proposal and/or a Wholesale-Retail Code Change Proposal);
  - b) a Charging Change Proposal;
  - c) an Urgent Change Proposal;
  - d) an Applicable Law Change Proposal; or
  - e) an Authority Timetabled Change Proposal.
- 6.1.2 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, 66DC or 117F or 117H of the Water Industry Act 1991.
- 6.1.3 Change Proposals that have already been notified to the Code Change Committee Secretary and so have commenced and have not yet been submitted for

consideration by the Authority prior to the implementation date of this revised Section 6 (Change Process) shall be continued in accordance with the previous change process applicable immediately prior to the implementation date of this revised Section 6 (Change Process).

## **6.2 Who may make a Change Proposal or a Charging Change Proposal**

- 6.2.1 A Change Proposal may be submitted to the Code Change Committee Secretary by anybody.
- 6.2.2 A Charging Change Proposal may be made to the Code Change Secretary by any Wholesaler. The Code Change Committee 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 Wholesale-Retail Code that would be needed to facilitate a Charging Change), in accordance with the following provisions of this Section 6 (Change Process).
- 6.2.3 The Panel shall delegate consideration of all Change Proposals under this Section 6 to the Code Change Committee, which shall have been established in accordance with Schedule 14 of this Market Arrangements Code, and which shall have been granted such delegated powers to carry out all or part of this activity, subject to the Panel exercising such oversight as is necessary to fulfil this activity. A Change Proposal that is identified in the reasonable opinion of the Code Change Committee to have a potential impact or association with a strategic programme as set out by the Panel may be referred to the Panel for its view on whether the Change Proposal should be encompassed into an existing programme or action, or whether it merits its own distinct work programme.

## **6.3 What must a Change Proposal and a Charging Change Proposal contain?**

- 6.3.1 A Change Proposal and a Charging Change Proposal made pursuant to Section 6.2 will be submitted in writing using the Change Proposal Forms published by the Market Operator and will contain the following information, as a minimum:

- 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 how the enhancement, issue or defect impacts the delivery of the Objectives and Principles and/or the Market Arrangements Code Principles;
- d) where practicable, an indication of the impact of the Change Proposal or Charging Change Proposal on the Proposer, Non-Household Customers and wider industry;
- e) any supporting evidence demonstrating the enhancement, issue or defect which the Change Proposal or Charging Change Proposal seeks to address;
- f) where the Proposer considers (by reference to the Urgent Change Proposal Criteria and Acceptance and Prioritisation Criteria) that the Change Proposal or Charging Change Proposal should be treated as an Urgent Change Proposal, 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;
- g) 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.

6.3.2 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.

6.3.3 The Code Change Committee may also request the Market Operator to prepare a Change Proposal or Charging Change Proposal relating to a change which is deemed to be housekeeping or non-substantive for submission directly to the Authority.

6.3.4 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.

## **6.4 Initial Acceptance of a Change Proposal or a Charging Change Proposal**

6.4.1 Where a Change Proposal or Charging Change Proposal is received by the Code Change Committee Secretary:

a) except in relation to an Authority Timetabled Change Proposal, an Urgent Change Proposal or 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), the Market Operator shall assess the Change Proposal or Charging Change Proposal against the Initial Acceptance Criteria. If the Market Operator determines:

(i) that the Change Proposal or Charging Change Proposal fails to meet the Initial Acceptance Criteria, the Market Operator shall refuse to accept the submission, setting out the reasons for the failure with reference to the Initial Acceptance Criteria and offering assistance to the Proposer (as is appropriate in the circumstances) to address the failure. The Proposer may submit a revised Change Proposal or Charging Change Proposal to the Market Operator, which the Market Operator will reassess against the Initial Acceptance Criteria. The Change Proposal or Charging Change Proposal shall not be progressed further until the Initial Acceptance Criteria has been met. In the event that the Proposer does not submit a revised Change Proposal or Charging Change Proposal, the Market Operator shall publish the rationale for its decision to refuse to accept the submission on its website; or

- (ii) that the Change Proposal or Charging Change Proposal has met the Initial Acceptance Criteria, the Market Operator shall assess the evidence provided by the Proposer and, where necessary, gather further evidence. Once the Market Operator has deemed there to be sufficient evidence, the Code Change Committee Secretary will place the Change Proposal or Charging Change Proposal on the agenda of the next Code Change Committee meeting, or the following meeting, where the next is in less than five (5) Business Days. The Code Change Committee Secretary will also publish a copy of the Change Proposal or Charging Change Proposal on the Market Operator's website.
  - (iii) The Proposer may appeal to The Authority if the Market Operator does not accept the Change Proposal in accordance with section (i) above. Upon consideration of such appeal, The Authority may direct the Code Change Committee Secretary to place the Change Proposal or Charging Change Proposal on the agenda of a subsequent Code Change Committee meeting, where the Change Proposal will proceed to be considered at the stage outlined in section 6.5 below.
- 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 Code Change Committee 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 Code Change Committee Secretary, including the date by which it should first be considered at a Code Change Committee meeting and the date by which the Code Change Committee Secretary should provide a Final Report in relation to the Applicable Law Change Proposal. The Code Change Committee Secretary shall ensure that the Applicable Law Change Proposal is placed on the agenda for one or more duly convened Code

Change Committee meetings in accordance with the Authority's timetable/process. The Code Change Committee Secretary will also send a copy of the Applicable Law Change Proposal to the Authority and publish it on the Market Operator's website. If the Authority decides that the Change Proposal or Charging Change Proposal is not an Applicable Law Change Proposal and informs the Code Change Committee Secretary of its decision, the Code Change Committee Secretary will manage the Change Proposal or Charging Change Proposal in accordance with 6.4.1(a) above. An Applicable Law Change Proposal may not be withdrawn without the consent of the Authority.

- c) if it is a Change Proposal or Charging Change Proposal which the Proposer has stated should be treated as an Urgent Change Proposal, then all of the following steps must be completed within three (3) Business Days of receipt of the Change Proposal or Charging Change Proposal:
- (i) the Code Change Committee Secretary will send the Change Proposal or Charging Change Proposal and any evidence to support it to the Code Change Committee Chair.
  - (ii) the Code Change Committee Chair shall direct the Code Change Committee Secretary to convene an Urgent Code Change Committee Meeting, unless an appropriate meeting is already scheduled to take place within the next three (3) Business Days, in which case the Change Proposal or Charging Change Proposal will be added to the agenda for that meeting, which for the avoidance of doubt, will be treated as an Urgent Code Change Committee Meeting for the purpose of that Change Proposal or Charging Change Proposal.
  - (iii) at the Urgent Code Change Committee Meeting, the Code Change Committee will decide if the Change Proposal or Charging Change Proposal is an Urgent Change Proposal (using the Urgent Change Proposal Criteria and the Acceptance and Prioritisation Criteria).
  - (iv) if the Code Change Committee decide at the Urgent Code Change Committee Meeting that the Change Proposal or Charging Change

Proposal is an Urgent Change Proposal, it will provide a timetable and/or process for the Urgent Change Proposal to the Code Change Committee Secretary, including the date by which any assessment work should be considered at a Code Change Committee meeting (or Urgent Code Change Committee Meeting) and the date by which the Code Change Committee Secretary should provide a Final Report in relation to the Urgent Change Proposal.

- (v) if the Code Change Committee decide at the Urgent Code Change Committee Meeting that the Change Proposal or Charging Change Proposal is not an Urgent Change Proposal on the basis that it does not meet the Urgent Change Proposal Criteria, regardless of whether it meets the Acceptance and Prioritisation Criteria or not, and the Proposer agrees with this decision, then the Change Proposal will proceed as per 6.4.1.
- d) If the Code Change Committee decides the Change Proposal or Charging Change Proposal should not be treated as an Urgent Change Proposal on the basis that it does not meet the Urgent Change Proposal Criteria, regardless of whether it meets the Acceptance and Prioritisation Criteria or not, and the Proposer notifies the Code Change Committee within two (2) Business Days of that decision that it disagrees with the decision, then the Code Change Committee Secretary shall have a further one (1) Business Day to send the Change Proposal or Charging Change Proposal and any evidence to support it to the Authority. If the Authority decides, having regard to the Urgent Change Proposal Criteria, that the Change Proposal or Charging Change Proposal should be treated as an Urgent Change Proposal then the Code Change Committee, based on feedback from the Authority, shall provide a timetable and/or process for the Urgent Change Proposal to the Code Change Committee Secretary. This will include the date by which any assessment work should be considered at a Code Change Committee meeting (or Urgent Code Change Committee Meeting) and the date by which the Code Change Committee Secretary should provide a Final Report in relation to the Urgent Change Proposal. If the Authority decides that the Change Proposal or Charging Change Proposal

is not an Urgent Change Proposal, then the Change Proposal or Charging Change Proposal will proceed as per 6.4.1a).

- e) If the Code Change Committee decides that the Change Proposal or Charging Change Proposal meets the Urgent Change Proposal Criteria but does not meet the Acceptance and Prioritisation Criteria, the Code Change Committee shall communicate the rationale for its decision to the Proposer with reference to the Acceptance and Prioritisation Criteria. The Proposer may resubmit the Change Proposal or Charging Change Proposal within thirty (30) days of communication of the decision from the Code Change Committee. If the Proposer submits a revised Change Proposal or Charging Change Proposal, the Code Change Committee shall convene an Urgent Code Change Committee Meeting, unless an appropriate meeting is already scheduled to take place, within the next three (3) Business Days of receipt of the revised Change Proposal or Charging Change Proposal to reevaluate it against the Acceptance and Prioritisation Criteria. Where the revised Change Proposal or Charging Change Proposal meets the Acceptance and Prioritisation Criteria, the Code Change Committee will provide a timetable and/or process for the Urgent Change Proposal to the Code Change Committee Secretary in accordance with 6.4.1c)(iv). If the revised Change Proposal or Charging Change Proposal fails to meet the Acceptance and Prioritisation Criteria for a second time, or the Proposer does not resubmit a revised Change Proposal or Charging Change Proposal, the Code Change Committee shall send the Change Proposal or Charging Change Proposal to the Authority and recommend that the Authority reject it.

6.4.2 The Market Operator shall report to the Code Change Committee each Month (save where the Code Change Committee has elected not to meet that Month) on the status and progress of the Change Proposals or Charging Change Proposals received by the Code Change Committee Secretary, including those Change Proposals or Charging Change Proposals that have failed to meet the Initial Acceptance Criteria.

6.4.3 If it is an Authority Timetabled Change Proposal, the Authority will provide a timetable and/or process to the Code Change Committee Secretary with the Authority Timetabled Change Proposal, including the date by which it should first

be considered at a Code Change Committee meeting and the date by which the Code Change Committee Secretary should provide a Final Report in relation to the Authority Timetabled Change Proposal. The Code Change Committee 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 Code Change Committee Secretary will also publish a copy of the Authority Timetabled Change Proposal to the Market Operator's website.

- 6.4.4 The Code Change Committee 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), 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 Objectives and is consistent with the Principles and/or the Market Arrangements Code Principles.
- 6.4.5 If the Change Proposal or Charging Change Proposal is an Applicable Law Change Proposal or an Authority Timetabled Change Proposal, the Code Change Committee must comply with any requirements which the Authority has provided to the Code Change Committee Secretary in relation to the process to be followed and/or the timetable within which the Code Change Committee must consider the Applicable Law Change Proposal or Authority Timetabled Change Proposal and issue a Final Report.

## **6.5 Acceptance of a Change Proposal or Charging Change Proposal**

- 6.5.1 Except in relation to an Applicable Law Change Proposal or an Authority Timetabled Change Proposal, the Code Change Committee will consider and evaluate each Change Proposal or Charging Change Proposal against the Acceptance and Prioritisation Criteria and decide whether to accept it into the change process or recommend it to the Authority for rejection.

6.5.2 Where the Code Change Committee determines that the Change Proposal or Charging Change Proposal fails to meet the Acceptance and Prioritisation Criteria:

- a) the Code Change Committee shall refuse to accept the Change Proposal or Charging Change Proposal into the change process;
- b) the Code Change Committee will communicate the rationale for its decision to the Proposer, with reference to the Acceptance and Prioritisation Criteria;
- c) The Proposer may withdraw the Change Proposal or Charging Change Proposal from the change process or submit a revised Change Proposal or Charging Change Proposal. The Proposer shall inform the Market Operator of their intention to withdraw or resubmit the Change Proposal or Charging Change Proposal within thirty (30) days of communication of the decision from the Code Change Committee. If the Proposer:
  - (i) does not inform the Market Operator of its intention to resubmit or withdraw the Change Proposal or Charging Change Proposal, the Code Change Committee shall send the Change Proposal or Charging Change Proposal to the Authority and recommend that the Authority reject it;
  - (ii) intends to submit a revised Change Proposal or Charging Change Proposal, the Proposer shall consider the rationale provided by the Code Change Committee and provide additional evidence. The Code Change Committee will provide a reasonable time period in which the revised Change Proposal or Charging Change Proposal shall be resubmitted. Where the Proposer does not submit a revised Change Proposal or Charging Change Proposal within the prescribed time period, the Code Change Committee shall send the Change Proposal or Charging Change Proposal to the Authority and recommend that the Authority reject it;
  - (iii) pursuant to 6.5.2 c)(ii) above, submits a revised Change Proposal or Charging Change Proposal within the prescribed time period provided by the Code Change Committee, the Code Change Committee shall reevaluate the revised Change Proposal or

Charging Change Proposal against the Acceptance and Prioritisation Criteria. If the revised Change Proposal or Charging Change Proposal fails to meet the Acceptance and Prioritisation Criteria for a second time, the Code Change Committee shall send the Change Proposal or Charging Change Proposal to the Authority and recommend that the Authority reject it;

- d) The Code Change Committee will publish its decision to recommend a Change Proposal or Charging Change Proposal to the Authority for rejection, with reference to the Acceptance and Prioritisation Criteria, on the Market Operator's website.

6.5.3 Where the Code Change Committee determines that the Change Proposal or Charging Change Proposal has met the Acceptance and Prioritisation Criteria, the Code Change Committee will provide a timetable and/or process for solution development, having regard to the complexity, priority relative to other ongoing Change Proposals and Charging Change Proposals and time sensitivity.

## 6.6 Solution Development and Impact Assessment

6.6.1 Solution development may be undertaken by the Proposer and/or the Market Operator in accordance with this Section 6.6.

6.6.2 Where the Proposer has provided a solution in the Change Proposal or Charging Change Proposal or has not provided a solution in the Change Proposal or Charging Change Proposal but wishes to stay engaged in the change process, the Proposer may work with the Market Operator to develop or refine the solution before presenting it to the Code Change Committee for consideration. The Market Operator may identify and develop an alternative solution to be submitted to the Code Change Committee for consideration alongside the Proposer's solution.

6.6.3 Where the Proposer has disengaged from the change process after submitting a Change Proposal or Charging Change Proposal, the Market Operator will develop or continue to refine the solution for the Change Proposal or Charging Change Proposal and present it to the Code Change Committee for consideration.

6.6.4 Other than for Applicable Law Change Proposals and Authority Timetabled Change Proposals, when considering and developing each Change Proposal or Charging Change Proposal the Code Change Committee must:

- a) consult in such manner as the Code Change Committee 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 6.6.4a), obtain the view of the Customer Representative on the Change Proposal or Charging Change Proposal, except in relation to housekeeping or non-substantive changes.

6.6.5 In addition to the requirements in Section 6.6.4, when considering and developing each Change Proposal or Charging Change Proposal the Code Change Committee or the Market Operator may (but shall not be obliged to) undertake any one or several of the following processes:

- a) co-opt or consult with experts or wider industry representation to give advice to the Code Change Committee 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 or consult with 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.

- 6.6.6 When developing each Change Proposal or Charging Change Proposal, the Code Change Committee may reprioritise ongoing Change Proposals or Charging Change Proposals in accordance with the Acceptance and Prioritisation Criteria. If a Change Proposal or Charging Change Proposal is reprioritised, the Code Change Committee may provide a new timetable and/or process in which to progress the Change Proposal or Charging Change Proposal.
- 6.6.7 If at any stage of the change process it becomes apparent to the Code Change Committee that the Change Proposal or Charging Change Proposal has no reasonable prospect of being approved and implemented, the Code Change Committee may direct the Market Operator to cease development of the solution, and send the Change Proposal or Charging Change Proposal to the Authority recommending that the Authority rejects it. The Code Change Committee will also communicate the rationale for its decision to the Proposer and publish the decision on the Market Operator's website.

## 6.7 Recommendation and Implementation

6.7.1 Following (A) the processes undertaken in accordance with Section 6.4.56.4.5, save where a Change Proposal or Charging Change Proposal has been sent to the Authority in accordance with Section 6.6.7, the Code Change Committee 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, or (B) the preparation by the Market Operator of a housekeeping or non-substantive Change Proposal which is to be submitted directly to the Authority; the Code Change Committee Secretary shall thereafter prepare a Final Report setting out:

- a) the Code Change Committee's or Market Operator's (for housekeeping or non-substantive changes) recommendation as to (i) whether the Change Proposal or an amended or alternative version of the Change Proposal should be approved or rejected by the Authority (and, for the avoidance of doubt, the Code Change Committee shall recommend that the Authority should not approve a Change Proposal unless the Code Change Committee votes in favour of recommending the approval of that Change Proposal, or the Code Change Committee have requested the Market Operator to prepare a non-substantive Change Proposal which is to be submitted directly to the Authority) 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 Code Change Committee's recommendation or confirmation and rationale from the Market Operator that the Change Proposal is housekeeping or non-substantive;

- b) a summary of the views expressed by all interested parties who participated in the processes undertaken in accordance with Sections 6.6.4 and 6.6.5, or confirmation and rationale from the Market Operator that the Change Proposal is housekeeping or non-substantive;
- c) a description of the views of the Code Change Committee Members who voted in relation to the Code Change Committee's recommendation (or confirmation that the Code Change Committee have referred the housekeeping or non-substantive Change Proposal to the Market Operator for preparation and submission to the Authority, with rationale);
- d) (in respect of a Change Proposal only) an explanation of how the Change Proposal better facilitates the Objectives and Principles and/or the Market Arrangements Code Principles; and
- e) (save in relation to housekeeping or non-substantive Change Proposals which the Market Operator has been requested to prepare) in respect of each and every Charging Change Proposal and where the Code Change Committee decides to recommend to the Authority that a Change Proposal should be approved:
  - (i) the time and date on which the Code Change Committee believes the Change Proposal or Charging Change Proposal could be implemented; and
  - (ii) the draft legal text that the Code Change Committee proposes could be implemented to change the relevant part of the Wholesale-Retail Code and/or the Market Arrangements Code.

6.7.2 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.

- 6.7.3 The Code Change Committee Secretary will promptly provide a Final Report in respect of each Change Proposal or Charging Change Proposal to the Authority, and publish it on the Market Operator's website.
- 6.7.4 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 Code Change Committee revise and resubmit a Final Report, the Code Change Committee Secretary shall include the relevant Change Proposal or Charging Change Proposal on the agenda of the next Code Change Committee meeting. The Code Change Committee shall, as soon as reasonably practicable in the circumstances of the Authority's request, revise and arrange for the Code Change Secretary to resubmit a Final Report that responds to any issues specified in the Authority's request. Where the Change Proposal is housekeeping or non-substantive and submitted by the Market Operator, and the Authority determines that it cannot properly form an opinion on the approval of the Change Proposal and requests that the Market Operator and Code Change Committee revise and resubmit a Final Report, the Code Change Committee and the Market Operator shall work together to resubmit a Final Report that responds to any issues specified in the Authority's request.
- 6.7.5 If, having considered the Final Report (and having conducted such other analysis and consultation as the Authority considers appropriate), the Authority decides to approve the Change Proposal or Charging Change Proposal, any such change shall be an Approved Change.
- 6.7.6 Pursuant to Section 6.7.5 above, where the Authority has agreed an approved implementation date for an Approved Change, the Market Operator may make a request directly to the Authority to amend the implementation date where necessary.
- 6.7.7 The Market Operator shall implement any Approved Change, including any resultant amendments required to the Central Systems in an efficient and co-

ordinated manner. Each Trading Party shall implement any Approved Change in accordance with any reasonable requirements of the Market Operator.

## 6.8 Coordinated change

6.8.1 Following receipt of a Change Proposal or a Charging Change Proposal, the Market Operator shall publish a copy of such Change Proposal or Charging Change Proposal to its website, 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 6.6.4a)6.6.4a).

6.8.2 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 and the Code Change Committee 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.

6.8.3 Where the Market Operator reports to the Panel and Code Change Committee in accordance with this Section 6 with a recommendation that a Change Proposal should be made in relation to a Part of the Wholesale-Retail Code, the Market Operator shall make the appropriate Change Proposal in accordance with this Section 6.

## 7 NOT USED

## 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 or Charging Change Proposal; and
  - c) give Trading Parties the opportunity to raise potential Change Proposals or Charging Change Proposals for discussion at the User Forum before these are submitted to the Code Change Committee.

### 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 Chair who shall chair the meetings of the User Forum. The Chair 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 Chair of the Market Operator shall not be eligible to be appointed as the Chair 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 which the User Forum has been consulted on by the Code Change Committee.

## 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 which the User Forum is being consulted on by the Code Change Committee and which is to be discussed at that meeting).

## 8.5 Conduct of meetings

- 8.5.1 The Chair of the User Forum shall ensure that at each meeting, the User Forum shall receive a detailed report on:
- a) all Change Proposals or Charging Change Proposals that have been approved since the last meeting; and
  - b) any Change Proposal or Charging Change Proposals which are being consulted on by the Code Change Committee.
- 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 or Charging Change Proposal which the User Forum is consulted on by the Code Change Committee. 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 Framework Charges

## 9.1 Key Performance Indicator Charges

- 9.1.1 The Market Operator shall calculate the Key Performance Indicator Charges payable by Trading Parties in respect of underperformance against the Key Performance Indicator Standards (which shall be invoiced by the Market Operator on an Undertaker Wholesaler Business or a Retailer Business in accordance with Section 10.4.2 and 10.4.3) and the Retailer Credited Key Performance Indicator Charges to be paid to each Retailer Business (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 Key Performance Indicator Charges received from Undertaker Wholesaler Businesses in respect of that Retailer Business in the preceding Month. The Market Operator shall not be required to pay, and shall have no liability to the Retailer Business in respect of, any Retailer Credited Key Performance Indicator Charges that have not been paid by an Undertaker Wholesaler Business in respect of a Retailer Business.

## 9.2 Not Used

## 9.3 Not Used

## 9.4 Redistribution of Key Performance Indicator Charges

- 9.4.1 If the Market Operator holds a surplus of Key Performance Indicator Charges at the end of any Year, such surplus (monies collected less any amounts allocated by the Panel under Section 9.6 shall be redistributed to Undertaker Wholesaler Businesses and Retailer Businesses within six (6) Months (unless a MO Dispute is raised) following the end of the Year in which any surplus is accrued, in accordance with Sections 9.4.1 and 9.4.2 and noting always that for the purposes of such redistribution:
- a) any share of the surplus Key Performance Indicator Charges paid by an Undertaker Wholesaler Business in each Year shall only be redistributed to other Undertaker Wholesaler Businesses;

- b) any share of the surplus Key Performance Indicator Charges paid by a Retailer Business in each Year shall only be redistributed to other Retailer Businesses; and
- c) the share of the surplus in each of a) and b) above shall be defined as each Trading Party's Key Performance Indicator Charges collected, multiplied by the relevant total Key Performance Indicator Charges available for redistribution divided by the relevant total Key Performance Indicator Charges collected.

9.4.2 The share of the surplus for each Trading Party described in Section 9.4.1 above shall be redistributed to Trading Parties in the same proportions as they shared the Market Operator Charges in that Year but excluding each respective Trading Party's own Market Operator Charges.

## **9.5 Key Performance Indicator Charge Annual Inflationary Process**

9.5.1 Effective from the Year commencing 1 April 2027, and for each subsequent Year, a process for calculating the Key Performance Indicator Charge Inflationary Increase shall be conducted by the Market Operator for all Key Performance Indicator Charges. This shall determine the annual percentage increase for inflation for each current Key Performance Indicator Charge.

9.5.2 The Market Operator shall calculate the Key Performance Indicator Charge Inflationary Increase for each current Key Performance Indicator Charge using the CPIH Inflation Rate for the full year-long period to the October preceding the Year in which the Key Performance Indicator Charge Inflationary Increase will apply. The Market Operator shall perform this calculation no later than three (3) Months prior to the start of the relevant Year and shall then notify the Performance Assurance Committee of the Key Performance Indicator Charges Inflationary Increase.

9.5.3 The Performance Assurance Committee, may, at its absolute discretion, determine that any Key Performance Indicator Charge Inflationary Increase for one or more Key Performance Indicator Charges shall not be applied for the next applicable Year. Such decision must be determined at least one (1) Month before the commencement of the applicable Year, to allow the Market Operator to publish the

prevailing Key Performance Indicator Charges in accordance with CSD 0002 (Market Performance Framework).

## **9.6 Option to use Key Performance Indicator Charges to fund other activities**

9.6.1 Key Performance Indicator Charges collected may be used, in whole or in part, to fund other activities in accordance with this Section 9.6 and as agreed by the Panel in accordance with this Section 9.6.

9.6.2 The Panel will establish and maintain an appropriate governance framework for the purposes of determining how any Key Performance Indicator Charges collected may be used to fund other activities. This governance framework shall be consistent with, and reflect, the following essential principles:

- a) that any selected project or activity should enhance market functioning and benefit non-household customers;
- b) that such project or activity would not be considered to be business as usual or a project or activity that would ordinarily be undertaken by the Market Operator or other parties; and
- c) that any project or activity would be expected to deliver benefit to the market in general and not confer any particular competitive advantage to any Trading Party or groups of Trading Parties.

9.6.3 This governance framework must also set out:

- a) the roles and responsibilities of each of the Panel and the Market Operator in this process;
- b) the decision-making process (including timing, application, evaluation, approval, post-selection monitoring and management of projects), which must be followed in determining how any Key Performance Indicator Charges collected may be used;
- c) any further criteria that are to be used by the Panel in making any decision as regards how any Key Performance Indicator Charges collected may be used;

- d) any complaints or appeals process; and
- e) how the costs of selected projects are to be attributed to ensure that redistributions in Sections 9.4.1, and 9.4.2 can be performed in respect of any Key Performance Indicator Charges for Undertaker Wholesaler Businesses and Retailer Businesses.

9.6.4 This governance framework shall be referred to as the Project Selection and Governance Document and will be developed and maintained by the Panel and published on the Market Operator's website.

## **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 the annual budgetary process for the Market Operator;

10.1.3 the initial budgetary process for the Market Operator;

10.1.4 the method of calculation of Market Operator Charges;

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

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 10.2.6b);
  - 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 Market Operator Board shall consider the representations made by the Panel as to the treatment of a surplus in accordance with 10.2.2. The Market Operator 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.

10.2.11 Data Cleanse Charges

The Market Operator Budget excludes the Data Cleanse Charges, which the Market Operator proposes to charge to the Undertaker Wholesale Businesses during the relevant Year in relation to the Data Cleanse. The Data Cleanse Charges shall be calculated and charged separately to the Market Operator Charges and in accordance with Schedule 16 (Data Cleanse Charging Framework). This Section 10 (Cost recovery for the Market Operator's costs) shall not apply to the Data Cleanse Charges.

### **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 Key Performance Indicator 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 1.1.1, 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 nine (9) Business Days following the start of the preceding relevant Month;
- b) any Additional Service Charge payable by the Undertaker Wholesale Business in terms of Section 10.3.4 no later than nine (9) Business Days following the end of the relevant Month;
- c) any Key Performance Indicator Charges payable by the Undertaker Wholesale Business, no later than sixteen (16) Business Days following the end of the relevant Month for invoices pertaining to performance;

- d) any interest payable by the Undertaker Wholesale Business under Section 10.7 no later than nine (9) Business Days following the end of the relevant Month; and
- e) any value added tax payable thereon.

10.4.3 Save as set out in Section 1.1.1, the Market Operator shall deliver 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 nine (9) Business Days following the start of the preceding relevant Month;
- b) any Additional Service Charge payable by the Retailer Business in terms of Section 10.3.4 no later than nine (9) Business Days following the end of the relevant Month;
- c) any Key Performance Indicator Charges payable by the Retailer Business, no later than sixteen (16) Business Days following the end of the relevant Month for invoices pertaining to except where the Key Performance Indicator Charges relate to Interim Duty Supply Points during the Interim Supply Suspension Period which shall not be invoiced, and Section 10.5.2 below shall apply.
- d) any interest payable by the Retailer Business under Section 10.7 no later than nine (9) Business Days following the end of the relevant Month; and
- e) any value added tax payable thereon.

## 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 (a) or Section 10.4.3 (a) not later than ten (10) Business Days after the date of invoice ; and

- b) pay the amounts set out on the invoices pursuant to Section 10.4.2 (b) – (e) inclusive, and Section 10.4.3 (b) – (f) inclusive not later than twenty (20) Business Days after the date of invoice; and
- c) 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 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 10.5.1a) and 10.5.1c).

- 10.5.2 During the Interim Supply Suspension Period the Market Operator shall report the level of Key Performance Indicator Charges that would be due by each Retailer Business for Interim Duty Supply Points allocated to the Retailer Business at the time of the invoice issued pursuant to Section 10.4.3 but such amounts shall not be due or 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 Key Performance Indicator Charges are exclusive of United Kingdom value added tax which shall be added to such Market Operator Charges, Default Market Operator Charges and Key Performance Indicator 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 in accordance with the provisions of Section 10.7.2 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.

- 10.7.2 The Undertaker Wholesale Business or Retailer Business will only be invoiced for the interest owed to the Market Operator if the total amount of accrued interest owed exceeds £50.

## 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 10.8.1b) 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 Key Performance Indicator 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 10.8.1b).
- 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, Key

Performance Indicator 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,
- 10.10.3 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.

- 10.10.4 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.
- 10.10.5 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 10.5.1c).
- 10.10.6 Subject only to Section 10.10.7, the Market Operator's determination of Market Operator Charges for any Year shall be final and binding and no further adjustment shall be made.
- 10.10.7 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.

## **10.12 Key Performance Indicator performance disputes**

- 10.12.1 If an Undertaker Wholesale Business or Retailer Business disputes any amount shown in any Relevant Invoice related to Key Performance Indicator Charges applicable to it (as detailed in Sections 10.4.2 (c) and 10.4.3 (c)), 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.
- 10.12.2 Additionally, where an Undertaker Wholesale Business or Retailer Business disputes its reported performance, as calculated by the Market Operator, for any

Key Performance Indicator applicable to it, for which no charge is applicable, it shall only be entitled to dispute its reported performance provided it has notified the Market Operator of such dispute within three (3) Months of the date on which its performance against the Key Performance Indicator was published by the Market Operator.

- 10.12.3 Where an Undertaker Wholesale Business or Retailer Business notifies the Market Operator of any dispute or query under Sections 10.12.1 or 10.12.2 the Market Operator shall in a timely fashion (but not necessarily before the due date for payment, if applicable) investigate the matter and inform the Undertaker Wholesale Business or Retailer Business of the outcome of its investigation.
- 10.12.4 Where the Market Operator establishes that an error has been made in the determination of any Trading Parties' performance against a Key Performance Indicator Standard including, where applicable, 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) by or to such Undertaker Wholesale Business or Retailer Business, and will ensure that the correct amounts have been so paid, and will ensure that adjustments are made to any relevant published Key Performance Indicator performance reports.
- 10.12.5 No amount in respect of interest shall be included in any adjustment under Section 10.12.4.
- 10.12.6 Nothing in this Section 10.12 (Key Performance Indicator performance disputes) 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, or adjusting any published Key Performance Indicator performance reports, by agreement with the Undertaker Wholesale Business or Retailer Business concerned, where the Market Operator is aware of an error in such invoice, statement or report.
- 10.12.7 Where, following notification to the Market Operator of any dispute or query under Sections 10.12.1 or 10.12.2, the impacted Undertaker Wholesale Business or

Retailer Business is not satisfied with the determination of the Market Operator, having conducted its investigation, the Undertaker Wholesale Business or Retailer Business may raise the matter as an MO Dispute, in accordance with Section 5.3 of the Market Terms. Any MO Dispute must be raised within one (1) Month of the notification of the determination made by the Market Operator.

- 10.12.8 Where an Undertaker Wholesale Business or Retailer Business disputes its reported performance, as calculated by the Market Operator, for any Key Performance Indicator, the Market Operator shall continue to publish the relevant performance reporting as required under CSD 0002 (Market Performance Framework), unadjusted, until such time as the Market Operator determines there has been an error and so makes adjustments, or the Disputes Committee makes a determination following the raising of an MO Dispute, that there has been an error in Key Performance Standard Charges and/or published performance reporting. Where either party refers the Dispute to arbitration following a Disputes Committee determination, the Market Operator shall continue to publish unadjusted relevant performance reporting until such time that a determination is made by the arbitration tribunal.

## **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 raise an MO Dispute for resolution pursuant to Section 17 (Dispute Resolution):

- a) 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,
- b) 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 raise an MO Dispute for resolution pursuant to Section 17 (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 A Trading Party may not raise an MO Dispute related to performance calculations, for resolution pursuant to Section 17 (Dispute Resolution), unless:
- a) The total amount of the purported error(s) in performance calculations for the disputed Key Performance Indicator(s) for the Trading Party is greater than the lower of £1,000 or 5% of their total uncapped Key Performance Indicator Charges for the relevant Month, pursuant to Section 3.3.3 of CSD 0002 (Market Performance Framework); or
  - b) Where the purported error in performance calculations for the disputed Key Performance Indicator Standard results in a change to the Trading Party's ranking in any Market Performance Framework Peer Comparison Report.
- 12.1.5 The aggregate liability of the Market Operator in respect of all MO Disputes shall in no event exceed £1,000,000 per Year.
- 12.1.6 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.
- 12.1.7 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 Key Performance Indicator 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; 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 10.8.1b).

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

## 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 General Compliance with Data Protection Laws**

15.1.1 Each Party undertakes to comply with its obligations under the Data Protection Laws and, more specifically, in the performance of its obligations under the Market Arrangements Code and the Wholesale-Retail Code, to comply with the following:

- a) the obligations relating to Market Personal Data as contained in this Market Arrangement Code; and
- b) any mandatory guidance notes published by the Information Commissioner's Office and mandatory Codes of Conduct issued under Article 40 of GDPR.

### **15.2 Roles and Responsibilities**

15.2.1 The Market Operator is a Data Controller of any Market Personal Data.

15.2.2 Each Trading Party is also a Data Controller of any Market Personal Data that is:

- a) uploaded by that Trading Party to Market Operator Systems; and/or
- b) accessed by that Trading Party; and/or
- c) also held on that Trading Party's systems.

15.2.3 It is the responsibility of each Party to ensure that its processing of Market Personal Data complies with Data Protection Laws and this Market Arrangements Code.

### **15.3 Data processors**

15.3.1 Each Party undertakes to enter into such appropriate arrangements as are necessary in respect of any third party that may be acting as a data processor and/or sub-contractor on its behalf to facilitate compliance of these third parties with Data Protection Laws including specifically having in place any appropriate

legal mechanism for the transfer of Personal Data outside of the European Economic Area.

- 15.3.2 The Market Operator undertakes to ensure that it has in place, at all times, appropriate and robust contractual arrangements with any such appointed service provider to comply with Data Protection Laws including specifically having in place any appropriate legal mechanism for the transfer of Personal Data outside of the European Economic Area.

## 15.4 Use of Market Personal Data

- 15.4.1 Market Personal Data shall only be used for the Purpose and shall not be used or disclosed to third parties for any other purpose unless required by Law. This does not restrict the use of Personal Data that was not obtained or accessed from Market Operator Systems nor obtained from a Party to the Market Arrangement Code acting in pursuit of this Purpose.
- 15.4.2 Each Party shall ensure that, only such of its officers and employees as is necessary for the Purpose, shall process Market Personal Data and shall take all reasonable steps to ensure that access to Market Operator Systems and use of Market Personal Data is restricted to those who are authorised for that Purpose.
- 15.4.3 Each Party shall ensure that all of its officers and employees who are able to access Market Operator Systems and Market Personal Data are provided with regular appropriate training regarding the requirements of Data Protections Laws and this Market Arrangements Code.
- 15.4.4 The Market Operator shall monitor the accessing and downloading of Market Personal Data by Trading Parties.

## 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 For the purposes of this Section 17 and Section 18 below:

- a) references to the Market Operator "acting as disputes secretary" refer to the Market Operator acting in an independent and administrative role to facilitate the resolution of a Dispute. For the avoidance of doubt, where a Dispute involves the Market Operator as a Disputing Party, the role of disputes secretary shall still be carried out by the Market Operator but the individuals or team within the Market Operator carrying out the role of disputes secretary must not be connected with the terms of such Dispute;
- b) references to "affected" Disputing Parties in relation to a Dispute refer to:
  - (i) such Disputing Party or Disputing Parties as the Disputes Committee (or, before the Disputes Committee has considered the matter, the Market Operator acting as disputes secretary) considers from time to time in its sole discretion to be affected by the Dispute;  
or

(ii) a Disputing Party that has notified the Market Operator (acting as disputes secretary) under Section 17.3.5 below that it considers itself to be affected by the Dispute; and

c) in respect of Trading Disputes only, references to an "affected Settlement Report" refer to a Settlement Report in respect of which an error in a Data Item has, or is alleged to have, occurred.

17.1.2 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.

17.1.3 All Disputes shall be raised and dealt with in accordance with this Section 17 and, where necessary Section 18 below, and each Disputing Party hereby waives:

a) 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 Dispute other than as provided herein; and

b) 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.

#### **Duties of Disputing Parties**

17.1.4 Each Disputing Party shall:

a) provide to the Market Operator (acting as disputes secretary) such data, report and other information:

(i) as may be reasonably be required by the Disputes Committee for the purposes of fulfilling its functions set out in this Section 17 and Schedule 9 (Disputes Committee); and

(ii) in accordance with the requirements (including format) of the Disputes Committee Procedures; and

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

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

## 17.2 Raising a Dispute

17.2.1 Where a Dispute or a potential Dispute has arisen, the Party asserting the Dispute (the "Claimant") shall notify the other Parties relevant to the Dispute (together now the "Disputing Parties").

17.2.2 The Disputing Parties shall use reasonable endeavours to seek a resolution to the Dispute by informal means without escalation of the Dispute, acting at all times in accordance with any relevant Working Procedure in place from time to time.

17.2.3 In the event a potential Dispute is not resolved by informal means, a Disputing Party must make it clear to the other Disputing Parties, by written notification, its intention to escalate the Dispute to the Market Operator (acting as disputes secretary), prior to doing so pursuant to Section 17.3.

## 17.3 Escalation of Disputes

17.3.1 To the extent that the Disputing Parties are unable to resolve the Dispute by informal means, the Claimant may escalate a Dispute by submitting an escalation request in respect of such Dispute to the Market Operator (acting as disputes secretary). Escalations in respect of Trading Disputes must be raised no later than the Trading Dispute Deadline.

17.3.2 All escalation requests shall be submitted to the Market Operator using its secure online communications platform and must describe the Dispute in sufficient detail to enable the Market Operator (acting as dispute secretary) to assess the request against the following validation criteria:

- a) Where applicable, has the Claimant attempted to resolve the Dispute through existing procedures for informal dispute resolution in the Market Arrangements Code or the Wholesale-Retail Code?
- b) Has the Claimant notified the other Disputing Party that it wishes to escalate the Dispute to the Market Operator (acting as disputes secretary)?
- c) Where the Dispute involves the Market Operator, has the Market Operator failed to provide or implement an appropriate rectification plan in accordance with the terms of the Markets Arrangements Code or the Wholesale-Retail Code?

17.3.3 Each Dispute shall be treated in accordance with the Disputes Committee Procedures (as applicable) and the Disputing Parties shall complete and comply with the process for dispute resolution in accordance with the Disputes Committee Procedures.

**Publishing details of Disputes**

17.3.4 The Market Operator (acting as disputes secretary) shall publish the fact of the Dispute having been raised on its website within five (5) Business Days of receiving the request referred to in Section 17.3.1 above and shall include within such publication sufficient details for any Disputing Party to assess whether it may be affected.

17.3.5 A Party that considers that it is, or will be, affected by the Dispute shall notify the Market Operator (acting as disputes secretary) within seven (7) Business Days of the publication referred to in Section 17.3.4 above and the Disputes Committee shall take account of such Party as an affected Disputing Party in making its decision.

17.3.6 An affected Disputing Party referred to in Section 17.3.5 above shall complete and comply with the process for dispute resolution in accordance with the Disputes Committee Procedures.

### **Negotiation Period**

- 17.3.7 Within ten (10) Business Days from and including the date on which the Dispute is published pursuant to Section 17.3.4 above, representatives of each of the Disputing Parties with authority to resolve the Dispute shall meet in person, by conference call or by video conference to begin formal negotiations to resolve the Dispute.
- 17.3.8 The Disputing Parties shall negotiate in good faith and shall use reasonable endeavours to resolve the Dispute within twenty (20) Business Days from and including the date on which the Dispute is published pursuant to Section 17.3.4 above (the "Initial Negotiation Period"). If the Disputing Parties are unable to resolve the Dispute within this timeframe, the Disputing Parties may:
- a) agree to extend the Initial Negotiation Period by an additional twenty (20) Business Days, provided that the Market Operator (acting as disputes secretary) is notified prior to the expiry of the Initial Negotiation Period (as extended the "Extended Negotiation Period" and each the "Negotiation Period"); or
  - b) immediately request that the Market Operator (acting as disputes secretary) refer the Dispute for consideration by the Disputes Committee pursuant to Sections 17.3.10 and 17.4 below.
- 17.3.9 If the Disputing Parties are unable to resolve the Dispute within the Extended Negotiation Period, the Disputing Parties may:
- a) agree to extend the Negotiation Period further by such additional period of time as the Disputing Parties all agree; or
  - b) immediately request that the Market Operator (acting as disputes secretary) refer the Dispute for consideration by the Disputes Committee pursuant to Sections 17.3.10 and 17.4 below.
- 17.3.10 The Market Operator (acting as disputes secretary) may begin preparations to refer the Dispute for consideration by the Disputes Committee:
- a) upon notification from the Disputing Parties that they have been unable to resolve the Dispute before the expiry of the relevant Negotiation Period; or

- b) at the written request of any Disputing Party prior to the expiry of the relevant Negotiation Period. For avoidance of doubt the Disputing Party shall notify the other Disputing Party or Parties of the written request.

#### **Auto-close of Disputes**

17.3.11 If, following the expiry of the relevant Negotiation Period (as applicable), the Market Operator (acting as disputes secretary) has not received confirmation from the Disputing Parties that:

- a) the Dispute has been successfully resolved;
- b) the Disputing Parties wish to extend the Negotiation Period; or
- c) the Dispute is to be referred for consideration by the Disputes Committee,

the Market Operator (acting as disputes secretary) may send a notice to the Disputing Parties seeking the confirmation of the outcome of the Negotiation Period and the status of the Dispute.

17.3.12 The Disputing Parties shall have ten (10) Business days from and including the date of the notice sent by the Market Operator (acting as disputes secretary) pursuant to Section 17.3.11 above to confirm whether the Dispute:

- a) has been successfully resolved during the relevant Negotiation Period; or
- b) is still active and requires escalation to consideration by the Disputes Committee.

17.3.13 If the Market Operator (acting as disputes secretary) does not receive any update from any of the Disputing Parties pursuant to Section 17.3.12 above, the Market Operator (acting as disputes secretary) shall refer the Dispute to the Disputes Committee for immediate closure.

## **17.4 Disputes Committee**

### **General**

17.4.1 The Disputes Committee shall be formed and make decisions in accordance with the provisions of Schedule 9 (Disputes Committee).

17.4.2 The Disputes Committee shall not consider and decide matters relating to a Dispute unless the relevant Dispute has been validly escalated by a Disputing Party in accordance with Section 17.3 above.

17.4.3 The Disputes Committee shall not act as an expert or an arbitrator and the Arbitration Act 1996 shall not apply to the resolution of any dispute by the Disputes Committee under this Section 17.4.

**Referral to the Disputes Committee**

17.4.4 Once a Dispute has been referred to the Disputes Committee, the Disputing Parties shall provide the Market Operator (acting as disputes secretary) with documents and evidence relating to the Dispute not less than fifteen (15) Business Days prior to the next Disputes Committee meeting, save where the Dispute has been deemed urgent pursuant to the Disputes Committee Terms of Reference and Section 17.4.6b).

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

- a) collate all relevant information, documentation and reports sent by the Disputing Parties to the Market Operator (acting as disputes secretary) in respect of the Dispute; and
- b) within five (5) Business Days of receipt from the Disputing Party of all documents required to be submitted in accordance with the Disputes Committee Procedures and, subject to Section 17.4.7 below, include the Dispute on the agenda for the next meeting (or next practicable meeting) of the Disputes Committee.

17.4.6 The Disputes Committee shall consider the Dispute either:

- a) subject to Section 17.4.7 below, at the first meeting of the Disputes Committee scheduled to take place following the receipt of the information referred to in Section 17.4.5 above; or
- b) at an extraordinary meeting of the Disputes Committee convened pursuant to the Disputes Committee Terms of Reference.

17.4.7 Save where Section 17.4.6b) applies in order to consider a Dispute, the Disputes Committee must receive all necessary documents and evidence at least ten (10) Business Days prior to the published meeting date. If the relevant documents and evidence are received less than ten (10) Business Days prior to the published meeting date, the Market Operator (acting as disputes secretary) will place it on the agenda of the next succeeding Disputes Committee meeting.

17.4.8 If the Disputes Committee resolves that a Dispute raised by a Disputing Party is of a vexatious or frivolous nature, the Disputes Committee may (subject to and in accordance with any relevant Disputes Committee Procedures) require such Disputing Party to pay to the Market Operator (acting as disputes secretary) an amount (as from time to time approved by the Panel) towards the cost of administration of any such Dispute, and such Disputing Party shall pay such amount within seven (7) Business Days of notification by the Market Operator (acting as disputes secretary).

**Consideration and decision by the Disputes Committee**

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

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

17.4.10 The Disputes Committee may decide, subject to Paragraph 1.9 of Schedule 9 (Disputes Committee) and any relevant Disputes Committee Procedures, to defer a decision in respect of a Dispute to enable further information to be provided.

17.4.11 In relation to each Dispute, having considered all relevant material available to them and any representations made (and evidence submitted) in accordance with this 17.4 and the provisions of any Disputes Committee Procedures, the Disputes Committee shall:

- a) decide what Trading Parties are affected by the Dispute;

- b) in relation to Trading Disputes only, decide whether the relevant Trading Dispute was raised by the Trading Dispute Deadline; and
- c) decide:
  - (i) in respect of a Trading Dispute raised by the Trading Dispute Deadline:
    - 1. whether there was an error in any Data Item; and
    - 2. if so, what changes in data are appropriate to correct the Data Item(s); and
    - 3. 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.
  - (ii) in respect of a Non-Trading Dispute whether there has been any breach of the relevant Wholesale Contract or any of the Wholesale-Retail Code;
  - (iii) in respect of an MO Dispute whether there has been an Inaccurate Settlement, whether there has been an error in the calculation of a Key Performance Standard(s) resulting in inaccurate Key Performance Standard Charges and/or inaccurate performance reporting, or the Market Operator has not performed its operations in respect of providing or implementing a rectification plan; or
  - (iv) in respect of an Market Arrangements Code Dispute, whether there has been a breach of the Market Arrangements Code.

17.4.12 Any decision of the Disputes Committee must be a majority decision. To the extent that the Disputes Committee is unable to form a majority decision, the Dispute will be referred for arbitration in accordance with Section 18.1 below.

17.4.13 The Market Operator (acting as disputes secretary) shall, within five (5) Business Days following the making of a decision by the Disputes Committee in respect of a Dispute, notify each affected Disputing Party of the identities of all affected

Disputing Parties and of the decision made (and the provision of the reasons given by the Disputes Committee), or where the Disputes Committee failed to reach a majority decision in relation to the Dispute, of that fact and publish the decision or the fact of the failure to make a decision on the Market Operator's website.

- 17.4.14 If an affected Disputing Party does not agree with the decision of the Disputes Committee, it may refer the Dispute to arbitration under and in accordance with Section 18.1 below. If any Dispute is not referred to arbitration within twenty (20) Business Days of receipt (or if earlier, deemed receipt) of notice from the Market Operator (acting as disputes secretary) pursuant to Section 17.4.13 above, then the decision of the Disputes Committee shall be final and binding on all Disputing Parties, and each Disputing Party shall comply with such decision.
- 17.4.15 To the extent that any Disputing Party does not comply with the decision of the Disputes Committee, such Disputing Party shall be deemed to be non-compliant with the terms of the Wholesale-Retail Code, the Market Arrangements Code and (where applicable) its Licence.
- 17.4.16 The Disputes Committee cannot impose a decision which contravenes any Disputing Party's legal or regulatory obligations.

## 17.5 Additional provisions for Trading Disputes

### **Corrections following decision of the Disputes Committee**

- 17.5.1 Subject to Section 17.5.2 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 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.
- 17.5.2 If a Trading Party notifies the Market Operator (acting as disputes secretary) that it intends to refer the Trading Dispute to arbitration in accordance with Section 18.1 below it shall not be required to correct data pursuant to Section 17.5.1 above.

### **Adjustments following agreed resolution by Disputes Committee**

- 17.5.3 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 (acting as disputes secretary) pursuant to Section 17.4.13 above or if the affected Trading Parties have advised the Market Operator (acting as disputes secretary) that they are willing to abide by the Dispute Committee's decision then Sections 17.5.4 to 17.5.7 below (inclusive) shall apply.

17.5.4 Subject to Section 17.5.2 above and 17.5.5 below, following a decision of the 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 Section 17.5.1 above, the 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 Section 17.5.3 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 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.

17.5.5 Following a decision of the 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.

17.5.6 The Disputes Committee shall not require the Market Operator to take any step decided under Section 17.5.4 above until it is known whether any reference is to be made to arbitration under Section 18.1 below or the deadline for referring the Trading Dispute to arbitration within the timescale under Section 17.4.14 above has passed without the Market Operator (acting as disputes secretary) receiving notice that the Trading Dispute has been referred to arbitration.

17.5.7 The 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 Disputes Committee.

## **18 Arbitration**

### **18.1 Reference to arbitration**

18.1.1 A Disputing Party or the Disputes Committee Chair as applicable may refer the matter to arbitration in accordance with this Section 18.

18.1.2 No Dispute may be referred to arbitration unless the Dispute has first been considered by the Disputes Committee pursuant to Section 17.4 above and either:

- a) the Disputes Committee was unable to reach a majority decision pursuant to Section 17.4.12 above; or
- b) a Disputing Party disagrees with the decision of the Disputes Committee and has within twenty (20) Business Days of receiving (or if earlier, deemed receipt) the written decision of the Disputes Committee from the Market Operator (acting as disputes secretary) under Section 17.4.13 above:
  - (i) notified the Market Operator (acting as disputes secretary) in writing that it does not agree with the decision of the Disputes Committee;
  - (ii) notified any other affected Trading Parties (of which it is aware) and the Market Operator (acting as disputes secretary) that it is referring the Dispute to arbitration; and
  - (iii) made the referral of the Dispute to arbitration.

18.1.3 Any arbitration pursuant to this Section 18 shall be conducted under the arbitration rules of The London Court of International Arbitration (“LCIA” and “LCIA Rules”) in force from time to time.

### **18.2 Arbitration tribunal**

18.2.1 The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the LCIA Rules subject to the provisions of this Section 18.2.

- 18.2.2 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.
- 18.2.3 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 Chair for the nomination of a sole arbitrator (the "Panel Request"). The Panel Chair 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.
- 18.2.4 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.
- 18.2.5 If no nomination is transmitted to the LCIA under this Section 18.2 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.

### **18.3 Law and seat of arbitration**

- 18.3.1 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.
- 18.3.2 The language of the arbitration shall be English or Welsh, as the case may be.

## 18.4 Arbitration decision

- 18.4.1 The decision of the arbitration 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.
- 18.4.2 The Disputing Parties hereby waive any right to challenge or appeal any award of the arbitration tribunal to the full extent permitted by Law.

## 18.5 Related Disputes

- 18.5.1 The arbitration tribunal appointed in accordance with Section 18.2 shall have the powers referred to in Section 35 of the Arbitration Act 1996 in relation to the consolidation of related proceedings.
- 18.5.2 If a Dispute has been referred to an arbitration tribunal pursuant to Section 18.1 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.
- 18.5.3 Within ten (10) Business Days of receiving the request referred to in Section 18.5.2, 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 18.5.4. Any dispute between arbitration tribunals shall be referred to the LCIA for resolution.
- 18.5.4 In the event of the arbitration tribunal ordering consolidation of the Related Disputes in accordance with Section 18.5.3, 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.
- 18.5.5 In the event that the Related Disputes are consolidated the arbitration tribunal shall determine all the consolidated Related Disputes at the same time.

## 18.6 Notification of arbitration determinations

18.6.1 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 Dispute in which the Disputing Party was a Claimant or a Respondent.

## 18.7 Interim Judicial Relief

18.7.1 By agreeing to arbitration, the Disputing 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 Disputing 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 Disputing Party to respect the arbitration tribunal's orders to that effect. In any such judicial action:

- a) each of the Disputing 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 Disputing 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 Disputing 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:

- (i) for Trading Disputes and Non-Trading Disputes, paragraph 4 of Schedule 2 (in the case of the Contracting Retailer) or Schedule 3 (in the case of the Contracting Wholesaler) of the Wholesale Contract.
- (ii) for MO Disputes and Market Arrangements Code Disputes, 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).

## 18.8 Additional provisions for Trading Disputes

### Correction following arbitration

- 18.8.1 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 18.4 above and in accordance with CSD 0105 (Error Rectification and Retrospective Amendments) and to initiate and complete such correction as soon as reasonably practicable.

### Adjustments following arbitration

- 18.8.2 Subject to Section 18.8.3 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 Section 18.8.1 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.

18.8.3 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.

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

## **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 6 (Change Process).

## **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, both primary and supporting principles, in relation to the construction and interpretation of the Market Arrangements Code. The Panel, when contemplating any Market Arrangements Code Change Proposal, shall give particular consideration to supporting, developing and implementing change that advances the primary principle.

##### **Primary Principle**

1.2 The Market Arrangements Code shall be maintained, operated and developed in a manner that best seeks to protect and promote the interests of, and participation by, existing and future Non-Household Customers.

##### **Supporting Principles**

In furthering the primary principle, regard shall also be given to the following supporting principles.

##### **Continued development and sustainment of an effective market**

1.3 The Market Arrangements Code shall, wherever appropriate, promote effective competition and the removal of, and shall not introduce unnecessary, barriers to:

- Efficient market entry, expansion and exit; or
- Innovation that benefits Non-Household Customers and the environment, including innovative business modes; or
- Development of competitive markets within the water sector in England and Wales.

### Seamless Non-Household Customer experience

- 1.4 The Market Arrangements Code shall be maintained, operated and developed in a manner that seeks to deliver a seamless experience for the benefit of Non-Household Customers in relation to the Areas of Wholesalers and as between Areas in England and Wales;

### Resilience

- 1.5 The Market Arrangements Code shall be consistent with the Resilience Objective, including by promoting Trading Party and Non-Household Customer participation in measures to:
- manage water resources in sustainable ways, to maximise efficiency in the use of water and reduce demand for water so as to reduce pressure on water resources; and
  - improve the environmental sustainability of the Sewerage System.

### Transparency and clarity

- 1.6 The Market Arrangements Code shall be clear, open and transparent, including the activities of the Panel and the Market Operator, and be complete, concise, clearly expressed, well-structured, unambiguous and readily accessible to both existing and prospective Trading Parties.

### Proportionality

- 1.7 The Market Arrangements Code shall be proportionate to the size of the Competitive Market in England and Wales. It shall allow for the creating of

provisions to promote proportionate change which delivers the greatest value for existing and future Non-Household Customers.

#### **Efficiency**

- 1.8 The Market Arrangements Code shall ensure the efficient, economic and effective administration, governance and operation of the Competitive Market so far as impacted by it.

#### **Market Led**

- 1.9 The Market Arrangements Code shall enable and promote market participants to drive innovation and change that will create value for existing and future Non-Household Customers.

#### **Non-Discrimination**

- 1.10 The Market Arrangements Code shall not unduly discriminate, or create undue discrimination, between any existing or prospective Parties or group of such Parties.

#### **To support Innovation**

- 1.11 The Market Arrangements Code may enable such processes and procedures for the promotion and investment in innovation and change which will create value for the English and Welsh water and sewerage sector and grow its capacity to innovate, enabling it to better meet the evolving needs of customer, society and the environment as consented to by the Authority.

## **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.

"Acceptance and Prioritisation Criteria"	the criteria to be produced, and maintained by the Code Change Committee, but subject always to the Authority's approval. These criteria shall be applied by the Code Change Committee when determining whether a Change Proposal, Charging Change Proposal or Urgent Change Proposal should be progressed within the change process, and used to prioritise accordingly, as set out in Section 6.5 and 6.6;
"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 5.2.1o) which for the avoidance of doubt shall not include the Disputes Committee or the Performance Assurance 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;
"Alternative Customer Body Code Change Committee Member"	Those members of the Code Change Committee who are appointed in accordance with Section 1.7.5 of Schedule 14 of the Market Arrangements Code, and who may be a Customer Representative or an authorised representative of a consumer body as nominated from time to time by the Panel, or who may be a Non-Household Customer;
"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 3.3 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;
"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, 66DC, 117F and/or 117H of the Water Industry Act 1991, or to the Market Arrangements Code approved by the Authority;
"Arbitration Claimant"	the Party wishing to raise an arbitration under the LCIA Rules;
"Area"	any area for which an Appointment is held;
"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 Directed Fund"	any fund established by the Authority and specifically designated as an Authority Directed Fund subject to this code to encourage innovation, water efficiency or other improvements in the water and wastewater sector, including, but not limited to, the Innovation Fund and the Water Efficiency Fund;
"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;
"Bilateral Hub"	the platform for managing Requests between Trading Parties;

"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;
"CCW"	the Consumer Council for Water established under Section 27A of the Water Industry Act 1991, which may also be referred to as CCWater;
"Central Market Agency"	The Central Market Agency Ltd (incorporated in Scotland with Company number SC328635) and being the market operator for the non-household water market in Scotland.
"Central Systems"	the central settlement system Supply Point Register, and the Bilateral Hub;
"Cessation of Trading Conditions"	<p>in the case of a Retailer that:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(iii) it would not be a breach of a Licence condition for that Retailer to cease trading; and</li> <li>(iv) all notices required by the Market Terms have been given.</li> </ul> <p>In the case of a Wholesaler that:</p> <ul style="list-style-type: none"> <li>(i) an Incoming Undertaker(s) has been appointed in relation to all of that Wholesaler's Area;</li> <li>(ii) to the extent that it is not already a Trading Party, the Incoming Undertaker has satisfied the Trading Conditions;</li> <li>(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;</li> <li>(iv) all amounts payable or which may become payable by that Wholesaler to the Market Operator have been paid in full;</li> </ul>

	<p>(v) all amounts payable or which may become payable by that Wholesaler to the Market Operator have been paid in full;</p> <p>(vi) all notices required by the Market Terms have been given;</p>
"Chair"	Chair of the Market Operator Board or any person performing that role in accordance with the Articles of Association of the Market Operator;
"Change Proposal"	A Market Arrangements Code Change Proposal and/or a Wholesale-Retail Code Change Proposal;
"Change Proposal Form"	means the form referred to in Paragraph 6.3.1 which shall be published by the Market Operator from time to time. These forms will be reviewed and agreed by the Panel;
"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);
"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 Change Committee"	The code change committee whose composition, role and proceedings are described in Schedule 14 of the Market Arrangements Code;

"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;
"CPIH Inflation Rate"	the Consumer Prices Index including owner occupier's housing costs, as determined by the Office for National Statistics;
"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 CCW or any successor organisation to CCW;
"Customer Representative Code Change Committee Member"	Those members of the Code Change Committee who are appointed in accordance with Section 1.7.4 of Schedule 14 of the Market Arrangements Code;
"Customer Representative Panel Member"	the member of the Panel appointed by the Panel Chair in accordance with paragraph 5.6.12;
"Customer Representative Performance Assurance Committee Member"	those members of the Performance Assurance Committee who are appointed in accordance with Section 1.6.3 of Schedule 10 of the Market Arrangements Code;

"Data Catalogue"	the list of Data Transactions and Data Items set out in CSD 0301 (Data Catalogue) and/or CSD 0601 (Bilateral Data Catalogue);
"Data Cleanse"	a service provided by the Market Operator to assess, assure and support Trading Parties to improve the accuracy of core market data in the Central Systems, in accordance with Paragraph 3 of Schedule 16;
"Data Cleanse Charges"	the charges levied on Undertaker Wholesale Businesses in order to fund the Data Cleanse;
"Data Controller"	the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;
"Data Item"	each of the data items listed in CSD 0301 (Data Catalogue) and/or CSD 0601 (Bilateral Data Catalogue);
"Data Owner"	the Market Operator or relevant Wholesaler or Retailer in each case having responsibilities under the Market Terms and being the party responsible for each Data Item in accordance with: <ul style="list-style-type: none"> <li>• CSD 0105 (Error Rectification and Retrospective Amendments); and</li> <li>• CSD 0301 (Data Catalogue); and/or</li> <li>• CSD 0601 (Bilateral Data Catalogue);</li> </ul>
"Data Protection Laws"	all applicable data protection and privacy laws in force in the UK from time to time including the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (Regulation (EU) 2016/679) all as amended from time to time and any further legislation implemented in the UK in substitution for or to give effect to any of the above;
"Data Transaction"	each of the data transactions listed and numbered in CSD 0301 (Data Catalogue) and/or CSD 0601 (Bilateral Data Catalogue);
"Data Subject"	the natural person on whom Personal Data is held by the Data Controller;

"Data Subject Rights"	all rights available to Data Subjects under the Data Protection Laws including (but not limited to) (a) the right of access by the data subject; (b) the right to object to data processing; (c) the right to rectification; (d) the right to erasure; (e) the right to restriction of processing; (f) the right to data portability; (g) the right to not be subject to automated decision making; and (h) the right to lodge a complaint;
"Data Subject Rights Request" or "DSSR"	any communication received by a Party from a Data Subject (or a person acting on behalf of the Data Subject) seeking to exercise a Data Subject Right in relation to Market Personal Data;
"Data Subject Rights Request Record" or "DSRR Record"	the record referred to in Schedule 13 which contains the details of the DSRR in order to complete the DSRR within the deadlines under the Data Protection Laws. The record shall be in accordance with the template as published to all Data Controllers by the Market Operator from time to time. The material content of the template shall be subject to the approval of the Panel;
"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;
"Defra"	The Department for Environment Food & Rural Affairs (or successor);
"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 the Articles of Association of the Market Operator;
"Dispute"	a Trading Dispute, a Non-Trading Dispute, a Market Arrangements Code Dispute or a MO Dispute as the context requires;
"Disputes Committee"	that committee established by the Panel pursuant to Section 5.2.1k)
"Disputes Committee Chair"	the meaning given in Paragraph 1.5.1 of Schedule 9 (Disputes Committee)
"Disputes Committee Member"	the meaning given in Paragraph 1.3.1 of Schedule 9 (Disputes Committee)

"Disputes Committee Procedures"	the meaning given in Paragraph 1.10 of Schedule 9 (Disputes Committee)
"Disputes Committee Terms of Reference"	the meaning given in Paragraph 1.4.1 of Schedule 9 (Disputes Committee)
"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 as set out in Sections 17 and 18 and Schedule 9 of the Market Arrangements Code;
"Disputing Party"	any Party to a Dispute;
"Dormant Member"	the meaning given in Section 4.2.4;
"DSRR Recipient"	a Party who has received a Data Subject Rights Request, either directly from a Data Subject (or a person acting on the Data Subject's behalf) or from another Data Controller;
"DSRR Record Initiator"	a subset of DSRR Recipient, meaning the Party who has received the relevant Data Subject Rights Request, directly from a Data Subject (or a person acting on the Data Subject's behalf) and so creates the DSRR Record, or, alternatively, the Party who determines that a request should be dealt with as a DSRR;
"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;
"European Data Protection Board"	the body established under Article 68 of the General Data Protection Regulation (Regulation (EU) 2016/679);
"Exit Regulations"	any exit regulations made under Section 42 of the Water Act 2014 from time to time;
"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 6.7.1 in respect of a Change Proposal or Charging 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;
"Go Live Date"	1 April 2017 or such other date as may be determined by the Authority;
<u>"Government Department Fund"</u>	<u>any award granting fund established by a UK Government Department to promote innovation, water efficiency or other improvements, that promote the objectives and principles of the market codes;</u>
"Household Premises"	premises in any part of which, a person has their home and whose principal use is a home and which may be identified as such in light of any Regulations or Eligibility Guidance;
"Implementing Party"	the Party with responsibility for dealing with a particular Data Subject's request or objection as set out in Section D of Schedule 13;
"Inaccurate Settlement"	an inaccurate Settlement Report, as further described in Section 5 of the Market Terms;
"Indemnified Party"	the meaning given in Section 5.11.1;
"Independent Code Change Committee Members"	Those members of the Code Change Committee who are appointed in accordance with Section 1.7.3 of Schedule 14 of the Market Arrangements Code;
"Independent Panel Members"	those members of the Panel appointed by the Panel Chair in accordance with Section 5.6.10;
Industry Group	an organisation which operates within, and for the benefit of, the Competitive Market, including Non-Household Customers, which also fulfils the additional defined criteria of Schedule 17;
"Independent Performance Assurance Committee Members"	those members of the Performance Assurance Committee who are appointed in accordance with Section 1.6.2 of Schedule 10 of the Market Arrangements Code;
"Information Commissioner"	the supervisory authority for the UK for data protection matters;

"Initial Acceptance Criteria"	the criteria to be produced, and maintained by the Code Change Committee, but subject always to the Authority's approval. These criteria shall be applied by the Market Operator in determining whether a Change Proposal or Charging Change Proposal has met the minimum requirement for submission to the Code Change Committee Secretary as set out in Section 6.4.1a);
"Initial Suspension Period"	the period of twelve (12) months commencing on the Go Live Date;
"Innovation Fund"	means the Authority's innovation competition fund to encourage innovation in the water and wastewater sector;
"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, semiconductor 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 Duty Supply Points"	the meaning given in the Wholesale Retail Code;
"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;
"Interim Supply Suspension Period"	the period of three (3) Months, or such other period as the Authority may notify to the Market Operator in writing, following the date on which a cessation of supply commenced, as described in Section 4.3.9 of Schedule 1, Part 4 Market Terms of the Wholesale-Retail Code;
"Invoice Period"	a Month or (where the Business Terms require) part of a Month;

"Key Performance Indicator"	a primary indicator set out in CSD 0002 (Market Performance Framework) used to measure and incentivise Trading Party performance in combination with intervention tools;
"Key Performance Indicator Charge"	the financial charge that a Trading Party must pay to the Market Operator where applicable in the event of a failure to meet the Key Performance Indicator Standard for a Key Performance Indicator, as calculated by the Market Operator in accordance with CSD 0002 (Market Performance Framework) and invoiced by the Market Operator in accordance with Section 10.4;
"Key Performance Indicator Charge Inflationary Increase"	the annual increase to all current Key Performance Indicator Charges to account for inflation, as detailed in Section 9.5;
"Key Performance Indicator Standard"	the performance standard set out in Schedule 1 of CSD 0002 (Market Performance Framework) which is used for the purpose of monitoring and reporting Trading Party performance and calculating Key Performance Indicator Charges where applicable;
"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 Change Proposal"	a proposal in respect of a change to the Market Arrangements Code made in accordance with Section 6 (Change Process);
"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 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 Operator"	the company established to exercise certain central market functions in relation to the participation of Trading Parties in the Competitive Market;
"Market Operator Auditor"	the person or persons appointed to audit the functioning of the Market Operator in accordance with Section 4.6.2b);
"Market Operator Board"	the board of Directors of the Market Operator appointed in accordance with the Articles of Association of the Market Operator;
"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 Company Secretary"	the person appointed as company secretary to the Market Operator in accordance with Section 4.3;

"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 Systems"	the Central Systems together with any other related systems including, but not limited to, test, development, training or other systems that the Market Operator may make available to Trading Parties from time to time;
"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 Review Report"	the report prepared and published by the Market Operator with input from the Performance Assurance Committee which provides a retrospective review of the Market Performance Framework, and sets out recommendations for future market performance related focus and change in accordance with CSD 0002 (Market Performance Framework);
"Market Personal Data"	Personal Data either: (a) stored in, accessed through or downloaded from Market Operator Systems; and/or (b) Personal Data shared between Parties as required by the Market Arrangements Code or the Wholesale-Retail Code;
"Market Privacy Notice"	a privacy or fair processing notice which is published by the Market Operator following consultation with Trading Parties regarding the use of Market Personal Data;
"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;
"Month"	a calendar month;
"New Appointee"	a company that replaces an Undertaker for a specific geographic area by virtue of a variation of appointment under Section 7 of the Water Industry Act 1991;
"New Supply Point"	a Supply Point that requires to be created in relation to the circumstances set out in Section 4.4.2 of the Market Terms;
"Nominations Committee"	has the meaning given in 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;
"Non-Trading Dispute"	any Dispute, other than a Trading Dispute, a Market Arrangements Code Dispute or an MO Dispute, between or among any two or more Trading Parties of any nature arising under, out of or in connection with a Wholesale Contract or any of the Wholesale-Retail Code, as described in Section 17 of the Business Terms;

"Objectives"	the Business Terms Objectives, the Operational Terms Objectives and the Market Terms Objectives;
"Operational Subsidiary Documents"	the detailed process documents that further describe and facilitate the performance of duties under the Operational Terms as set out in Schedule 1 Part 7 of the Wholesale Contract, such duties including processes and responsibilities required to be performed within the Bilateral Hub in accordance with the Operational Terms;
"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 Operational Subsidiary Documents and 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;
"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) to which may also be referred to as Strategic Panel;
"Panel Chair"	the person appointed in accordance with Section 5.3.2;
"Panel Deputy Chair"	the person appointed in accordance with Section 5.3.3;
"Panel Members"	the members of the Panel from time to time nominated, elected or appointed in accordance with Sections 5.3.2, 5.3.3, 5.6 and 5.7;
"Panel Chair Nomination Committee"	An Additional Panel Committee responsible for leading the process of appointing a Panel Chair and making a recommendation to the Panel to approve. The Panel Chair Nomination Committee shall, as a minimum, be composed of two (2) Trading Party Panel Members (one being a representative of a Wholesaler Member and one being a representative of a Retailer Member) and one (1) Independent Panel Member;
"Panel Nominations Committee"	The committee convened by the Authority for the purposes of assessing nominations to serve on the Panel, and which may include members from the Authority, the Market Operator and Defra, and may include the existing Panel Chair, all as set out in Section 5.6.1;
"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 18.2.3;
"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 seven (7) 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);
"Performance Assurance Committee"	the committee established by the Panel pursuant to Section 5.2.1m);
"Performance Assurance Committee Chair"	the chair of the Performance Assurance Committee appointed in accordance with Section 1.4 of Schedule 10 of the Market Arrangements Code;
"Performance Assurance Committee Members"	all members of the Performance Assurance Committee appointed in accordance with Section 1.6 of Schedule 10 of the Market Arrangements Code;
"Performance Rectification Plan"	a plan determined by the Performance Assurance Committee or Panel setting out the remedial steps that a Trading Party must take in order to address a performance issue escalated to the Performance Assurance Committee or Panel in accordance with CSD 0002 (Market Performance Framework);
"Personal Data"	any information which can identify a natural person directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
"Personal Data Breach"	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
"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"> <li>(i) fixed and volumetric charges and allowances;</li> <li>(ii) any other charges set out in the Wholesale Tariff Document in relation to specific circumstances or events,</li> </ul> <p>but excluding,</p> <ul style="list-style-type: none"> <li>(iii) all charges that relate to the provision of one off or discrete services performed pursuant to the Operational Terms</li> </ul> <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;
"Project Selection and Governance Document"	the document referred to at Section 9.6.4, established, maintained and implemented by the Panel which describes the governance framework for determining how any Key Performance Indicator Charges collected may be used to fund other activities in accordance with Section 9.6.
"Proposer"	the person or entity making a Change Proposal or Charging Change;
"Purpose"	Compliance with the requirements of the Market Arrangements Code or the Wholesale-Retail Code. The requirements of the Wholesale-Retail Code must be interpreted in accordance with the objectives set out in Part A of Part 1 of the Wholesale-Retail Code;
"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 or (as appropriate) such number of the Code Change Committee members as indicated in Section 1.11.2 of Schedule 14;

"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"	a 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 Disputes because all of such Disputes present significant issues of law or fact in common or relate to the same, or a substantially similar, 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 10.10.5;
"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);
"Resilience Objective"	has the meaning given to that term in Section 2(2DA) of the Water Industry Act 1991;
"Respondent"	a party to an arbitration that is not the Arbitration Claimant;
"Response"	the meaning given in Section 18.2.2;
"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 Credited Key Performance Indicator Charges"	those Key Performance Indicator Charges identified as being "Retailer Credited" in of CSD 0002 (Market Performance Framework);
"Retailer Market Operator Charges"	the meaning given in Section 10.3.1b);
"Retailer Members"	those members of the Market Operator which are Retailers;

"Retailer Panel Member"	those members of the Panel nominated by Trading Party Members and appointed in accordance with Section 5.6.5;
"Retailer Performance Assurance Committee Members"	those members of the Performance Assurance Committee who are nominated by a Trading Party to be a Performance Assurance Committee Member representing Retailer Members appointed in accordance with Section 1.6.1 of Schedule 10 of the Market Arrangements Code;
"RF Settlement Run"	the final Settlement Run performed by the Market Operator in relation to any Invoice Period;
"Risk and Issues Tracker"	a report prepared and published by the Market Operator outlining the key market risks and issues in accordance with CSD 0002 (Market Performance Framework);
"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;
"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;
"Sewerage Retailer"	a Licensee who provides Sewerage Retail Services;
"Sewerage Retail Services"	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;
"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;

"Sewerage System"	<p>the system of a Sewerage Undertaker comprising:</p> <p>(i) the system of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that the Sewerage Undertaker is required to provide by Section 94 of the Water Industry Act 1991;</p> <p>(ii) the lateral drains that the Sewerage Undertaker is required to maintain by Section 94 of the Water Industry Act 1991; and</p> <p>(iii) any sewers or drains of the Sewerage Undertaker which are used for the purposes of serving Eligible Premises outside the Sewerage Undertaker's Area pursuant to Section 117A(5) of the Water Industry Act 1991;</p>
"Sewerage Undertaker"	a company appointed to be the sewerage Undertaker for an Area under Section 6 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 CSD 0301 (Data Catalogue) and/or CSD 0601 (Bilateral Data Catalogue);
"Standard Process"	means the processes set out in Market Arrangements Code or the Wholesale-Retail Code that describe and facilitate the processes that enable Parties to transfer data;
"Statement of Approach"	a statement produced and published by the Market Operator with input from the Panel and Performance Assurance Committee outlining the scale and use of market performance intervention tools described in CSD 0002 (Market Performance Framework) for the following Year;
"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"	<p>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 Supply 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);</p>
"Supply Point Share"	<p>the meaning given in Paragraphs 2 and 3.2 (as relevant) of Schedule 6 (Market Operator Charges);</p>
"Total Costs"	<p>the meaning given in Section 10.2.1;</p>
"Trading"	<p>the meaning given in Section 3.1 of Schedule 6 (Market Operator Charges);</p>
"Trading Application"	<p>means the form of that name published by the Market Operator from time to time;</p>

"Trading Conditions"	that a Wholesaler and/or a Retailer as appropriate: (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 Section 18.1 of the Business Terms;
"Trading Dispute Deadline"	is the date falling twenty eight (28) calendar months from and including the date of publication of the final Settlement Report in which the alleged error in the Data Item occurred;
"Trading Party"	all Retailers and Wholesalers that are Parties to the Market Arrangements Code and that have satisfied the Trading Conditions;
"Trading Party Audit"	a detailed examination performed by the Trading Party Auditor into Trading Party systems, information, data, staff and/or sub-contractors in order to provide continued assurance of the proper operation of the market in line with the Market Arrangements Code and the Wholesale-Retail Code;
"Trading Party Auditor"	the person or persons employed by the Market Operator to conduct Trading Party Audits, or a third party appointed by the Market Operator where necessary, to audit the operation of the market in accordance with CSD 0002 (Market Performance Framework);
"Trading Party Code Change Committee Members"	Those members of the Code Change Committee who are nominated by a Trading Party to be a Code Change Committee member representing Trading Parties appointed in accordance with Section 1.7.2 of Schedule 14 of the Market Arrangements Code;
"Trading Party Panel Members"	Those members of the Panel who are nominated by a Trading Party to be a panel member who may be a Retailer Panel Member or a Wholesaler Panel Member appointed in accordance with Section 5.6.5 of the Market Arrangements Code;

"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 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;
<u>"UK Government Department"</u>	<u>any ministerial department of the UK Government which establishes and oversees Government Department Funds;</u>
"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;
"Urgent Change Proposal"	A Change Proposal or Charging Change Proposal that has been given urgent status by the Panel or Authority in accordance with 6.3.1f);
"Urgent Change Proposal Criteria"	The guidance documentation to be produced, maintained by the Panel, but subject always to the Authority's approval. This guidance documentation shall be referred to by the Panel in determining whether a Change Proposal or Charging Change Proposal should be classified as an Urgent Change Proposal;

Urgent Code Change Committee Meeting	A meeting of the Code Change Committee to discuss and determine whether a Change Proposal or Charging Change Proposal should be given urgent status or a meeting of the Code Change Committee to discuss, vote on or recommend an Urgent Change Proposal;
"Urgent Panel Meeting"	A meeting of the Panel to discuss and determine whether (i) a strategic issue is to be given urgent status; or (ii) a Change Proposal or Charging Change Proposal with strategic effect should be given urgent status or a meeting of the Panel to discuss whether or not an Urgent Change Proposal should be encompassed into an existing programme or action, or whether it merits its own distinct work programme;
"Urgent Panel Meeting Contact Methods Guidance"	The guidance documentation to be produced and maintained by the Panel, but subject always to the Authority's approval. It sets out the process the Panel Chair (or relevant alternative under 5.8.5) should follow when contacting Panel Members to convene an Urgent Panel Meeting, and which shall also apply to an Urgent Code Change Committee Meeting (as if the references to Urgent Panel Meeting were references to Urgent Code Change Committee Meeting);
"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;
"Water Efficiency Fund"	the fund established by the Authority to stimulate a reduction in water demand across England and Wales;
"Water Retailer"	a Licensee who provides Water Retail Services;
"Water Retail Services"	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;
"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-Retail Code 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, 66DC, 117F or Section 117H of the Water Industry Act 1991;
"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 Market Operator Charges"	the meaning given in Section 10.3.1a);
"Wholesaler Members"	those members of the Market Operator that are Wholesalers;
"Wholesaler Panel Members"	those members of the Panel nominated by Trading Party Members and appointed in accordance with Section 5.6.5;

"Wholesaler Performance Assurance Committee Members"	those members of the Performance Assurance Committee who are nominated by a Trading Party to be a Performance Assurance Committee Member representing Wholesaler Members appointed in accordance with Sections 1.6.1 of Schedule 10 of the Market Arrangements Code;
"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 ; 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 3.2.2b) 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.

## 7 Exceptions

### Proposed new Parties

7.1 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.

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

7.2.1 would not suffer any material adverse impact; or

7.2.2 gives written consent.

## 8 Governing Law

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

8.2 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 the .....day of .....Director/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 the .....day of .....Director/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 3.2.2b) 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 the .....day of .....Director/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 the .....day of .....Director/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 Market Operator 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 audit reports, together with any reports recording such acceptance and the auditor's observations and comments on the tests; and
- 2.2.8 any relevant compilation or detailed operating procedures required in connection with any of the relevant provisions in this Paragraph 2;
- 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.

2.1 In addition to the amount of the Wholesaler Market Operator Charges payable under Paragraph 2 above, where an Undertaker Wholesale Business is a Dormant Member at the date when the Market Operator produces the invoice in respect of the relevant Month in accordance with Section 10.4, then the amount of the Wholesaler Market Operator Charges payable by each such Dormant Member in respect of that Month shall be calculated solely as the fixed fee of two hundred and fifty pounds sterling (£250). This Paragraph 2.1 shall not apply to Dormant Members which are New Appointees, which shall only be liable for the fixed fee set out in Paragraph 3.4.

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), (3.3) and (3.4) 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 Paragraph 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.

3.4 Where a Retailer Business is a Dormant Member at the date when the Market Operator produces the invoice in respect of the relevant Month in accordance with Section 10.4 then the amount of the Retailer Market Operator Charges payable by each such Dormant Member in respect of that Month shall be calculated solely as the fixed fee of two hundred and fifty pounds sterling (£250). For the avoidance of doubt, this Paragraph 3.4 shall not apply to any Retailer Business that is "Trading" (as defined in Paragraph 3.1) at the date when the Market Operator produces the invoice.

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"). Any Dormant Member's fixed fee contribution shall be included for the purposes of determining

any total shortfall or surplus of Market Operator Charges, but Dormant Members shall otherwise be disregarded for the purposes of this Paragraph 4. 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. Any Dormant Member's fixed fee contribution shall be included for the purposes of determining any total shortfall or surplus of Market Operator Charges, but Dormant Members shall otherwise be disregarded for the purposes of this Paragraph 5. 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

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### Part B

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# 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
Definitions of the following terms: Parties, Contracting Retailer; Retailer and Other Retailer; Contracting Wholesaler; Wholesaler and Other Wholesaler	The definitions of these terms shall be read as referring to an Undertaker Retail Business or an Undertaker Wholesale Business as the context requires.
Definitions of all service related 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	The definitions of these terms shall be read as relating to services provided by an Undertaker Retail Business or an Undertaker Wholesale Business (as the context requires) which are equivalent 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.
Definition of Wholesale Contract	This definition (when applied to the relationship between the Undertaker Wholesale Business and the Undertaker Retail Business of the Undertaker) shall be read as referring to the written arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business required by Condition R4 of the Undertaker's Appointment.
Definitions of all charge related terms including Wholesale Tariff Document, Wholesale Charges, Primary Charges; Non-Primary Charges, Special Agreements and references to allowances, incentives and other payments	The definitions of these terms shall be read as relating to the equivalent charge and payment arrangements in place between the Undertaker Retail Business and Undertaker Wholesale Business and set out in their written arrangements;
Rule of interpretation regarding references to Retailer or Wholesaler agreement, acceptance and consent, determination, rejection and/or challenge	References 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.

<b>Objectives, Principles and Definitions</b>	<b>Interpretation</b>
Definition of Trading Conditions	<p>The definition of Trading Conditions, as it applies to an Undertaker Retail Business and Undertaker Wholesale Business, is amended as follows:</p> <ul style="list-style-type: none"> <li>• The Undertaker Retail Business shall not be required to hold a Licence under condition (ii).</li> <li>• 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.</li> <li>• 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.</li> </ul>
Definition of Cessation of Trading Conditions	Condition (iv) shall not apply to an Undertaker Retail Business

<b>Wholesale Contract/Business Terms</b>	<b>Interpretation</b>
Part D of Business Terms – credit cover and payment terms	References in Part D of the Business Terms to invoicing between a Wholesaler and Retailer, shall be read as relating to the payment arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business.
Part H of Business Terms – Information exchange and confidentiality of other contracting Party's information and of customers' information	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.

<b>Operational Terms</b>	<b>Interpretation</b>
All processes: Separate action required from the Wholesaler and from the Retailer	Where any process or part of a process requires steps to be taken or imposes obligations, the Undertaker Retail Business must take the steps and perform the obligations on the Retailer as set out in the Operational Terms and the Undertaker Wholesale Business must take the steps and perform the obligations on the Wholesaler as set out in the Operational Terms, each independently as a wholesaler and retailer.

Processes concerning provision of notices: Wholesaler receipt of notice from Non-Household Customer	A statutory notice served on the Undertaker by a Non-Household Customer is validly served on the Undertaker when it is first received by either the Undertaker Retail Business or the Undertaker Wholesale Business.
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Market Terms	Interpretation
Obligations concerning interfacing and communicating with the Market Operator	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. Neither the Undertaker Wholesale Business nor the Undertaker Retail Business may perform any of these actions on behalf of the other.
Section 4.3: Volume transfers - planned	<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 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"> <li>• due to a sale, merger or other transaction affecting all or part of its business; or</li> <li>• on the making of any special administration order; or</li> <li>• on the appointment of another Undertaker in relation to all or part of the Undertaker's Area.</li> </ul> <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.

<b>Business Terms</b>	<b>Interpretation</b>
Part D	Provisions relating to credit support requirements shall not apply to arrangements between the Undertaker Wholesale Business and the Undertaker Retail Business.
Part I: Multi-party dispute resolution	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 any other Trading Party and/or the Market Operator.

<b>Market Terms</b>	<b>Interpretation</b>
Section 4.3.9: Interim supplier allocation and transfer process	Section 4.3.9 shall not apply to the Undertaker Retail Business
Sections 4.4.9 and 4.4.10: Gap site allocation	<p>Subject to the following paragraphs Sections 4.4.9 and 4.4.10 do not apply and the Undertaker remains the default supplier for Non-Household Customers within its Area pursuant to its Appointment.</p> <p>Where a Gap Site is identified by the Undertaker, the Undertaker shall 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 shall 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.

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

# Schedule 9

## Disputes Committee

1 The Disputes Committee

### 1.1 Establishment

1.1.1 The Panel shall establish a Disputes Committee in accordance with the provisions of this Paragraph 1.

### 1.2 Functions

1.2.1 The principal functions of the Disputes Committee are to:

- (a) investigate and resolve all Disputes in accordance with the provisions of this Schedule 9 (Disputes Committee), and Section 17 of the Market Arrangements Code, 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 Disputes; and
- (c) submit recommendations to the Code Change Committee for the Code Change Committee to consider in respect of modification of the Market Arrangements Code or the Wholesale-Retail arising out of the activities of the Disputes Committee under this Schedule 9 (Disputes Committee).

1.2.2 The 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 (Disputes Committee) or assigned to it by the Panel pursuant to this Schedule 9.

1.2.3 The Panel shall not delegate any powers, functions or responsibilities of the Panel to the 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 Disputes Committee under this Schedule 9 (Disputes Committee).

### 1.3 **Constitution**

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

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

### 1.4 **Disputes Committee Terms of Reference**

1.4.1 The Panel shall determine terms of reference ("Disputes Committee Terms of Reference") for the 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 Disputes Committee including any appropriate pro-forma documentation and the frequency of the meetings of the Disputes Committee;
- (b) rules and requirements for a Trading Party to raise a Dispute for determination by the Disputes Committee and the required timetable for the resolution of any such Dispute;
- (c) the restrictions which the Panel considers appropriate on the disclosure of data by the Disputes Committee (including in particular requirements for a Disputes Committee Member not to disclose to their employer information obtained as a Disputes Committee Member);
- (d) the identification and declaration of, and steps to be taken in the case of, any conflict of interest of a Disputes Committee Member, or the Disputes Secretary, in relation to a Dispute;

- (e) circumstances in which other individuals (including experts) may be or should be invited to attend meetings of the Disputes Committee, and any requirements that individuals so invited should sign undertakings of confidentiality;
- (f) the functions of the Disputes Committee Chair;
- (g) the maintenance and availability to Trading Parties of a register of decisions of the Disputes Committee, and the extent to which the Disputes Committee is to have regard to such previous decisions in deciding any 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 Disputes Committee Chair and Disputes Committee Members to confirm or acknowledge in writing that they will act in accordance with this Schedule 9 (Disputes Committee) and the Disputes Committee Terms of Reference.

1.4.2 The Disputes Committee Terms of Reference shall be published by the Market Operator on the Market Operator's website.

## 1.5 **Chair**

1.5.1 The Panel shall from time to time appoint an individual with appropriate seniority to act as the independent Chair of the Disputes Committee (the "Disputes Committee Chair"), and may remove and replace such individual so appointed from time to time in its sole discretion.

1.5.2 The Disputes Committee Chair or such substitute as may be designated from time to time by the Disputes Committee Chair in their sole discretion shall chair the meetings of the Disputes Committee. The Disputes Committee Chair shall have such additional functions in connection with the conduct of the business of the Disputes Committee as the Panel shall assign to them.

1.5.3 The Disputes Committee Chair shall not be a member of the Disputes Committee and shall not have a vote at meetings of the Disputes Committee.

1.5.4 The Disputes Committee Chair shall be independent, in that they must not be employed or engaged by any Trading Party or by the Market Operator, given the nature of the Disputes they shall be dealing with.

1.6 **Authority and Trading Party Auditor representatives**

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

- (a) a representative of the Trading Party Auditor appointed from time to time by the Trading Party 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).

1.6.2 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 Disputes Committee.

1.7 **Additional attendees**

1.7.1 Subject to the Disputes Committee Terms of Reference, the Disputes Committee Chair may (and, if required by such terms or requested by the Disputes Committee, shall) invite any individual to attend a meeting of the Disputes Committee in order to speak to particular items on the agenda. Such individual may be an expert or wider industry representative where the Disputes Committee agrees that expert advice on any issue relevant to the Dispute is required to facilitate their consideration and determination of the Dispute.

1.7.2 Any such individual invited pursuant to paragraph 1.7.1 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 Disputes Committee.

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

## 1.8 **Meetings of the Disputes Committee**

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

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

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

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

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

## 1.9 **Postponing meetings and deferring decisions**

1.9.1 The Disputes Committee Chair may not postpone a meeting of the Disputes Committee or defer a decision on any Dispute if the circumstances giving rise to the Dispute are likely to recur until a decision is reached by the Disputes Committee unless the Disputes Committee reasonably determines that further information is required to properly consider and make a decision in respect of a Dispute.

1.10 **Disputes Committee Procedures**

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

1.11 **The Market Operator**

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

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

1.12 **Annual report**

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

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

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

# Schedule 10

## Performance Assurance Committee

1 The Performance Assurance Committee

### 1.1 Establishment

1.1.1 The Panel shall establish a Performance Assurance Committee in accordance with the provisions of this Paragraph 1.

### 1.2 Functions

1.2.1 The principal functions of the Performance Assurance Committee, as may be delegated by the Panel, shall include:

- a) 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;
- b) providing expert input to the annual Risk and Issues Tracker and Statement of Approach
- c) providing expert input on the administration and implementation of the Market Performance Framework;
- d) providing expert input to the Market Performance Review Report;
- e) considering any remedial steps required in respect of any Trading Party that is escalated to the Performance Assurance Committee as part of the performance resolution process;
- f) making recommendations to the Code Change Committee that the Wholesale-Retail Code be modified in order to enhance the Market Performance Framework; and

- g) such other role and functions as the Panel may delegate to it from time to time.

### 1.3 **Composition**

1.3.1 The Performance Assurance Committee shall comprise the following Performance Assurance Committee Members:

- a) the Performance Assurance Committee Chair;
- b) three (3) Retailer Performance Assurance Committee Members;
- c) three (3) Wholesaler Performance Assurance Committee Members;
- d) two (2) Independent Performance Assurance Committee Members; and
- e) one (1) Customer Representative Performance Assurance Committee Member.

1.3.2 Only one (1) Retailer or Wholesaler Performance Assurance Committee Member may be appointed from any one Trading Party.

### 1.4 **Chair**

1.4.1 The Panel shall from time to time appoint an individual with appropriate seniority to act as the independent chair of the Performance Assurance Committee (the "Performance Assurance Committee Chair") and may remove and replace such individual so appointed from time to time in its sole discretion. The Performance Assurance Committee Chair shall be independent, in that they must not be employed or engaged by any Trading Party or by the Market Operator.

1.4.2 The Performance Assurance Committee Chair or such substitute as may be designated from time to time by the Performance Assurance Committee Chair in their sole discretion shall chair the meetings of the Performance Assurance Committee. The Performance Assurance Committee Chair shall have such additional functions in connection with the conduct of the business of the Performance Assurance Committee as the Panel shall assign to them.

1.4.3 The term of office of the Performance Assurance Committee Chair will be for a period of three (3) years. The Performance Assurance Committee Chair may hold more than one term of office, but not more than three terms in aggregate. The Performance

Assurance Committee Chair shall, at all times, and in accordance with Section 1.7.1 act impartially, in the best interests of the market as a whole and shall be guided by the Principles and Objectives.

## 1.5 **Attendees**

1.5.1 The meetings of the Performance Assurance Committee shall be held in open forum except to the extent that confidential information will be considered (e.g. in relation to the performance of a particular Trading Party) or personal privacy matters arise. Where performance of a particular Trading Party is considered, the Performance Assurance Committee may invite such Trading Party to send a representative to attend the relevant part of such meeting. Performance Assurance Committee members shall not disclose confidential information received in that capacity.

1.5.2 A representative of the Market Operator and representative(s) from the Authority shall be entitled to attend and speak at all meetings of the Performance Assurance Committee, as affiliated members, but not to vote.

1.5.3 Observers may attend a meeting of the Performance Assurance Committee. Observers may speak at meetings of the Performance Assurance Committee if invited to do so by the Performance Assurance Committee Chair but will not be entitled to vote.

## 1.6 **Performance Assurance Committee Members**

1.6.1 **Retailer and Wholesaler Performance Assurance Committee Members** - in the event of a vacant Retailer or Wholesaler Performance Assurance Committee Member seat:

- a) the Panel shall notify all Trading Parties of their entitlement to nominate candidates to become the Retailer or Wholesaler Performance Assurance Committee Members, specifying whether the vacancy is for a representative of a Wholesaler Member or a Retailer Member, and the date by which nominations should be submitted to the Panel.
- b) Each Member shall be entitled, by notice to the Panel Secretary, to nominate individual(s) to be a Retailer or Wholesaler Performance Assurance Committee Member. Individuals nominated pursuant to this Section 1.6.1 shall be employed by a Trading Party and shall have the requisite skills and experience.

- c) Pursuant to Section 1.6.1(b) above, 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 they are aware of the nomination and would be prepared to serve as a Retailer or Wholesaler Performance Assurance Committee Member if appointed. The Trading Party nominating the individual (or their employer if that is a different Trading Party) shall also provide a letter confirming approval to the individual acting as a Retailer or Wholesaler Performance Assurance Committee Member if appointed.
- d) The Panel shall consider the nominations with a view to making a decision on the candidate(s) best suited for the vacant Retailer or Wholesaler Performance Assurance Committee Member seat(s). The Panel will thereafter confirm if a decision has been reached and whether an acceptable nominee has been identified.
- e) The Panel will appoint an acceptable nominee with effect from the next occurring Performance Assurance Committee meeting, save where otherwise agreed.

1.6.2 **Independent Performance Assurance Committee Members** - Independent Performance Assurance Committee Members shall be appointed by the Panel. The Market Operator may, on behalf of the Panel, engage with a recruitment search company to invite applications. Each Independent Performance Assurance Committee Member must be Qualified and shall have the requisite skills and experience. The Panel shall agree an appropriate selection process to reach final agreement on which (if any) of the applicants are to be appointed as Independent Performance Assurance Committee Members.

1.6.3 **Customer Representative Performance Assurance Committee Member** – The Customer Representative Performance Assurance Committee Member shall be nominated by CCW, or any successor organisation, and appointed by the Panel. The Customer Representative Performance Assurance Committee Member must be a Qualified individual and shall have the requisite skills and experience.

1.6.4 **Term of appointment** – Performance Assurance Committee Members appointed in accordance with Section 1.6.1 and 1.6.2 shall be appointed for a fixed term not exceeding three (3) years and shall be eligible for re-appointment only once following expiry of their initial term.

1.6.5 **Replacing Performance Assurance Committee Members** – A person shall cease to be a Performance Assurance Committee Member if:

- a) they resign by notice delivered to the Panel Secretary; or
- b) the Panel or the Performance Assurance Committee resolves that they should cease to hold office; or
- c) they are, for any reason or change or circumstance, no longer able to act in accordance with the requirements in 1.7.1 of this Schedule 10

and upon any person ceasing to hold office as a Performance Assurance Committee Member a new Performance Assurance Committee Member shall be appointed in accordance with Section 1.6 of this Schedule 10. Once appointed, a new Performance Assurance Committee Member shall take office with immediate effect, save where otherwise agreed.

1.7 **Role of a Performance Assurance Committee Member**

1.7.1 A Performance Assurance Committee 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 company, body or person by whom they are employed, or by whom they were nominated, or appointed to be a Performance Assurance Committee Member; and
- c) shall not be appointed as a Performance Assurance Committee Member unless they shall have first:
  - (i) confirmed in writing to the Market Operator for the benefit of all Trading Parties that they agree to act as a Performance Assurance Committee Member in accordance with the Market Arrangements Code and acknowledges the requirements of this Section 1.7.1 of Schedule 10; and
  - (ii) provided to the Panel Secretary a letter from their employer (if applicable) agreeing that they may act as a Performance Assurance Committee

Member and that the requirements in Section 1.7 of this Schedule 10 shall prevail over their duties as an employee in this regard; 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 1.7 of Schedule 10.

1.7.2 Where the Performance Assurance Committee Chair (on the application of a Performance Assurance Committee Member) agrees in advance in writing, a Performance Assurance Committee Member may appoint a person to be their alternate. Any alternate appointed in accordance with this Section 1.7.2 shall be entitled to attend, speak and vote at any meeting of the Performance Assurance Committee where the Performance Assurance Committee Member who appointed them is not present. Such alternate shall cast one (1) vote for the Performance Assurance Committee Member by whom they were appointed. All alternates must act in accordance with the provisions of Section 1.7.1. This Section 1.7.2 shall not apply to the Performance Assurance Committee Chair, for whom Section 1.4.2 shall instead apply. The substitute who is acting as Performance Assurance Committee Chair for the relevant Performance Assurance Committee meeting, pursuant to Section [1.4.2](#), shall be entitled to additionally appoint an alternate for the duration of that meeting.

#### 1.8 **Performance Assurance Committee meetings**

1.8.1 Meetings of the Performance Assurance Committee shall be held at regular intervals and at least every three (3) months at such time and place in England and Wales as the Performance Assurance Committee shall decide or by way of a conference telephone call providing each Performance Assurance Committee Member is able to speak to each of the others and to be heard by each of the others simultaneously. A Performance Assurance Committee 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.

1.8.2 The Panel Secretary shall maintain a calendar of the dates of the forthcoming regular meetings and will provide copies of this to the Performance Assurance Committee Members 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 Performance

Assurance Committee before the next regular meeting if required in order to consider any performance related issues.

- 1.8.3 Any meeting of the Performance Assurance Committee shall be convened by the Panel Secretary by giving notice to each Performance Assurance Committee Member and any alternate appointed in accordance with this Section 1.8 setting out the date, time and place of the meeting and (unless the Performance Assurance Committee has decided otherwise) giving at least ten (10) Business Days' notice of the meeting and accompanies by an agenda and such supporting papers as are necessary.
- 1.8.4 The Performance Assurance Committee shall, in the event of any conflict of interest being declared by a Performance Assurance Committee Member (under the requirements of 1.7.1(a)) at a meeting of the Performance Assurance Committee, decide the most appropriate course of action and in doing so, will be guided by the Code Principles set out at Schedule 1.

#### 1.9 **Quorum**

- 1.9.1 No business shall be transacted at any meeting of the Performance Assurance Committee unless a quorum is present at the meeting. A quorum shall be a minimum of the Performance Assurance Committee Chair (or their substitute), one (1) Retailer Performance Assurance Committee Member, one (1) Wholesaler Performance Assurance Committee Member, two (2) non-Trading Party Performance Assurance Committee Members (whether two Independent Performance Assurance Committee Members or an Independent Performance Assurance Committee Member and the Customer Representative Performance Assurance Committee Member), and one (1) additional Performance Assurance Committee Member of any type, each of whom must be entitled to vote at that meeting.

#### 1.10 **Voting**

- 1.10.1 At any meeting of the Performance Assurance Committee any matter to be decided shall be put to a vote of Performance Assurance Committee Members. Where any matter (save for those matters considered under Section 1.10.2) is put to a vote of Performance Assurance Committee Members, such a vote shall be decided by a simple majority of those votes cast at the meeting by Performance Assurance Committee Members (and an abstention shall not be counted as a cast vote). All Performance Assurance Committee Members, including the Performance Assurance

Committee Chair, and any person appointed to act as substitute for the Performance Assurance Committee Chair, are entitled to a single vote. In the event of a tied vote, the Performance Assurance Committee Chair shall have the casting vote. Where the Retailer and Wholesaler Performance Assurance Committee Members solely form the majority of votes, this will be considered as a tied vote and the Performance Assurance Committee Chair shall have the casting vote.

1.10.2 Determinations to remove a Performance Assurance Committee Member under Section 1.6.5(b) shall be decided by:

- a) a unanimous vote of those votes cast at the meeting by the Panel or the Performance Assurance Committee Members (and an abstention shall not be counted as a cast vote); or
- b) being voted for by a Qualifying Majority of the Panel as set out in Section 5.10.2, or a Qualifying Majority of the Performance Assurance Committee as set out in this Section 1.10.2.

For the purposes of this Section 1.10.2 a "Qualifying Majority" shall be not less than seven (7) of the Performance Assurance Committee Members.

1.10.3 A resolution in writing signed by or on behalf of all of the Performance Assurance Committee 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 Performance Assurance Committee and such an instrument may consist of several instruments in like form each signed by or on behalf of one or more of the Performance Assurance Committee.

#### 1.11 **Performance Assurance Committee Terms of Reference**

1.11.1 The Panel shall determine terms of reference for the Performance Assurance 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).

1.12 **The Market Operator**

1.12.1 The Market Operator shall provide the Performance Assurance Committee with such support and facilities as the Performance Assurance Committee may reasonably require for the proper exercise of its functions pursuant to this Schedule 10 (Performance Assurance Committee) including providing a secretarial function for the Performance Assurance Committee.

# 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 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 Not Used
- 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.

# Schedule 13 Data Protection Compliance Arrangements

This schedule sets out how the Parties will allocate and discharge their respective responsibilities as Data Controllers of Personal Data and Market Personal Data.

## A DATA GOVERNANCE

### 1 Summary of Arrangements

1.1 Data Controllers who jointly control how Personal Data is processed must make available to Data Subjects a summary of the arrangements and allocation of responsibilities between them (which may include a summary of matters dealt with in this Schedule).

### 1.2 Allocation of responsibilities

The Market Operator shall produce and publish on its website a summary of the arrangements for the sharing of Market Personal Data and Personal Data between the Parties, including compliance with Data Subject Rights and the provision of privacy notices.

### 1.3 Interactions to deliver compliance

The Market Operator shall:

- (a) Provide a copy of its proposed summary (and thereafter any changes to it) to all Trading Parties for review and comment by 1 April 2018 and annually thereafter or as any changes are required;
- (b) Trading Parties shall provide comments within 14 days of receipt of the summary or any proposed changes to it.

### 2 Nominated Contact Points

2.1 Data Controllers may be obliged by law or may elect to appoint a Data Protection Officer (as defined by Data Protection Laws). In cases where a Data Protection

Officer has not been appointed, joint Data Controllers will nevertheless require to share contact point details of appropriate personnel to ensure that any data protection issues that may arise can be promptly notified. Data Controllers shall not be obliged to provide a Data Protection Officer as their primary contact point.

## 2.2 Allocation of Responsibilities

- (a) All Parties will provide the Market Operator with details of their nominated primary contact point for any data protection issues that may arise, in accordance with Section A2.1 of this Schedule 13.
- (b) All Parties must additionally provide the Market Operator with details of at least two nominated contact points for managing DSRRs, who will be the Party's contact points for any DSRR actions. These must be appropriate persons, which shall be the Data Protection Officer, or those with data protection expertise and/or training.
- (c) The Market Operator shall maintain a master list of these details for all Parties on its website and will promptly update the list as and when there are any changes to it.

## 2.3 Interactions to deliver compliance

- (a) The details to be provided by Parties for their nominated contact points include name, job title, email address and business telephone number.
- (b) All Parties must promptly advise the Market Operator of any change to their nominated contact points and all Parties remain responsible for ensuring that the nominated contact point details they provide are correct and therefore that they are able to receive DSRR notifications.

# B DATA MANAGEMENT

## 1 Review of Market Personal Data

1.1 Personal Data shall be limited to what is necessary for the purpose for which they are processed.

1.2 **Allocation of responsibilities**

Once a year the Market Operator shall review the Market Personal Data that is processed to assess whether the Market Personal Data captured and stored is necessary for the Purpose and is no more than is required for this Purpose.

1.3 **Interactions to deliver compliance**

If the Market Operator considers that it is no longer necessary to process specific fields or types of Market Personal Data it shall report this to the Panel. The Panel will consider and implement any necessary changes.

2 Privacy by Design

2.1 Data Controllers shall adopt internal compliance policies and implement appropriate technical and organisational measures to meet the principles of privacy by design and by default.

2.2 **Allocation of responsibilities**

Each of the Parties shall implement internal policies and processes to ensure that only those within its organisation with a legitimate requirement to access the Market Personal Data can do so.

2.3 **Interactions to deliver compliance**

The Parties shall provide evidence in writing of compliance with the above within 5 Business Days of any reasonable request by any other Party.

3 Privacy Impact Assessments

3.1 Privacy impact assessments are required to be conducted by Data Controllers where processing of Personal Data is likely to result in a high risk to the rights of Data Subjects or as a means to demonstrate compliance.

3.2 **Allocation of responsibilities**

- (a) The Market Operator shall be responsible for ensuring there is a clear process for conducting privacy impact assessments on any new, adjusted or additional processing of Market Personal Data to identify its necessity and proportionality, any impact upon Data Subjects and how such impacts could be mitigated or addressed.
- (b) The Market Operator shall be responsible for updating any privacy impact assessment regarding the Market Personal Data in accordance with guidance published or endorsed by the European Data Protection Board.
- (c) Trading Parties shall provide such information and assistance to the Market Operator as is necessary and reasonable in order for it to ensure the appropriate conduct of privacy impact assessments

3.3 **Interactions to deliver compliance**

The Market Operator shall:

- (a) Share the outcome of any privacy impact assessment with Trading Parties including any recommended actions;
- (b) Liaise accordingly with Trading Parties and any other third party to ensure any recommended actions are implemented accordingly;
- (c) Document the above process and outcomes as appropriate.

4 Records of Processing

4.1 Data Controllers must maintain a formal written record of processing activities under their responsibility which shall include the legal basis upon which any

processing of Personal Data is conducted as well as any other requirements under Data Protection Laws.

#### 4.2 **Allocation of responsibilities**

- (a) The Market Operator shall produce and maintain a comprehensive record of processing for Market Personal Data. This record shall not cover any processing of Market Personal Data that is not required by either the Market Arrangements Code or the Wholesale-Retail Code.
- (b) Trading Parties shall provide such information and assistance to the Market Operator as is necessary and reasonable in order for it to produce and maintain a comprehensive record of processing activities.

#### 4.3 **Interactions to deliver compliance**

- (a) The Market Operator shall make available at all times to the Trading Parties a current copy of the comprehensive record of processing activities.
- (b) Trading Parties shall provide any comments which require to be taken account of or corrections which require to be made to the record of processing to the Market Operator without delay following review of any current record of processing.

## **C USE OF PERSONAL DATA**

### 1 Privacy Notices

- 1.1 Data Controllers must provide to Data Subjects fair processing information or notices that set out particular information in terms of the Personal Data, the rights of Data Subjects and obligations of Data Controllers in accordance with Data Protection Laws. Parties shall process Personal Data only in accordance with such fair processing information or notices.

### 1.2 **Allocation of responsibilities**

- (a) The Market Operator shall publish a privacy notice on its website regarding Market Personal Data ("**the Market Privacy Notice**"). This shall include

all of the information required by Data Protection Laws and specifically must include both the purpose and legal basis for processing.

- (b) Data Controllers shall ensure that privacy notices, consistent with the Market Privacy Notice, are provided to Data Subjects to whom they deliver services. The Market Operator shall ensure that the Market Privacy Notice is published on their website no later than 20 Business days prior to 25 May 2018 in order to enable all Data Controllers to comply with this provision.
- (c) All Parties shall maintain privacy notices consistent with the Market Privacy Notice for the purposes of Market Personal Data and shall process Market Personal Data only in accordance with such privacy notices.

### 1.3 Interactions to deliver compliance

- (a) The Parties (including the Market Operator) may request a change to the Market Privacy Notice.
- (b) The Market Operator shall notify the Trading Parties of any proposed change to the Market Privacy Notice by it or by a Trading Party and give Trading Parties 10 Business Days to comment. The Market Operator will take any comments into account but will not be obliged to effect any suggested changes.
- (c) If the proposed change adds an additional purpose of processing to the Market Privacy Notice then the Market Operator shall give at least 15 Business Days' notice of the proposed change and the date on which the proposed change is to be made.
- (d) If the Market Privacy Notice is to be amended to permit the processing of Market Personal Data for an additional purpose then each Data Controller shall provide the Data Subjects to whom they deliver Retail Services the updated or amended Market Privacy Notice within the timescales set under the Data Protection Laws.
- (e) If Personal Data about Data Subjects employed or contracted to Trading Parties is processed on Market Operator Systems, then the Market Operator shall ensure that privacy notices are provided to those Data

Subjects as required and the Personal Data is only processed for the Purpose.

## **D DATA SUBJECTS RIGHTS**

### **1 Guidance**

1.1 Data Controllers must provide guidance to Data Subjects on how Data Subject Rights can be exercised.

### **1.2 Allocation of responsibilities**

(a) The Market Operator shall provide guidance to Data Subjects on the Market Operator's website about how Data Subject Rights should be exercised with regard to Market Personal Data.

(b) Each Trading Party shall ensure that its own published statement about the exercise of Data Subject Rights with regard to Market Personal Data is consistent with the statement on the Market Operator's website as published from time to time.

### **1.3 Interactions to deliver compliance**

(a) The Market Operator shall give Trading Parties at least 10 Business Days' notice of the proposed wording and an opportunity to raise any queries or comments.

(b) The Market Operator shall notify the Trading Parties of any proposed changes to the wording on the Market Operator website about the exercise of Data Subject Rights and give Trading Parties 10 Business Days to comment.

(c) The Market Operator will take any comments from Trading Parties into account in determining the published wording. The Market Operator shall act reasonably when deciding on the proposed wording and any subsequent changes to the wording but will not be obliged to effect any suggested changes.

## 2 Data Subjects Rights Requests

2.1 Joint Data Controllers are required to agree their respective responsibilities for dealing with the exercise by Data Subjects of Data Subjects Rights concerning Market Personal Data, including by designating a point of contact for Data Subjects.

2.2 A Data Controller must provide a final response to any DSRR's without undue delay and in any event within one month from its first receipt. That period may be extended by two further months if a DSRR is complex or the Data Controller has received a high number of DSRR's, subject to notification to the Data Subject by the Data Controller that they require such an extension, and the relevant updating of the DSRR Record, if applicable. Data Controllers must expedite applicable Standard Procedures to ensure compliance with statutory deadlines for DSRR's.

2.3 To the extent that a Trading Party or the Market Operator receives a DSRR (related to Market Personal Data) which exclusively relates to another Party, and so they are not the Data Controller, they should use best endeavours to assist the Data Subject, or, if unable to identify the Data Controller, shall request that the Data Subject (or the person acting on behalf of the Data Subject) redirects their request to the correct Data Controller.

### 2.4 **Verifying the identity of a Data Subject**

(a) In accordance with the Data Protection Laws, where a DSRR Recipient has doubts about the identity of the person making a DSRR they shall ask anyone who has submitted a DSRR, for any evidence reasonably required to confirm their identity.

(b) If additional evidence is required to confirm the identity of the person making a DSRR, or their authority to act on behalf of the Data Subject, the DSRR Recipient shall request this promptly, and within 3 Business Days.

### 2.5 **Allocation of responsibilities**

The Market Operator and each Trading Party respectively shall co-ordinate and manage any DSRR they receive in accordance with the provisions set out in 2.7.

## 2.6 **DSRR Record**

A DSRR Record shall be created by the DSRR Record Initiator, and subsequently updated by each DSRR Recipient and issued, as required, onwards to another Trading Party or the Market Operator, in accordance with this Schedule 13. This shall be via a secure method of transfer and in the form of the DSRR Record template. Updating of the DSRR Record shall be the responsibility of the DSRR Recipient's nominated contacts for DSRR's, in accordance with Section A2 of this Schedule 13.

## 2.7 **Interactions to deliver compliance**

- (a) If a DSRR Recipient receives a DSRR which it determines it is able to complete itself (without any input from another Trading Party or the Market Operator), either in accordance with a Standard Process or otherwise, it shall respond to the DSRR directly, in accordance with Data Protection Laws. There is no need for it to create a DSRR Record.
- (b) If a DSRR Recipient receives a DSRR which it determines it is unable to fully complete itself, in accordance with 2.7 (a), but to which a Standard Process applies, then the DSRR Recipient shall initiate the relevant Standard Process (including any relevant operational forms or Data Transactions), create the DSRR Record with the actions/information required to fully complete the DSRR, and, as soon as practicable (and in any event within 3 Business Days of receipt of the DSRR), issue the DSRR Record to the Trading Party(s) and/or Market Operator that the DSRR Recipient determines are required to take action in order to complete the DSRR. If following the timescales stipulated in the Standard Process would mean the DSRR would not be completed in accordance with the deadlines under the Data Protection Laws, then this must be indicated on the DSRR Record so that all Parties can expedite the DSRR accordingly, or notify the Data Subject of any anticipated delay.
- (c) If a DSRR Recipient is unable to fully complete a DSRR in accordance with 2.7(a), or in accordance with 2.7(b) because no Standard Process applies, then it shall create the DSRR Record with the actions/information required to fully complete the DSRR, and, as soon as practicable (and in any event

within 3 Business Days of receipt of the DSRR), issue the DSRR Record to the Trading Party(s) and/or Market Operator that the DSRR Recipient determines are required to take action in order to complete the DSRR. It shall update the DSRR Record with the actions/information required to fully complete the DSRR.

- (d) A DSRR Recipient that receives a DSRR Record from a Trading Party and/or the Market Operator shall acknowledge receipt of the DSRR Record. The DSRR Recipient shall update the DSRR Record, for the benefit of the relevant Data Controller, as soon as practicable (and in any event within 3 Business Days). The DSRR Recipient shall complete any required actions within its control, in compliance with Data Protection Laws. Upon the completion of their actions (which may include providing a lawful ground for not processing the DSRR) the DSRR Recipient shall update the DSRR Record accordingly and issue it to the relevant Data Controller(s), as soon as practicable (and in any event within 3 Business Days of completion of their actions).
- (e) Save where 2.3 applies, any DSRR Record Initiator, on receipt of a DSRR from a Data Subject (or the person acting on behalf of the Data Subject) shall provide the initial acknowledgment of receipt of the DSRR, to the Data Subject (or the person acting on behalf of the Data Subject) in accordance with the Data Protection Laws.
- (f) Whenever any DSRR Recipient has fully completed their actions under the DSRR (which may include giving a lawful ground for not processing the DSRR), it shall respond to the Data Subject (or person acting on their behalf) in accordance with Data Protection Laws, unless it has otherwise been agreed, in writing, with another DSRR Recipient, that they will respond to the Data Subject (or the person acting on behalf of the Data Subject).
- (g) In order to meet the deadlines required under the Data Protection Laws, all DSRR Recipients must, at all times, remain aware of the statutory deadline(s) for a final response and update the DSRR Record as soon as they become aware that a statutory deadline is likely to be missed, stating the reasons why and the expected completion date. The DSRR Recipient

whose action under the DSRR Record will miss the statutory deadline shall then be responsible for communicating any delay to the Data Subject (or the person acting on their behalf) and updating the DSRR Record accordingly, including with any further response from the Data Subject, such as an escalation to the Information Commissioner's Office.

### 3 Claims Brought by Data Subjects

The Parties shall use reasonable endeavours to provide any necessary assistance to each other in the conduct and handling of any data protection breach claim.

## **E DATA SECURITY**

### 1 Standards of Security

1.1 Data Controllers must have in place appropriate technological and organisational security measures having regard to the state of technological development and cost of implementation, the nature, scope, context, and purposes of the processing as well as the risk of and impact on Data Subjects. The measures must ensure a level of security appropriate to the risk, including as appropriate:

- (a) the pseudonymisation and encryption of Personal Data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- (d) the ability to ensure the confidentiality, security and integrity of communications between Data Controllers; and
- (e) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

## 1.2 **Allocation of responsibilities**

- (a) Each Party must implement appropriate technical and organisational security measures that meet the requirements of Data Protection Laws and which are consistent with at least one identifiable and objective IT security standard as published from time to time, for example (but not limited to) the Network and Information Systems Regulations 2018, the Publicly Available Standards (PAS) Cyber Security Risk Governance and Management Specification (PAS555:2013) or ISO 27001 on information security management.

## 1.3 **Interactions to deliver compliance**

- (a) Trading Parties shall make available on reasonable request to the Market Operator evidence of having in place appropriate technical and organisational security measures for example by evidencing formal accreditation, certification or independent audit of information security systems and, in doing so, shall identify which IT security standard or standards have been used for the purposes of compliance with 1.2(a) above
- (b) Trading Parties shall notify the Market Operator within 5 Business Days in the event it no longer holds any previous accreditation or certification or in the event of receiving an independent audit report which raises material concerns regarding its information security systems.
- (c) the Market Operator shall make available to any Trading Party on reasonable request evidence of having in place appropriate technical and organisational security measures for example by evidencing any formal accreditation, certification or audit of information security systems and, in doing so, shall identify which IT security standard or standards have been used for the purposes of compliance with 1.2(a) above.
- (d) The Market Operator shall notify Trading Parties within 5 business days in the event it no longer holds any previous accreditation or certification or in the event of receiving an independent audit report which raises material concerns regarding its information security systems.

## 2 Notification of Data Security Breaches

2.1 Data Controllers must notify (i) the Information Commissioner and (ii) Data Subjects of the occurrence of a Personal Data Breach unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons. Such notifications must be made to the Information Commissioner within 72 hours of becoming aware of such a breach and to Data Subjects without undue delay.

### 2.2 Allocation of responsibilities

- (a) Within 24 hours of becoming aware of an actual or likely Personal Data Breach, a Party shall notify all nominated contact points of the other Parties of that actual or likely Personal Data Breach.
- (b) All Parties shall be responsible and liable for any actions and consequences arising from their own Personal Data Breaches.
- (c) In the event of a Personal Data Breach that has or is likely to have a material impact on the entire Market Dataset, the Market Operator shall co-ordinate / direct how this is to be handled including any notifications to be made to the Information Commissioner and/or affected Data Subjects. This shall not prevent any Party from complying with their obligations under the Data Protection Laws.
- (d) All Parties must have in place appropriate policies and processes setting how they will deal with the occurrence of a Personal Data Breach.

### 2.3 Interactions to deliver compliance

- (a) All Parties shall maintain, as a minimum:
  - (i) A personal data security breach response policy together with appropriate template documents that clearly demonstrate the process that Party will follow in the event of a Personal Data Breach; and
  - (ii) A personal data breach register.

- (b) The Trading Parties shall provide copies of their personal data breach policy documents to the Market Operator within 5 Business Days of any request by the Market Operator for such copies. In the event of any amendments being made to these documents, a copy of the amended documents must be promptly provided to the Market Operator.
- (c) the Market Operator shall make available to any Trading Party within 5 Business Days of any request a copy of the Market Operator's personal data breach policy documents.

# Schedule 14

## Code Change Committee

1 The Code Change Committee

### 1.1 Establishment

1.1.1 The Panel shall establish a Code Change Committee in accordance with the provisions of this Paragraph 1.

### 1.2 Functions

1.2.1 The principal functions of the Code Change Committee are to undertake such elements of the following activities as may be delegated to the Code Change Committee by the Panel:

- (a) Keep the contents of the Wholesale-Retail Code under review;
- (b) Keep the contents of the Market Arrangements Code under review;
- (c) 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);
- (d) Approve all forms and supporting documents that the Market Operator is required to produce under the Code Subsidiary Documents [and Operational Subsidiary Documents] from time to time;
- (e) Refer any Change Proposal or Charging Change Proposal that is identified in the reasonable opinion of the Code Change Committee to have a potential impact or association with a strategic programme as set out by the Panel to the Panel for its view on whether the Change Proposal should be encompassed into an existing programme or action, or whether it merits its own distinct work programme; and
- (f) Where considered appropriate, request the Market Operator to prepare a Change Proposal or Charging Change Proposal relating to a change which

is deemed to be housekeeping or non-substantive for submission directly to the Authority on its behalf.

1.2.2 The Code Change 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 14 (Code Change Committee) or assigned to it by the Panel pursuant to this Schedule 14.

1.2.3 The Code Change Committee shall not delegate any powers, functions or responsibilities of the Code Change Committee to any sub-group or sub-committee under this Market Arrangements Code or the Wholesale-Retail Code which do not relate to the detailed consideration of changes to the Market Arrangements Code or the Wholesale-Retail Code. Save that the Code Change Committee may require the Market Operator to prepare a Change Proposal or Charging Change Proposal relating to a change which is deemed to be housekeeping or non- substantive for submission directly to the Authority

### 1.3 **Composition**

1.3.1 The Code Change Committee shall comprise the following Code Change Committee Members:

- (a) the Code Change Committee Chair;
- (b) four (4) Trading Party Code Change Committee Members (two from Wholesaler Members and two from Retailer Members). Provided always that where there are insufficient nominations for Trading Party Code Change Committee Members from Retailer Members or insufficient nominees from Retailer Members with the relevant skills and experience, additional members from Wholesaler Members may be appointed, or where there are insufficient nominations for Trading Party Code Change Committee Members from Wholesaler Members or insufficient nominees from Wholesaler Members with the relevant skills and experience additional members from Retailer Members may be appointed, provided that the total number of Trading Party Code Change Committee Members does not exceed four (4) in total. Only one (1) Trading Party Code Change Committee Member may be appointed from any one Trading Party

- (c) two (2) Independent Code Change Committee Members;
- (d) one (1) Customer Representative Code Change Committee Member; and
- (e) one (1) Alternative Customer Body Code Change Committee Member.

#### 1.4 **Chair**

1.4.1 The Panel shall from time to time appoint an individual with appropriate seniority to act as the independent Chair of the Code Change Committee (the "Code Change Committee Chair"), and may remove and replace such individual so appointed from time to time in its sole discretion.

1.4.2 The Code Change Committee Chair or such substitute as may be designated from time to time by the Code Change Committee Chair in their sole discretion shall chair the meetings of the Code Change Committee. The Code Change Committee Chair shall have such additional functions in connection with the conduct of the business of the Code Change Committee as the Panel shall assign to them.

1.4.3 The term of office of the Code Change Committee Chair will be for a period of three (3) years. The Code Change Committee Chair may hold more than one term of office, but not more than three terms in aggregate. The Code Change Committee Chair shall be independent, in that they must not be employed or engaged by any Trading Party or by the Market Operator, given the nature of the changes they shall be dealing with. The Code Change Committee Chair shall, at all times, and in accordance with Section 1.8.1 act impartially, in the best interests of the market as a whole and shall be guided by the Principles and Objectives.

#### 1.5 **Attendees**

The meetings of the Code Change Committee shall be held in open forum except to the extent that commercially sensitive business or personal privacy matters arise. The CEO of the Market Operator (or an alternate appointed by the CEO of the Market Operator) or any other representative(s) of the Market Operator, representative(s) from the Authority and Defra shall be entitled to attend and speak at all meetings of the Code Change Committee but not to vote (each an "Affiliated Member"). Observers may attend a meeting of the Code Change Committee. Observers may speak at meetings of the Code Change Committee

if invited to do so by the Code Change Committee Chair, but will not be entitled to vote.

#### 1.6 **Code Change Committee Secretary**

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

#### 1.7 **Code Change Committee Members**

1.7.1 **Nominations** In the event of a vacant Trading Party Code Change Committee Member seat, the Panel shall notify all Trading Parties of their entitlement to nominate candidates to become the Trading Party Code Change Committee Members, specifying whether the vacancy is for a representative of a Wholesaler Member or a Retailer Member, and the Panel Meeting date by which nominations should be submitted to the Panel. Each Member shall be entitled, by notice to the Panel Secretary given not later than five (5) Business Days before the stated commencement time of the Panel Meeting, to nominate individual(s) to be a Trading Party Code Change Committee Member. Individuals nominated pursuant to this Section 1.7.1 shall be employed by a Trading Party and shall have the requisite skills and experience. Nominations made pursuant to this Section 1.7.1 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 they are aware of the nomination and would be prepared to serve as a Trading Party Code Change Committee Member if appointed. The Trading Party nominating the individual (or their employer if that is a different Trading Party ) shall also provide a letter confirming approval to the individual acting as a Trading Party Code Change Committee Member if appointed.

#### 1.7.2 **Trading Party Code Change Committee Members**

- (a) The Panel Secretary shall circulate to each Panel Member (with a copy provided to all Trading Parties) a list of the names of all of the individuals nominated to serve as Trading Party Code Change Committee Members, together with the details of the relevant skills and experience of the

nominated individual, and details of the Trading Party making the nomination, before the stated commencement time for the Panel Meeting;

- (b) The Panel shall consider the nominations taking into account any required blend of competencies with a view to making a decision on the candidate(s) best suited for the vacant Trading Party Code Change Committee Member seat(s). The Panel will thereafter confirm if a decision has been reached and whether an acceptable nominee has been identified. The Panel will thereafter appoint an acceptable nominee with effect from the next occurring Code Change Committee meeting;
- (c) The nomination and appointment process shall be repeated as necessary until an acceptable candidate for each and every vacancy has been identified and appointed by the Panel.

1.7.3 **Independent Code Change Committee Members** - Independent Code Change Committee Members shall be appointed by the Panel. The Market Operator shall on behalf of the Panel engage with a recruitment search company to invite applications from suitably Qualified individuals. The Panel Secretary shall convene a meeting of the Panel to review any applications. Each Independent Code Change Committee Member must be Qualified and shall have the requisite skills and experience. Subject to all members of the Panel being satisfied that the individual(s) applying to serve as Independent Code Change Committee Members are suitably Qualified, the Panel shall meet to deliberate on the outcome of any appropriate selection process and reach final agreement on which (if any) of the applicants are to be appointed as Independent Code Change Committee Members.

1.7.4 **Customer Representative Code Change Committee Member** – The Customer Representative Code Change Committee Member shall be nominated by CCW, or any successor organisation and appointed by the Panel. The Customer Representative Code Change Committee Member must be a Qualified individual and shall have the requisite skills and experience.

1.7.5 **Alternative Customer Body Code Change Committee Member** – The Alternative Customer Body Code Change Committee Member shall be nominated by and appointed by the Panel. The Alternative Customer Body Code

Change Committee Member must be a Qualified individual from an alternative customer body and shall have the requisite skills and experience.

1.7.6 **Term of appointment** – Code Change Committee Members appointed in accordance with Section 1.7 shall be appointed for a fixed term not exceeding two (2) years and shall be eligible for re-appointment only once following expiry of their initial term.

1.7.7 **Replacing Code Change Committee Members** - A person shall cease to be a Code Change Committee Member if:

- (a) they resign by notice delivered to the Code Change Committee Secretary; or
- (b) the Panel or the Code Change Committee resolves that they 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 1.8.1 of this Schedule 14

and upon any person ceasing to hold office as a Code Change Committee Member a new Code Change Committee Member shall be appointed as appropriate in accordance with Section 1.7 of this Schedule 14. Once appointed, a new Code Change Committee Member shall take office with immediate effect, save where otherwise agreed.

1.8 **Role of a Code Change Committee Member**

1.8.1 A Code Change Committee 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 company, body or person by whom they are employed, or by whom they were nominated, or appointed to be a Code Change Committee Member; and
- (c) shall not be elected as a Code Change Committee Member unless they shall have first:

- (i) confirmed in writing to the Market Operator for the benefit of all Trading Parties that they agree to act as a Code Change Committee Member in accordance with the Market Arrangements Code and acknowledges the requirements of this Section 1.8.1 of Schedule 14; and
  - (ii) provided to the Code Change Committee Secretary a letter from their employer (if applicable) agreeing that they may act as a Code Change Committee Member and that the requirements in Section 1.8 of this Schedule 14 shall prevail over their duties as an employee in this regard; and
- (d) shall notify the Code Change Committee 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 1.8 of Schedule 14.

1.8.2 Where the Code Change Committee Chair (on the application of a Code Change Committee Member) agrees in advance in writing, a Code Change Committee Member may appoint a person to be their alternate. A Code Change Committee Member may remove a person so appointed by giving notice of such appointment or removal to the Code Change Committee Secretary. Any alternate appointed in accordance with this Section 1.8.2 shall be entitled to attend, speak and vote at any meeting of the Code Change Committee where the Code Change Committee Member who appointed them is not present. Such alternate shall cast one (1) vote for the Code Change Committee Member by whom they were appointed in addition to any vote which they may hold if they are also a Code Change Committee Member. All alternates must act in accordance with the provisions of Section 1.8.1. This Section 1.8.2 shall not apply to the Code Change Committee Chair, for whom Section 1.4.2 shall instead apply. The substitute who is acting as Code Change Committee Chair for the relevant Code Change Committee meeting, pursuant to Section [1.4.2](#), shall be entitled to additionally appoint an alternate for the duration of that meeting.

## 1.9 Code Change Committee meetings

1.9.1 Meetings of the Code Change Committee shall be held at regular intervals and at least every three (3) months at such time and place in England or Wales as the Code Change Committee shall decide or by way of a conference telephone call providing each Code Change Committee Member is able to speak to each of the others and to be heard by each of the others simultaneously. The Code Change Committee Secretary shall maintain a calendar of the dates of the forthcoming regular meetings and will provide copies of this to the Code Change Committee members on a rolling Quarterly basis, giving not less than six (6) months' notice of each meeting. The Code Change Committee Secretary shall also convene a meeting of the Code Change Committee before the next regular meeting if required in order to consider any Change Proposal or Charging Change Proposal.

1.9.2 Any meeting of the Code Change Committee shall be convened by the Code Change Committee Secretary:

- (a) by giving notice to each Code Change Committee Member and any alternate appointed in accordance with Section 1.9.1 setting out the date, time and place of the meeting and (unless the Code Change Committee 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 Code Change Committee Secretary with the agreement of the Code Change Committee Chair is of the reasonable opinion that an Urgent Code Change Committee Meeting is required to consider any Change Proposal or Charging Change Proposal that the Proposer has indicated should be given urgent status, (and the business of that meeting is capable of being transacted in accordance with Section 1.10), the notice period required at Sections 1.9.1 and 1.9.2(a) shall be waived.

1.9.3 With the consent of all Code Change Committee Members and the Code Change Committee Chair the requirements of Section 1.9.2 may be waived or modified.

1.9.4 In the case of Urgent Code Change Committee Meetings, where:

- (a) the Code Change Committee Chair, in seeking to convene an Urgent Code Change Committee Meeting, reasonably considers that it will not be possible to achieve a quorum at such Urgent Code Change Committee Meeting; or
- (b) at the time of an Urgent Code Change Committee Meeting it transpires that the Urgent Code Change Committee Meeting is not quorate and the Code Change Committee Chair reasonably considers that there is insufficient time to re-arrange the Urgent Code Change Committee Meeting

the Code Change Committee Chair shall follow the Urgent Panel Meeting Contact Method Guidance (as if references to the Panel therein were references to the Code Change Committee) in order to contact each Code Change Committee Member individually in order to obtain such Code Change Committee Member's vote. Any matter to be decided shall be decided by a simple majority of those Code Change Committee Members who so cast a vote. No matter shall be decided unless, as a minimum, the Code Change Committee Chair has contacted and further consulted with at least two Code Change Committee Members, one of which must be a Trading Party Code Change Committee Member.

- 1.9.5 The measures to be undertaken by the Code Change Committee Chair under Section 1.9.4 shall be undertaken by the substitute, in the absence of the Code Change Committee Chair.
- 1.9.6 A meeting of the Code Change Committee may consist of a conference between Code Change Committee 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 Code Change Committee 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 Code Change Committee Members are in England or Wales as the case may be.
- 1.9.7 The Code Change Committee shall, in the event of any conflict of interest being declared by a Code Change Committee Member (under the requirements of 1.8.1(a)) at a meeting of the Code Change Committee, decide the most

appropriate course of action and in doing so, will be guided by the Code Principles set out at Schedule 1.

1.10 **Quorum**

1.10.1 No business shall be transacted at any meeting of the Code Change Committee unless a quorum is present at the meeting, unless it is an Urgent Code Change Committee Meeting where the steps under 1.9.4 should be followed. A quorum shall be a minimum of the Code Change Committee Chair (or their substitute), two (2) Trading Party Code Change Committee Members (one from a Retailer Member and one from a Wholesaler Member), two (2) other Code Change Committee Members (which can be made up of any combination of Independent Code Change Committee Members, the Customer Representative Code Change Committee Member and/or the Alternative Customer Body Code Change Committee Member (or any of their alternates entitled to be present)), each of whom must be entitled to vote at that meeting.

1.11 **Voting**

1.11.1 At any meeting of the Code Change Committee any matter to be decided shall be put to a vote of Code Change Committee Members upon the request of any Code Change Committee Member. Where any matter (save for those matters considered under Sections 1.9.4 and 1.11.2) is put to a vote of Code Change Committee Members, such a vote shall be decided by a simple majority of those votes cast at the meeting by Code Change Committee Members (and an abstention shall not be counted as a cast vote). All Code Change Committee Members, including the Code Change Committee Chair, and any person appointed to act as substitute for the Code Change Committee Chair, are entitled to a single vote.

1.11.2 Determinations to remove a Code Change Committee Member under Section 1.7.7(b) shall be decided by:

- (a) a unanimous vote of those votes cast at the meeting by the Panel or the Code Change Committee Members (and an abstention shall not be counted as a cast vote); or

- (b) being voted for by a Qualifying Majority of the Panel as set out in Section 5.10.2, or a Qualifying Majority of the Code Change Committee as set out in this Section 1.11.2.

For the purposes of this Section 1.11.2 a "Qualifying Majority" shall be not less than seven of the Code Change Committee Members.

1.12 A resolution in writing signed by or on behalf of all of the Code Change Committee 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 Code Change Committee and such an instrument may consist of several instruments in like form each signed by or on behalf of one or more of the Code Change Committee.

### 1.13 **Code Change Processes**

1.13.1 The Code Change processes undertaken by the Code Change Committee shall be as set out in Sections 6 of the Market Arrangements Code.

### 1.14 **Code Change Committee Terms of Reference**

1.14.1 The Panel shall determine terms of reference ("Code Change Committee Terms of Reference") for the Code Change Committee, which shall address at least the following matters:

- (a) rules and requirements as to the proceedings and conduct of the business of the Code Change Committee including any appropriate pro-forma documentation and the frequency of the meetings of the Code Change Committee;
- (b) rules and requirements for the raising of a Change request for consideration by the Code Change Committee and consideration by the Panel (as appropriate) prior to making a recommendation to the Authority;
- (c) the identification and declaration of, and steps to be taken in the case of, any conflict of interest of a Code Change Committee Member, or the Code Change Committee Secretary, in relation to any activities of the Code Change Committee;

- (d) circumstances in which other individuals (including experts) may be or should be invited to attend meetings of the Code Change Committee, and any requirements that individuals so invited should sign undertakings of confidentiality;
- (e) the functions of the Code Change Committee Chair;
- (f) the extent to which any confidential or commercially sensitive information should be redacted from any documentation made available to Trading Parties;
- (g) requirements (as the Panel considers appropriate) for the Code Change Committee Chair and Code Change Committee Members to confirm or acknowledge in writing that they will act in accordance with this Schedule 14 (Code Change Committee) and the Code Change Committee Terms of Reference.

1.14.2 The Code Change Committee Terms of Reference shall be published by the Market Operator on the Market Operator's website.

#### 1.15 **The Market Operator**

1.15.1 The Market Operator shall provide the Code Change Committee with such support and facilities as the Code Change Committee may reasonably require for the proper exercise of its functions pursuant to this Schedule 14 (Code Change Committee) including providing a secretarial function for the Code Change Committee.

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

#### 1.16 **Annual report**

1.16.1 The Code Change Committee shall prepare an annual report for the Panel concerning its activities, setting out information in respect of the activities of the Code Change Committee during the preceding year ended 31 March:

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

# Schedule 15

## Authority Directed Funds

This Schedule 15 sets out the high level obligations and arrangements which will apply in the circumstances where the Market Operator shall manage the settlement and payments process for, and carry out any other administrative functions as the Authority or any Trading Party may require, in relation any Authority Directed Funds. The Authority Directed Funds include the Innovation Fund and the Water Efficiency Fund and may include future improvement funds established by the Authority to promote innovation, water efficiency or other improvements in the water sector.

The Market Operator shall undertake the settlements, payments and (where applicable) other administrative actions to support the effective functioning of the Authority Directed Fund awards made by the Authority. Any requirement for the Market Operator to manage the settlement, payment and administrative actions of any future improvement funds established by the Authority shall be subject to approval by the Market Operator Board.

### Purpose

- 1 In addition to, and separately from, its duties as market operator, the Market Operator is authorised to undertake collection of funds, distribution and settlement, payment and administrative functions in relation to the operation of Authority Directed Funds and awards to promote innovation, water efficiency or other improvements in the water sector in accordance with this Schedule.
- 2 Save to the extent that the Authority Directed Funds are part of the Market Operator market improvement fund made up from funds collected as Key Performance Indicator Charges, this function shall be separated from and funded separately to the duties as Market Operator and the costs thereof (including any additional insurance and the cost of activities such as assurance) shall not be charged to the Members as Market Operator Charges.
- 3 The purpose of this function shall be to:

- 3.1 Facilitate the collection of funds from contributing Wholesalers; and
- 3.2 Facilitate the effective and timely payments of the Authority Directed Funds to successful applicants.

#### **Market Operator role and functions**

- 4 The role and functions of the Market Operator in respect of the Authority Directed Funds shall include:
  - 4.1 Collection and receipt of payments from the contributing Wholesalers;
  - 4.2 Holding the funds received from the contributing Wholesalers in trust for the benefit of the contributing Wholesalers and for the benefit of the successful applicants; and
  - 4.3 Distribution of the funds to successful applicants.

#### **Other requirements**

- 5 All costs, claims and expenses relating to this function shall be covered by the contributing Wholesalers and shall not be charged to the Members.
- 6 All funds received by the Market Operator shall be placed in a segregated account and will be held on trust for the benefit of the contributing Wholesalers and the successful applicants. The fund shall only be released to the successful applicants on instruction from and confirmation of the award from the Authority.
- 7 The Market Operator shall not be required to place the funds into an interest bearing account. No interest shall accrue to the funds held by the Market Operator.
- 8 There shall be no adverse impact on the services provided to Members under this Market Arrangements Code or the Wholesale Retail Code as a result of the Market Operator undertaking this function.
- 9 The Market Operator shall enter into a binding commercial contract (in accordance with a form pre-agreed with the Authority) with the contributing Wholesalers and (where appropriate, the successful applicants) which shall set out the obligations and responsibilities of each party and their liabilities in respect

of these arrangements. The Market Operator and the relevant party must comply with the terms of that agreement. Any variations to the form of the binding commercial contract shall be consented to by the Authority prior to the variation being implemented (including if a full replacement form of contract).

- 10 The contributing Wholesalers shall indemnify and keep indemnified the Market Operator against any expense, liability, loss, claim or proceedings in respect of the payments made to or by the contributing Wholesalers and in respect of any claim by any third party in respect of the provision of this function by the Market Operator. The contributing Wholesalers shall indemnify and keep indemnified the Market Operator in respect of any incorrect or inaccurate instruction received by the Market Operator from the Authority. The successful applicants acknowledge that they have no claim on the funds or against the Market Operator in respect of payment of the funds until such time as they have been fully paid over to the successful applicants.
- 11 Neither the contributing Wholesalers, nor the successful applicants shall bring a claim in damages or any other claim of a financial nature against the Market Operator in respect of the operation of this function. Each contributing Wholesaler and successful applicant (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 Arrangements Code, the agreement entered into relative to this function, or in tort (including negligence) or otherwise.
- 12 The Market Operator shall ensure that appropriate controls, security, audit and assurance is in place to cover the risk undertaken in respect of the operation of this function. These controls shall include oversight of assurance reports in relation to the applicable processes and procedures, and a post settlement report and third party check undertaken on the settlement carried out.

# Schedule 16

## Data Cleanse Charging Framework

1 This Schedule 16 of the Market Arrangements Code sets out the charging framework in relation to the Data Cleanse, which shall be funded by the Undertaker Wholesale Businesses.

1.1 This Schedule sets out the methods for calculating:

- (a) each Undertaker Wholesale Business' share of the Data Cleanse Charges; and
- (b) 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.

1.2 The provisions of this Schedule 16 shall cease to exist on 31 March 2026, unless an extension is otherwise approved in accordance with Section 6 of the Market Arrangements Code, and by a Member vote in accordance with the Articles of Association of the Market Operator.

2 Definitions and Interpretation

2.1 In this Schedule 16 to the Market Arrangements Code, the following additional definitions shall apply:

"Default Data Cleanse Charges"	the charges levied on an Undertaker Wholesale Business by the Market Operator to recover unpaid Data Cleanse Charges calculated in accordance with Schedule 16;
"Unique Property Reference Number"	a unique number to identify an individual property as issued by each local authority and available as part of The National Land and Property Gazetteer (NLPG);

"Valuation Office Agency Billing Authority Reference Number"	the unique property identifier used between billing authorities and the Valuation Office Agency as published on the rating list produced by the Valuation Office Agency and which is available for public inspection;
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### 3 Scope

3.1 The scope of the Data Cleanse and the Data Cleanse Charges shall be agreed by the Members through a special resolution vote in accordance with the Articles of Association of the Market Operator. The scope and Data Cleanse Charges may be subject to change as agreed by the Members in accordance with this Paragraph 3.1.

3.2 The Data Cleanse for the Year 2023/24 will include the following:

- (a) the identification and removal of non-eligible, demolished and duplicate Supply Points;
- (b) the review, cleanse and uplift of Supply Point Unique Property Reference Numbers (funding to pilot the cleanse with Undertaker Wholesale Businesses, and if successful introduce and launch a full review from quarter 4 2023/24);
- (c) the review, cleanse and uplift of Supply Point Valuation Office Agency Billing Authority Reference Numbers (funding to pilot the cleanse with Undertaker Wholesale Businesses, and if successful introduce and launch a full review from quarter 4 2023/24); and
- (d) the review and cleanse of Supply Point address data (funding to pilot the cleanse with Undertaker Wholesale Businesses, and if successful introduce and launch a full review from quarter 4 2023/24).

The success of the pilot referred to in Paragraph 3.2 b), c) and d) above, and whether or not to continue with the full review, will be determined by the Market Operator, having first consulted with the Undertaker Wholesale Businesses and other relevant stakeholders. Where the pilot is successful, any full review referred to in Paragraph 3.2 b), c) and d) above shall continue to be funded by the Undertaker Wholesale Businesses in accordance with this Schedule 16.

#### 4 Recovering the Data Cleanse Charges

4.1 The Market Operator shall be entitled to recover the Data Cleanse Charges for any Year from the Undertaker Wholesale Businesses. For the avoidance of doubt, where an Undertaker Wholesale Business is a Dormant Member at the date when the Market Operator produces the invoice in respect of the relevant Month in accordance with Paragraph 5 below, this Schedule 16 shall not apply to the Dormant Member.

4.2 The Market Operator shall:

4.2.1 notify all Undertaker Wholesale Businesses of the initial aggregate amount of the Data Cleanse Charges for the Year; and

4.2.2 issue a profile of payments due for each Year by each Undertaker Wholesale 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 Data Cleanse 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 Data Cleanse Charges in accordance with Paragraph 4.2.2(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 Data Cleanse Charges; and
- (c) the Market Operator shall inform the Undertaker Wholesale 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.

4.3 The amount of the Data Cleanse 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 Paragraph 5 below (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 Data Cleanse Charges.

4.4 Without prejudice to Paragraph 9 below, in relation to each Year, the Undertaker Wholesale Businesses collectively shall be liable for the whole of any shortfall between the Data Cleanse Charges recovered by the Market Operator and the Market Operator's outturn costs for the Data Cleanse as shown in its audited accounts for the applicable Year (the "Annual Data Cleanse Outturn Costs"). The Market Operator shall carry out a reconciliation of each Undertaker Wholesale Business' share of the Annual Data Cleanse Outturn Costs by:

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

4.4.2 calculating each Undertaker Wholesale Business' liability for the Annual Data Cleanse Outturn Costs for each Month by applying the Undertaker Wholesale Business' Supply Point Share for each Month, as originally determined in accordance with Paragraph 4.3 of this Schedule, to the aggregate Undertaker Wholesale Businesses' share of the Annual Data Cleanse Outturn Costs for that Month.

4.5 Each Undertaker Wholesale Business is liable to pay any shortfall between the sum of the Data Cleanse Charges paid by that Undertaker Wholesale Business

for each Month of the applicable Year and the sum of its liability for the Annual Data Cleanse Outturn Costs as determined above.

4.6 If at any time during the Year to which the Data Cleanse Charges relates, the Market Operator reasonably believes that the Market Operator will exceed the expected costs, the Market Operator shall consider what remedial action might be taken or whether any change to the Data Cleanse Charges is required. Any changes to the Data Cleanse Charges shall be agreed by the Members in accordance with Paragraph 3.1.

4.7 If the Data Cleanse Charges are changed during the relevant Year under Paragraph 4.6, the Market Operator shall, if necessary, recalculate the Data Cleanse Charges for the remainder of the relevant Year.

4.8 Subject to Paragraph 10.10.2 below, each Undertaker Wholesale Business shall be entitled to reimbursement of any surplus between the sum of the Data Cleanse Charges paid by that Undertaker Wholesale Business and the sum of its liability for the Annual Data Cleanse Outturn Costs as determined above.

## 5 Invoicing

5.1 The Market Operator shall deliver invoices for each Undertaker Wholesale Business detailing:

- (a) the amount of the Undertaker Wholesale Business' share of the Data Cleanse Charges payable in respect of that Month and the basis of calculation of such amount no less than nine (9) Business Days following the start of the preceding relevant Month;
- (b) any interest payable by the Undertaker Wholesale Business under Paragraph 8 below no later than nine (9) Business Days following the end of the relevant Month; and
- (c) any value added tax payable thereon.

## 6 Due date for payment

6.1 Each Undertaker Wholesale Business shall:

- (a) pay the amounts set out on the invoice issued pursuant to Paragraph 5.1a) not later than ten (10) Business Days after the date of invoice; and
- (b) pay the amounts set out on the invoices pursuant to Paragraph 5.1b) and c) not later than twenty (20) Business Days after the date of invoice; and
- (c) in respect of reconciliation payments payable under Paragraph 11 below each Undertaker Wholesale Business shall make any payment not later than five (5) Business Days after the date of any invoice issued to an Undertaker Wholesale Business under Paragraph 11.4 below;

and references to the invoice due date in Paragraphs 8 and 9 shall be to each of the dates on which payment is due under Paragraphs 6.1(a) and 6.1(c).

7 Method of payment

7.1 Each Undertaker Wholesale 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 Data Cleanse Charges are exclusive of United Kingdom value added tax which shall be added to such Data Cleanse Charges, if applicable.

8 Interest

8.1 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 Paragraph 6, the Undertaker Wholesale 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 Paragraph 8 represent a substantial remedy under the Late Payment of Commercial Debts (Interest) Act 1998.

9 Failure to pay Data Cleanse Charges

9.1 If any Undertaker Wholesale Business fails to pay in full (a “non-paying Party”), within ten (10) Business Days after the invoice due date as set out in Paragraph 6, any amount payable by it in respect of Data Cleanse Charges:

- (a) the Market Operator shall promptly notify all Undertaker Wholesale 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 9.1b) 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 (other than the non-paying Party) as a Default Data Cleanse Charge and each such Undertaker Wholesale Business will be liable to pay additional amounts by way of Market Operator Charges, determined in accordance with this Paragraph 9.

9.2 Undertaker Wholesale Businesses shall pay the whole of any Default Data Cleanse Charges.

9.3 Each Undertaker Wholesale Business’ share of any Default Data Cleanse 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 Data Cleanse 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 aggregate Primary Charges levied by all Undertaker Wholesale Businesses during the relevant Month; and

C = the Primary Charges levied on the non-paying Party where this is an Undertaker Wholesale Business during the relevant Month.

9.4 Where an amount is unpaid in respect of Data Cleanse Charges as described in Paragraph 9.1 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.

9.5 Without prejudice to the Market Operator's continuing entitlement to payment by a non-paying Party in respect of the Data Cleanse Charges, a non-paying Party shall indemnify and keep indemnified each other Undertaker Wholesale Businesses on demand in respect of all amounts paid by such other Undertaker Wholesale Businesses to the Market Operator under Paragraph 9.1b).

9.6 While any amount is outstanding from the non-paying Party in respect of Data Cleanse Charges, the Market Operator will be entitled to withhold any payments which may be due to that non-paying Party from the Market Operator.

9.7 If the Market Operator subsequently recovers any amount from the non-paying Party in respect of the unpaid Data Cleanse Charges the amount recovered will be taken into account in determining the amounts payable in subsequent Months by Undertaker Wholesale Businesses in respect of Data Cleanse Charges.

## 10 Market Operator Conduct

10.1 The obligations of each Undertaker Wholesale Business to pay Data Cleanse Charges provided for in this Schedule 16 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.

## 11 Reconciliation

- 11.1 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 by way of Data Cleanse Charges for that Year or any amount payable by the Market Operator in respect of any surplus of Data Cleanse Charges for that Year. The adjustment in respect of the amounts payable by each Undertaker Wholesale Business, and their liability for any shortfall or entitlement to any surplus shall be calculated in accordance with this Schedule 16.
- 11.2 The Market Operator shall pay any sums due to Undertaker Wholesale Businesses in accordance with this Paragraph 11.2 within five (5) Business Days of the date of its final determination under Paragraph 11.1 provided that no such reimbursement shall be made:
- (a) to any Undertaker Wholesale Business where the sum in question is less than £10,000, in which case such sum shall be deducted from the next invoice for Data Cleanse Charges submitted to the relevant Undertaker Wholesale Business under Paragraph 5.
- The exception under Paragraph 11.2a) shall not apply where there are no further Data Cleanse Charges due to be paid by the Undertaker Wholesaler Businesses.
- 11.3 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 Paragraph 11.
- 11.4 The Market Operator shall invoice any amounts determined to be payable by Undertaker Wholesale Businesses in the relevant Year under this Paragraph 11 and such amounts shall be payable in accordance with Paragraph 6.16.1(c).
- 11.5 Subject only to Paragraph 11.6, the Market Operator's determination of Data Cleanse Charges for any Year shall be final and binding and no further adjustment shall be made.
- 11.6 If, after the final determination under Paragraph 11.1 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 Data Cleanse Charges for any Year, the Market Operator may in its discretion direct, and Undertaker Wholesale Businesses shall be bound by, and the Market Operator shall give effect to, such adjustments in respect of Data Cleanse Charges (payable by and to Undertaker Wholesale Businesses) in that Year as appears to the Market Operator to be appropriate.

## 12 Charging disputes

12.1 If an Undertaker Wholesale Business disputes any amount shown in any relevant invoice, that Undertaker Wholesale 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 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.

12.1.1 Where an Undertaker Wholesale 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 of the outcome of its investigation.

12.1.2 Where (pursuant to Paragraph 12.1.1 or otherwise) the Market Operator establishes that any error has been made in the determination of the amounts payable by any Undertaker Wholesale Business in respect of any relevant invoice (whether such error resulted in over-payments or in under-payment by any such Undertaker Wholesale 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 Schedule 16 by or to such Undertaker Wholesale Business, as will ensure that the correct amounts have been so paid.

12.1.3 No amount in respect of interest shall be included in any adjustment under Paragraph 12.1.2.

12.1.4 Nothing in this Schedule 16 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 concerned, where the Market Operator is aware of an error in such invoice or statement.

# Schedule 17

## Industry Group Support

### 1 Schedule Summary

- 1.1 This schedule functions as a mechanism which will assist in determining whether resource support is provided to an Industry Group, on the basis that the Market Operator assesses that group, and its request for support, as fulfilling all necessary criteria for support to be approved and provided.

### 2 Applicable Criteria for Submission of a Request for Support

- 2.1 The following section outlines the defined criteria against which the Market Operator must ensure an Industry Group complies, in order for any request for support to be considered:

- (a) the Industry Group must provide a benefit to Non-Household Customers; and
- (b) the Industry Group must act in the best interests of the Competitive Market, and it must not unduly benefit one specific Trading Party or Competitive Market segment.

### 3 Process of Submitting a Request for Support

- 3.1 When considering a request for support, the Market Operator shall require any valid Industry Group to submit a prospectus containing the following information about the resource support request:

- (a) a outline of what support will be required and what the intended purpose of that support is;
- (b) any role specifications required by the Industry Group for the Market Operator's support, to achieve its intended purpose; and
- (c) an estimation of the Market Operator's additional time commitment by role specification.

3.2 Where an Industry Group has submitted their resource support request to the Market Operator no later than five (5) Months prior to the start of Year, the Market Operator shall consider the resource support request for inclusion in the Market Operator Budget for that Year, otherwise the Market Operator shall only be obliged to consider the resource support request for the following Year.

#### 4 Assessment of a Request for Support

4.1 Following the submission of a prospectus by an Industry Group, the Industry Group, together with its prospectus, shall be assessed by the Market Operator against the criteria of Schedule 17, Section 2 and that it complies with the requirements of Schedule 17 Section 3.

4.2 If it is decided that the resource support request costs are justified by its benefits, and it can be provided without adverse effect to the Market Operator's other duties which are laid out in the Market Arrangements Code, Wholesale Retail Code and any other applicable Law or regulation, then the Market Operator may include this resource support request in the next Market Operator Budget.

4.3 If a resource support request does not comply with the requirements of this Schedule 17, it shall be rejected by the Market Operator, and the Industry Group informed of the reasons why.

4.4 The provision of support is dependent upon Member approval of the Market Operator Budget.

4.5 Subject to the Market Operator Budget approval, the Market Operator shall then begin providing the approved resource support to the Industry Group for that Year.

# Schedule 18

## Government Department Funds

### Purpose

1. This Schedule 18 sets out the high-level obligations and arrangements which will apply in the circumstances where the Market Operator shall manage the settlement and payments process for and carry out any other administrative and convening functions as a UK Government Department may require, in relation to any Government Department Funds.
2. The Government Funds include funding established by a UK Government Department to support initiatives that further the Market Arrangements Code Principles, including the protection and promotion of the interests of existing and future Non-Household Customers, and the advancement of innovation, water efficiency, or other improvements in the water sector.
3. The role of the Market Operator may include a convening role for the establishment of the delivery mechanism, including appointment of any third parties to deliver the functions of the Government Department Funds. The Market Operator may also directly undertake the settlements, payments and (where applicable) other administrative actions to support the effective functioning of Government Department Fund awards made by the relevant UK Government Department. Any requirement for the Market Operator to directly manage the settlement, payment and administrative actions of any Government Department Fund or undertake administrative or convening duties, shall be subject to approval by the Market Operator Board.

### Market Operator role and functions

4. The role and functions of the Market Operator in respect of the Government Department Funds may include:
  - a. Convening the necessary governance arrangements and overseeing the administration of the Government Department Funds, but with direct delivery undertaken by third-parties;
  - b. Collection and receipt of payments from the relevant UK Government Department;

c. Holding the funds received from the relevant UK Government Department in trust for the benefit of the successful applicants; and

d. Distribution of the funds to successful applicants in accordance with instructions provided by the relevant UK Government Department

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#### **Other requirements**

5 The Market Operator shall ensure its insurance arrangements encompass its role and liability for its functions related to the UK Government Funds.

6 All costs, claims and expenses arising from the Market Operator's performance of this function, including insurance, shall be covered by the relevant UK Government Department and shall not be charged to the Market Operator Members.

7 All funds received by the Market Operator in relation to this function shall be placed in a segregated account and will be held on trust for the benefit of the relevant UK Government Department and the successful applicants. Funds shall only be released to the successful applicants on instruction from and confirmation of the award from the relevant UK Government Department.

8 The Market Operator shall not be required to place the funds into an interest bearing account. No interest shall accrue to the funds held by the Market Operator in relation to this function.

9 The Market Operator's performance of this function shall not adversely impact the services provided to Members under this Market Arrangements Code or the Wholesale Retail Code.

10 The Market Operator shall enter into a binding commercial contract (in a form pre-agreed with the relevant UK Government Department) and, where appropriate, with successful applicant. Such agreement shall set out the obligations, responsibilities and liabilities of each party in respect of these arrangements. The Market Operator and the relevant parties must comply with the terms of that agreement.

11 Where the Market Operator's convening and administrative role requires delivery beyond the managing of payments, the Market Operator shall be required to put in place contractual arrangements with third-parties to deliver these services.

12 The Market Operator may, where deemed appropriate by its Board, require the relevant UK Government Department to agree that the Market Operator's liability against any expense, liability, loss, claim or proceedings in respect of the services performed by third-parties, or from any third-party claim in respect of the these services, shall not extend beyond the amount recovered from the third-party .. MOSL shall also require successful applicants to indemnify and keep indemnified the Market Operator in respect of any incorrect or inaccurate instruction received by the Market Operator from the relevant UK Government Department. The successful applicants shall be required to acknowledge that they have no claim on the funds or against the Market Operator in respect of payment of the funds until such time as they have been fully paid over to the successful applicants.

13 The Market Operator shall ensure that appropriate controls, security, audit and assurance is in place to cover the risk undertaken in respect of the operation of this function. These controls shall include oversight of assurance reports in relation to the applicable processes and procedures, and a post settlement report and third-party check undertaken on the settlement carried out.