

MARKET CODE

15 July 2008

This version of the Market Code dated 15 July 2008 replaces the version of 1 June 2008 which in turn replaced the version of 1 August 2007 that was designated by the Commission as the Market Code for the purposes of the Water Services (Codes and Services) Directions 2007.

Details of changes incorporated in this version are available on the website of the Central Market Agency: [www.cmascotland.co.uk](http://www.cmascotland.co.uk).

## **CONTENTS**

<b>Clause</b>	<b>Page No</b>
<b>Part 1: Commencement, Objectives and Principles</b>	<b>1</b>
<b>Part 2: CMA Duties</b>	<b>4</b>
<b>Part 3: Licensed Provider's Duties</b>	<b>12</b>
<b>Part 4: Scottish Water (Wholesale Business) Duties</b>	<b>15</b>
<b>Part 5: Market Design</b>	<b>18</b>
<b>Part 6: Performance Standards, Monitoring and Issues Resolution</b>	<b>38</b>
<b>Part 7: Cost Recovery</b>	<b>43</b>
<b>Part 8: Governance</b>	<b>54</b>
<b>Part 9: Disputes Procedure</b>	<b>75</b>
<b>Part 10: General Terms</b>	<b>82</b>
<b>Schedule 1 Definitions, Interpretation and Hierarchy</b>	<b>94</b>
<b>Schedule 2 CMA Exit Plan and Transfer Provisions</b>	<b>140</b>
<b>Schedule 3 Establishment of CMA</b>	<b>145</b>
<b>Schedule 4 Accession Agreements</b>	<b>180</b>
<b>Schedule 5 Transitional Duties</b>	<b>189</b>
<b>Schedule 6 CSD 0001 (Market Entry &amp; Assurance)</b>	<b>191</b>
<b>Schedule 7 CSD 0002 (Performance Standards)</b>	<b>192</b>
<b>Schedule 8 CSD 0003 (Provider of Last Resort)</b>	<b>193</b>
<b>Schedule 9 CSD 0101 (Registration: New Connections &amp; New Supply Points)</b>	<b>194</b>
<b>Schedule 10 CSD 0102 (Registration: Transfers)</b>	<b>195</b>
<b>Schedule 11 CSD 0103 (Registration: Cancellations)</b>	<b>196</b>
<b>Schedule 12 CSD 0104 (Maintain SPID Data)</b>	<b>197</b>
<b>Schedule 13 CSD 0105 (Error Rectification &amp; Retrospective Amendments)</b>	<b>198</b>
<b>Schedule 14 CSD 0201 (Settlement Timetable &amp; Reporting)</b>	<b>199</b>
<b>Schedule 15 CSD 0202 (Meter Read Submission: Process)</b>	<b>200</b>
<b>Schedule 16 CSD 0203 (Meter Read Submission: Validation)</b>	<b>201</b>
<b>Schedule 17 CSD 0204 (Volume Processing &amp; Estimation)</b>	<b>202</b>
<b>Section 18 CSD 0205 (Charge Calculation, Allocation &amp; Aggregation)</b>	<b>203</b>
<b>Schedule 19 CSD 0206 (Trade Effluent Processes)</b>	<b>204</b>
<b>Schedule 20 CSD 0301 (Data Transaction Catalogue)</b>	<b>205</b>

## **Part 1: Commencement, Objectives and Principles**

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### **1.1 Scope**

- 1.1.1 This Part 1 sets out or refers to:-
- (i) the objectives and underlying principles for the Market Code; and
  - (ii) the processes for accession to and resignation from the Market Code.
- 1.1.2 The definitions used in the Market Code and the interpretation rules are set out in Schedule 1 (Definitions, Interpretation and Hierarchy).

### **1.2 Objectives and Underlying Principles**

- 1.2.1 The objectives of the Market Code (the "Market Code Objectives") and the underlying principles of the Market Code ("Market Code Principles") are as set out in the Direction.
- 1.2.2 Due regard must be given to the Market Code Objectives in relation to the construction, interpretation and enforcement of the Market Code. Any Changes to the Market Code shall fall within the Market Code Objectives and shall require to be consistent with the Market Code Principles.
- 1.2.3 The objectives of the Operational Code (the "Operational Code Objectives") and the underlying principles of the Operational Code ("Operational Code Principles") are as set out in the Direction.
- 1.2.4 Any Changes to the Operational Code shall fall within the Operational Code Objectives and shall require to be consistent with the Operational Code Principles.

### **1.3 Effective Date/Accession/Resignation**

#### **1.3.1 Effective Date/Term**

The Market Code will come into force from the Effective Date and will remain in full force and effect until:-

- (i) in respect of a Trading Party, that party ceases to be a party to the Market Code in accordance with Part 10 (General Terms), Section 10.7 or Section 1.3.5 ; or
- (ii) there ceases to be at least one (1) Licensed Provider and Scottish Water remaining as Trading Parties.

### 1.3.2 **Admission of Additional Parties**

The Code Parties shall admit as an additional party to the Market Code any Applicant who applies to be admitted in accordance with the Admission Conditions.

### 1.3.3 **Admission Conditions**

Both Original Applicants and Applicants will comply with and satisfy the Admission Conditions specified below and the other requirements set out in the Admission Application together with any additional requirements that may be reasonably requested by the CMA. The Admission Conditions which a Relevant Applicant must fulfil prior to being admitted as a Code Party are:-

- (i) the completion and delivery to the CMA of a complete and accurate Admission Application; and
- (ii) each Relevant Applicant holds a Water Services Licence and/or a Sewerage Services Licence which has not been the subject of any successful appeal notified within fourteen (14) days of the date of the grant of such Water Services Licence and/or Sewerage Services Licence.

### 1.3.4 **Contractual Framework**

- (i) Subject to meeting the Admission Conditions, Original Applicants and the CMA shall sign the Framework Agreement to become Code Parties and be contractually bound by the Market Code.
- (ii) Subject to meeting the Admission Conditions, the Applicant shall sign an Accession Agreement to become a Code Party and be contractually bound by the Market Code. The Code Parties from time to time authorise the CMA to enter into Accession Agreements as agent for and on behalf of such Code Parties.

### 1.3.5 **Resignation**

A Licensed Provider shall be entitled to resign from the Market Code as a Code Party by delivering a Resignation Notice to the CMA. The Resignation Notice will take effect on the date on which all of the conditions in Section 1.3.6 are finally fulfilled. For the avoidance of doubt Scottish Water shall not be entitled to resign from the Market Code.

**1.3.6 Restriction on Resignation**

A Licensed Provider's Resignation Notice will not be effective unless and until:-

- (i) all Supply Point(s) Registered to that Licensed Provider have been Transferred to one (1) or more Licensed Providers in accordance with Part 5 (Market Design);
- (ii) all amounts payable or which may become payable by the resigning Licensed Provider to the CMA in accordance with the Market Code have been paid in full;
- (iii) it would not be a breach of a licence condition for the Licensed Provider to resign; and
- (iv) all notices required by the Market Code have been given.

## Part 2: CMA Duties

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### 2.1 Scope

2.1.1 This Part 2 sets out or refers to the CMA's enduring duties in providing the facilities, resources and services required for the effective implementation of the Market Code.

2.1.2 This Part 2 also sets out or refers to the process for the appointment or removal of the body carrying out the duties of the CMA.

2.1.3 In carrying out its duties the CMA shall:-

- (i) exercise a reasonable degree of skill and care;
- (ii) act independently of the interests of any market participant or group of market participants; and
- (iii) act impartially and show no undue preference in its relationship with market participants.

2.1.4 The CMA shall be permitted to sub-contract the performance of its duties and, accordingly, to enter into, manage and enforce such sub-contracts. In sub-contracting any duties, the CMA shall remain liable for the acts, defaults and omissions of its sub-contractors.

### 2.2 CMA Duties

The duties of the CMA shall include the following:-

#### 2.2.1 Accession and Resignation

The CMA shall administer the accession and resignation of Licensed Providers in accordance with Part 1 (Commencement, Objectives and Principles), Section 1.3 including entering into Accession Agreements with Applicants.

#### 2.2.2 Market Assurance Process and Transitional Duties

- (i) The CMA shall comply with Schedule 5 (Transitional Duties).
- (ii) The CMA shall administer the Market Assurance Process in relation to both Scottish Water and Licensed Providers in accordance with CSD 0001 (Market Entry & Assurance).
- (iii) The CMA shall administer the Market Readiness Process in relation to the period from the Effective Date to the Go Live Date.

#### 2.2.3 Operate, Maintain and Develop Central Systems

The CMA shall:-

- (i) operate and maintain the Supply Point Register and the Central Settlement System and carry out the functions set out in Part 5 (Market Design) and as otherwise set out in the Market Code;
- (ii) provide Settlement Reports to Trading Parties in accordance with the Market Code;
- (iii) capture, input, review and validate data in accordance with the Market Code;
- (iv) implement any Approved Change or Commission Change and any consequential amendments required to the Central Systems in an efficient and co-ordinated manner;
- (v) evaluate any notification received by the CMA from a Trading Party or the Market Auditor which alleges any defect in the Central Systems and take any steps required to ensure that the Central Systems comply with the Market Code;
- (vi) deal with enquiries from Trading Parties relating to the calculation of Usage and Wholesale Charges in accordance with Section 6.6;
- (vii) make all communications in the format and to the standards (including accuracy, security and contingency) and timescales required by the Market Code and the CMA shall develop and maintain a disaster recovery plan; and
- (viii) be permitted to modify the Central Systems and processes where such modification does not impact on any Trading Party, and improves the effectiveness of the CMA.

#### 2.2.4 **Performance Standards, Monitoring and Issues Resolution**

The CMA shall:-

- (i) carry out the duties of the CMA set out in Part 6 (Performance Standards, Monitoring and Issues Resolution);
- (ii) release data and provide reports to Trading Parties, the Commission, any Expert and Disputing Parties in accordance with Part 6 (Performance Standards, Monitoring and Issues Resolution), Section 6.7; and

- (iii) appoint or remove any Market Auditor in accordance with Part 6 (Performance Standards, Monitoring and Issues Resolution) Section 6.8.

**2.2.5 Cost recovery**

The CMA shall carry out the budgetary process, calculate and recover the CMA Charges in accordance with Part 7 (Cost Recovery).

**2.2.6 Governance**

The CMA shall comply with the provisions of Part 8 (Governance).

**2.2.7 Disputes Procedure**

The CMA shall provide all reasonable assistance to Trading Parties (and any Expert) to assist in the resolution of any Dispute in accordance with Part 9 (Disputes Procedure).

**2.2.8 Records and Maintenance of Market Code and CMA Website**

The CMA shall:-

- (i) hold and maintain all data and records required by the Market Code including all archived and other historical records of trading under the Market Code and all historical data (including all transaction, reference and audit data and changes to standing data) relating to the Central Systems operations of the CMA for a period of at least seven (7) years and make such records available for inspection to any person if expressly required by the Market Code;
- (ii) maintain a complete, accurate and up-to-date copy of the Market Code, and complete and accurate copies of previous Market Codes at all times and make such copies available to any person (including without limitation Trading Parties and the Commission), provided that the CMA shall have discretion as to how often to release a new version of the Market Code and may batch together a number of Approved Changes and/or Commission Changes before releasing any new version;
- (iii) develop such guidance notes or information for existing and potential Trading Parties on such matters as the CMA considers appropriate; and

- (iv) develop and maintain a website relating to the Market Code and the carrying out of the CMA's duties to include:-
- (a) the current version of the Market Code;
  - (b) copies of all Market Code Change Proposals under consideration by the TP;
  - (c) copies of all Approved Changes and/or Commission Changes which are not yet included in the current version of the Market Code;
  - (d) any reports issued in accordance with the Market Code which are to be made available to any person;
  - (e) any approved minutes, agendas and notices of meetings of the TP;
  - (f) any guidance documents issued by the CMA; and
  - (g) any other matters which the CMA considers appropriate or which are required to be published on the website under the Market Code.

#### 2.2.9 **Intellectual Property Rights**

The CMA shall secure and retain ownership and/or licences of Intellectual Property Rights relevant to carrying out its duties under the Market Code and to enable it to grant the licences set out in Part 10 (General Terms), Section 10.15.1.

#### 2.2.10 **General Terms**

The CMA shall comply with Part 10 (General Terms) and shall carry out any activities required of the CMA in Part 10 (General Terms).

#### 2.2.11 **Provider of Last Resort**

- (i) If and when the CMA issues a Termination Notice under Section 10.7.2 to a Licensed Provider which has become a Defaulting Trading Party pursuant to Part 10 (General Terms), Section 10.7, and provided that any Supply Points are still Registered to the Defaulting Trading Party, the CMA shall allocate such Supply Points to any one (1) or more Licensed Providers (other than any Self Supply Licensed Provider, any Specialist Licensed Provider and the Defaulting Trading Party) in accordance with Section 5.3.6.

### 2.2.12 Working Procedures

The CMA shall be entitled to issue Working Procedures documents to Trading Parties from time to time setting out best practice guidance on specified aspects of the Market Code.

## 2.3 Appointment and Removal of CMA

### 2.3.1 Appointment of CMA

- (i) From the Effective Date the first CMA shall be Central Market Agency Limited, a company limited by guarantee with registered number SC328635 and having its registered office at Ochil House, Springkerse Business Park, Stirling, FK7 7XE.
- (ii) The Trading Parties shall appoint a Successor CMA where the existing CMA ceases to be a Code Party.
- (iii) The CMA (and any Successor CMA) shall have the Memorandum and Articles of Association set out in Schedule 3 (Establishment of CMA).
- (iv) The CMA shall be a Code Party with effect from the date of its appointment until the date of its removal as set out in Section 2.3.2(ii).

### 2.3.2 Removal of CMA

- (i) The CMA shall be classed as a defaulting party if the CMA is subject to an Insolvency Event.
- (ii) The CMA shall be deemed to be removed and shall cease to be a Code Party with effect from the date of occurrence of the CMA being classed as a defaulting party by reason of it being subject to an Insolvency Event unless otherwise unanimously agreed by the Trading Parties within one (1) Month of the CMA being classed as a defaulting party.
- (iii) The departing CMA shall carry out the transfer and exit duties set out in Schedule 2 (CMA Exit Plan and Transfer Provisions) and the provisions of that Schedule shall apply to any transfer of assets to the Successor CMA. The departing CMA shall be bound by the terms of this Section 2.3.2(iii) notwithstanding that it may have ceased to be a Code Party.

- (iv) Termination of any CMA's role as a Code Party shall be without prejudice to any accrued rights and remedies of the Code Parties as at the date of termination of that CMA's role.

### 2.3.3 Escrow Arrangements

- (i) No later than three (3) Months after the Effective Date the CMA shall enter into and deliver an escrow agreement (the "CMA Escrow Agreement") in a form to be approved by the Board with a reputable escrow agent (the "CMA Custodian"). The CMA Escrow Agreement shall provide for:-
  - (a) the Commission to have access to the latest version of the materials set out below for the purposes of transferring such materials to the Successor CMA in the event of the removal of the existing CMA; and
  - (b) the Successor CMA to have the right to make use of such materials.
- (ii) Forthwith upon entering into the CMA Escrow Agreement the CMA shall deposit with the CMA Custodian to the extent then in existence (and, if not in existence, as soon as possible after it comes into existence):-
  - (a) a copy of all the source code, object code and load (machine executable) modules relevant to carrying out its duties under the Market 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;
  - (b) a copy of all related manuals and other associated documentation including:-
    - (i) any user requirement documents together with all associated authorised change requests;
    - (ii) any functional specification documents associated with those documents described in Section 2.3.3(ii)(a) above, together with all authorised

- change requests associated with the relevant functional specification;
- (iii) to the extent available to the CMA, any design specification documents associated with those documents described in Sections 2.3.3(ii)(a) above, together with all authorised change requests associated with the relevant design specification;
  - (iv) 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);
  - (v) any relevant test strategy schedules and acceptance test schedules as specified for functional and operational end to end testing;
  - (vi) 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 CMA;
  - (vii) any relevant acceptance certificates and Market Audit Reports, together with any reports recording such acceptance and the Market Auditor's observations and comments on the tests;
  - (viii) any relevant compilation or detailed operating procedures required in connection with any of the relevant sections in this Section 2.3.3; and
  - (ix) all software licences relevant to carrying out the CMA's duties under the Market Code, including those related to any Central Systems licensed to the CMA; and
- (c) a copy of all historical data (including all transaction, reference and audit data and changes to standing data) relating to the

Central Systems operations of the CMA over the preceding eighteen (18) Months except in so far as a valid Dispute is under consideration of an Expert and in so far as not inconsistent with any legal obligation to retain data for any longer period, as may be required by Customs & Excise or the Inland Revenue in accordance with taxation legislation or regulation, or as may be required in accordance with the Companies Acts or any other statutory, regulatory or legal obligation or, if shorter, over the period from the Effective Date.

- (iii) All the material referred to above is hereafter together referred to in this Market Code as the "CMA Material".

2.3.4 The CMA shall ensure that the CMA Material deposited with the CMA Custodian is kept fully up-to-date in accordance with the terms of and subject to the conditions of the CMA Escrow Agreement.

### **Part 3: Licensed Provider's Duties**

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#### **3.1 Scope**

3.1.1 This Part 3 sets out or refers to the Licensed Provider's duties under the Market Code.

3.1.2 A Licensed Provider shall be permitted to sub-contract the performance of its duties. In sub-contracting any duties, the Licensed Provider shall:-

- (i) ensure that (save as expressly permitted by the Market Code) all data submitted to the CMA by or on its behalf (including Customer Reads) shall be submitted using the Licensed Provider's systems and processes which have (where relevant) satisfied and continue to satisfy any Market Tests; and
- (ii) remain liable for the acts, defaults and omissions of its sub-contractors.

#### **3.2 Licensed Provider's Duties**

The duties of Licensed Providers shall include the following:-

##### **3.2.1 Accession and Resignation**

Each Licensed Provider shall enter into either:-

- (i) the Framework Agreement where they are an Original Applicant; or
- (ii) an Accession Agreement where they are an Applicant,

in accordance with Part 1 (Commencement, Objectives and Principles), Section 1.3 to become a Code Party and may only resign from the Market Code in accordance with Part 1 (Commencement, Objectives and Principles), Section 1.3.

##### **3.2.2 Market Assurance Process and Transitional Duties**

- (i) Each Licensed Provider shall comply with Schedule 5 (Transitional Duties) and shall carry out the activities required of it by the CMA in order to complete the Market Readiness Process all to the extent relevant to it.
- (ii) Each Licensed Provider shall carry out Market Tests and complete Market Assurance Process(es) as required by the CMA in accordance with CSD 0001 (Market Entry & Assurance).

**3.2.3 Market Design**

Each Licensed Provider shall Register all of the Supply Points in respect of which it has agreed to provide Water Services and/or Sewerage Services from time to time and provide all data required in relation to those Supply Points to the CMA in accordance with Part 5 (Market Design) and as otherwise set out in the Market Code.

**3.2.4 Performance Standards, Monitoring and Issues Resolution**

Each Licensed Provider shall comply (to the extent applicable to it) with Part 6 (Performance Standards, Monitoring and Issues Resolution).

**3.2.5 Cost Recovery**

Each Licensed Provider shall pay its share of the Licensed Provider CMA Charges in accordance with Part 7 (Cost Recovery) and shall otherwise comply with Part 7 (Cost Recovery) to the extent applicable to it.

**3.2.6 Governance**

Each Licensed Provider shall comply with Part 8 (Governance) to the extent applicable to it.

**3.2.7 Disputes Procedure**

Each Licensed Provider shall comply with Part 9 (Disputes Procedure) if it wishes to raise any Dispute under the Market Code.

**3.2.8 General Terms**

Each Licensed Provider shall comply with Part 10 (General Terms) and carry out any activities required of it in Part 10 (General Terms).

**3.2.9 Licensed Provider's Systems**

Each Licensed Provider shall, at its own cost:-

- (i) maintain systems which are compatible with the Central Systems;
- (ii) co-operate with the TP when the TP is considering any Market Code Change Proposal which may have an impact on the Licensed Provider's systems;
- (iii) make such changes to its systems as are required to implement any Approved Change or Commission Change in accordance with any reasonable requirements of the CMA; and

- (iv) make all communications in the format and to the standards (including accuracy, security and contingency) and timescales required by the Market Code.

**3.2.10 Intellectual Property Rights**

Each Licensed Provider shall secure and retain ownership and/or licences of Intellectual Property Rights relevant to carrying out its duties under the Market Code and to enable it to grant the licences set out in Part 10 (General Terms), Section 10.15.1.

**3.2.11 Working Procedures**

Each Licensed Provider shall use all reasonable endeavours to act in accordance with any Working Procedures issued by the CMA from time to time.

## **Part 4: Scottish Water (Wholesale Business) Duties**

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### **4.1 Scope**

4.1.1 This Part 4 sets out or refers to Scottish Water's duties under the Market Code.

4.1.2 Scottish Water shall be permitted to sub-contract the performance of its duties. In sub-contracting any duties, Scottish Water shall:-

- (i) ensure that (save as expressly permitted by the Market Code) all data submitted to the CMA by or on its behalf shall be submitted using Scottish Water's systems and processes which have (where relevant) satisfied and continue to satisfy any Market Tests; and
- (ii) remain liable for the acts, defaults and omissions of its sub-contractors.

### **4.2 Scottish Water's Duties**

The duties of Scottish Water shall include the following:-

#### **4.2.1 Accession and Resignation**

Scottish Water shall enter into the Framework Agreement as an Original Applicant in accordance with Part 1 (Commencement, Objectives and Principles), Section 1.3 to become a Code Party.

#### **4.2.2 Market Assurance Process and Transitional Duties**

- (i) Scottish Water shall comply with Schedule 5 (Transitional Duties) and shall carry out the activities required of it by the CMA in order to complete the Market Readiness Process.
- (ii) Scottish Water shall carry out Market Tests and complete the Market Assurance Process(es) as required by the CMA in accordance with CSD 0001 (Market Entry & Assurance).

#### **4.2.3 Market Design**

Scottish Water shall provide all relevant data and information relating to Supply Points to the CMA in accordance with Part 5 (Market Design) and as otherwise set out in the Market Code.

#### **4.2.4 Performance Standards, Monitoring and Issues Resolution**

Scottish Water shall comply (to the extent applicable to it) with Part 6 (Performance Standards, Monitoring and Issues Resolution).

#### 4.2.5 **Cost Recovery**

Scottish Water shall pay the Scottish Water CMA Charges in accordance with Part 7 (Cost Recovery) and shall otherwise comply with Part 7 (Cost Recovery) to the extent applicable to it.

#### 4.2.6 **Governance**

Scottish Water shall:

- (i) appoint a Director to the Board; and
- (ii) appoint a member to the TP,

and procure that such Director and member each fulfils his respective duties all in accordance with Part 8 (Governance) and as otherwise set out in this Market Code.

#### 4.2.7 **Disputes**

Scottish Water shall comply with Part 9 (Disputes Procedure) if it wishes to raise any Dispute under the Market Code.

#### 4.2.8 **General Terms**

Scottish Water shall comply with Part 10 (General Terms) and carry out any activities required of it in Part 10 (General Terms).

#### 4.2.9 **Scottish Water's Systems**

Scottish Water shall, at its own cost:-

- (i) maintain systems which are compatible with the Central Systems;
- (ii) co-operate with the TP when the TP is considering any Market Code Change Proposal which may have an impact on Scottish Water's systems;
- (iii) make such changes to its systems as are required to implement any Approved Change or Commission Change in accordance with any reasonable requirements of the CMA; and
- (iv) make all communications in the format and to the standards (including accuracy, security and contingency) and timescales required by the Market Code.

#### 4.2.10 **Intellectual Property Rights**

Scottish Water shall secure and retain ownership and/or licences of Intellectual Property Rights relevant to carrying out its duties under the Market Code and to enable it to grant the licences set out in Part 10 (General Terms), Section 10.15.1.

4.2.11 **Working Procedures**

Scottish Water shall use all reasonable endeavours to act in accordance with any Working Procedures issued by the CMA from time to time.

## Part 5: Market Design

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### 5.1 Scope

This Part 5 sets out the high level requirements for the Market Design and the high level duties which apply to each Code Party. It refers to a number of Code Subsidiary Documents which set out the more detailed processes and duties. In particular:-

- 5.1.1 Sections 5.2 to 5.7 summarise the key issues for the Registration of Supply Points (including New Connections and New Supply Points, updating of the Supply Point Register, Error Rectification of erroneous SPID Data in the Supply Point Register and Disconnection of Supply Points); and
- 5.1.2 Sections 5.8 to 5.14 summarise the key issues for the submission of Meter Reads and their validation, the calculation and estimation of volumes, the calculation, allocation and aggregation of Wholesale Charges, the timing and number of Settlement Runs and the provision of Settlement Reports to Trading Parties.
- 5.1.3 Section 5.15 contains specific rules to apply in determining the number of Supply Points at Eligible Premises with multiple occupancy.

### 5.2 Establishing and Maintaining the Supply Point Register

- 5.2.1 The CMA shall operate and maintain the Supply Point Register for all Supply Points to meet the requirements of the Market Code including the following CSDs: CSD 0101 (Registration: New Connections & New Supply Points), CSD 0102 (Registration: Transfers), CSD 0103 (Registration: Cancellations), CSD 0104 (Maintain SPID Data), CSD 0105 (Error Rectification & Retrospective Amendments), CSD 0301 (Data Transaction Catalogue) and CSD 0003 (Provider of Last Resort). The CMA shall develop the Supply Point Register to take account of Approved Changes and/or Commission Changes.
- 5.2.2 Each Licensed Provider shall be entitled to apply to Register Supply Points once it has:-
  - (i) satisfied the Trading Conditions; and
  - (ii) satisfactorily completed any Market Tests which that Licensed Provider is required to undertake in accordance with the Market Assurance Process. If any Licensed Provider at any time ceases to satisfy any of the Trading Conditions it shall cease to be entitled to apply to Register Supply Points until the relevant Trading Condition(s) are again satisfied.

5.2.3 The CMA shall permit each Licensed Provider to access the Supply Point Register for the purposes of identifying the SPID(s) relevant to any specific Eligible Premises once it has met the Trading Conditions and satisfactorily completed any Market Tests which that Licensed Provider is required to undertake. This data will not identify the Licensed Provider to whom each SPID is Registered. Each Licensed Provider shall keep its Customers informed of the SPID(s) relevant to them.

5.2.4 Once it has satisfied the Trading Conditions and satisfactorily completed any Market Tests each Trading Party shall appoint a Contract Manager to act as the principal point of contact for all day to day matters relating to the Market Code and shall inform the CMA of the identity of the Contract Manager and keep the CMA informed from time to time should the individual acting as Contract Manager change.

### 5.3 **Registration of Supply Points - Transfers between Licensed Providers**

#### 5.3.1 **Apply to the CMA for Registration**

(i) Each Licensed Provider shall Register all of the Supply Point(s) in respect of which it has agreed to provide Water Services and/or Sewerage Services in accordance with this Section 5.3 and CSD 0102 (Registration: Transfers). The remaining Sections of this Section 5.3 and CSD 0102 (Registration: Transfers) set out the detail of the process.

(ii) To Register a Supply Point the Licensed Provider shall submit its duly completed Registration Application to the CMA confirming as a minimum, (a) a Registration Start Date; and (b) the SPID. The Registration Application shall be submitted not more than twenty (20) Business Days and not less than six (6) Business Days prior to the Registration Start Date (the "Application Window").

#### 5.3.2 **CMA Responds to Application**

(i) The CMA shall Accept or reject the Registration Application.

(ii) For a Registration Application to be Accepted the CMA must be satisfied that the conditions set out in Appendix 1 of CSD 0102 (Registration: Transfers) have been met.

- (iii) The CMA shall issue a Confirmation Notice to the Incoming Licensed Provider within one (1) Business Day of the Registration Application Date.
- (iv) The Confirmation Notice referred to in Section 5.3.2(iii) above shall confirm to the Incoming Licensed Provider that either:-
  - (a) the Supply Point(s) will be Registered to the Incoming Licensed Provider on the Registration Start Date (save where a valid Cancellation Request is submitted to and accepted by the CMA); or
  - (b) the Registration Application has been rejected.

Where the Registration Application has been rejected the CMA shall provide reasons for such rejection in the Confirmation Notice and the Licensed Provider shall be entitled to submit another Registration Application to the CMA for the Supply Point(s) provided that the Licensed Provider has corrected the cause of such rejection.

### 5.3.3 **CMA Notifies Transfer to Outgoing Licensed Provider**

- (i) The CMA shall notify the Outgoing Licensed Provider for each Supply Point which is subject to an Accepted Registration Application that the CMA has received a Registration Application within one (1) Business Day of the Registration Application Date. The Outgoing Licensed Provider shall then be entitled to submit a Cancellation Request within the Cancellation Window in accordance with Section 5.6.
- (ii) Once the Registration Application is Accepted the CMA shall allocate the Supply Point(s) to the relevant Licensed Provider and the Licensed Provider shall be responsible for the Supply Point(s) with effect from the Registration Start Date (save where a valid Cancellation Request is submitted to and accepted by the CMA).

### 5.3.4 **Transfer Reads**

- (i) For Supply Point(s) that are Metered, each Incoming Licensed Provider who submits a Transfer Registration Application shall make arrangements (following Acceptance) for the submission of a Transfer Read to the CMA in relation to such Supply Point(s) in accordance

with CSD 0102 (Registration: Transfers) and CSD 0202 (Meter Read Submission: Process) except in the case of Supply Point(s) at Complex Sites in respect of which this obligation shall not apply and the CMA shall attribute a deemed meter read in accordance with CSD 0202 (Meter Read Submission: Process).

- (ii) The CMA will validate the Transfer Read and will notify the Outgoing Licensed Provider of that Transfer Read in accordance with CSD 0203 (Meter Read Submission: Validation) and CSD 0102 (Registration: Transfers).
- (iii) For Unmeasurable Supply Points and Measurable Supply Points the CMA shall apportion Wholesale Charges on the Registration Start Date in accordance with CSD 0205 (Charge Calculation, Allocation & Aggregation) and CSD 0206 (Trade Effluent Processes).
- (iv) Each Trading Party shall co-operate with the other Trading Parties in connection with the provision of Transfer Reads under this Section 5.3.4. In particular, each Trading Party that is responsible for a Related Water Supply Meter shall carry out and submit a Transfer Read when requested to do so by the Incoming Licensed Provider.

#### 5.3.5 **Historical Consumption Data**

Where any Incoming Licensed Provider requires Historical Consumption Data in relation to a Supply Point it may request that information from the CMA provided that the Incoming Licensed Provider obtains the prior consent of the relevant Customer to whom the data relates. The CMA shall provide the Incoming Licensed Provider with such Historical Consumption Data (without any Additional Services Charge) as soon as reasonably practicable after receipt of a request from the Incoming Licensed Provider. Any request for additional consumption data from the CMA will be treated as an Additional Service and if accepted by the CMA, the CMA shall be entitled to charge any Licensed Provider requesting such additional consumption data as an Additional Service in accordance with Part 7 (Cost Recovery), Section 7.3.5.

**5.3.6 Provider of Last Resort**

- (i) If and when the CMA issues a Termination Notice under Section 10.7.2 to a Licensed Provider which has become a Defaulting Trading Party, and provided that any Supply Points are still Registered to the Defaulting Trading Party ("POLR Supply Points"), the CMA shall:
- (a) allocate the POLR Supply Points to any one (1) or more Licensed Provider(s) (other than any Specialist Licensed Provider, any Self Supply Licensed Provider and the Defaulting Trading Party) that is entitled to Register Supply Points in accordance with Section 5.2.2 in accordance with the Allocation Process; or, in the absence of an approved Allocation Process,
  - (b) allocate the POLR Supply Points to each Licensed Provider (other than any Specialist Licensed Provider, any Self Supply Licensed Provider and the Defaulting Trading Party) that is entitled to Register Supply Points in accordance with Section 5.2.2 as follows:-
    - (b)(1) the particular POLR Supply Points allocated to each Licensed Provider shall be allocated on a random basis; and
    - (b)(2) each Water Services Licensed Provider shall be allocated an equal number of POLR Supply Points for Water Services and each Sewerage Services Licensed Provider shall be allocated an equal number of POLR Supply Points for Sewerage Services subject, in each case, to any rounding up or down required in order to allocate a whole number of Supply Points; and
    - (b)(3) if, at any stage in the process set out in this Section 5.3.6(i)(b), there are fewer POLR Supply Points than there are Licensed Providers (for either or both Water and Sewerage Services) each remaining POLR Supply Point shall be allocated to the

Licensed Providers by the CMA in date order based on the date of grant of each Licensed Provider's Permanent Licence with the earliest date of grant being given priority.

- (ii) the CMA shall Register the POLR Supply Points so allocated to the relevant Incoming Licensed Provider(s) in accordance with CSD 0003 (Provider of Last Resort) with the Designated Time being the date of issue of the Termination Notice; and
- (iii) where any Licensed Provider is required, pursuant to its Licence, to provide Water Services or Sewerage Services in Designated Circumstances, the Licensed Provider shall be responsible for all Supply Point(s) Registered to it by the CMA from the Designated Time in accordance with this Section 5.3.6; and
- (iv) the CMA shall introduce a Market Code Change Proposal in accordance with Section 8.7 that contains a proposed Allocation Process which either amends or replaces the process set out in Section 5.3.6(i)(b) as soon as possible after the Effective Date and shall, to the extent that the CMA is able to do so, seek to ensure that the Market Code Change Proposal process is completed in respect of that Change Proposal prior to the Go Live Date.

#### 5.4 **New Connections and New Supply Points**

All Code Parties agree to co-operate with each other in relation to the Registration of Supply Points for New Connections and New Supply Points including by carrying out the duties set out in this Section 5.4.

##### 5.4.1 **Create Record of New Connection and Partial Registration Application**

- (i) Not less than one (1) Month prior to the Connection Date for a New Connection, Scottish Water shall issue a request to the CMA for the creation of new Supply Point(s) related to that New Connection;
- (ii) the CMA will send confirmation of the SPID to Scottish Water and the Licensed Provider; and
- (iii) within five (5) Business Days of receipt of the SPID the Licensed Provider shall submit a properly completed Partial Registration Application to the CMA;

all in accordance with CSD 0101 (Registration: New Connections & New Supply Points).

**5.4.2 Notification of Scottish Water Data for New Connections**

- (i) On receipt of a SPID for a Partial Registration Application, Scottish Water shall (to the extent not already provided) notify the relevant Scottish Water Data for that Supply Point to the CMA; and
- (ii) the CMA shall notify the relevant Scottish Water Data for that Supply Point to the Licensed Provider,

all in accordance with CSD 0101 (Registration: New Connections & New Supply Points).

**5.4.3 Updates to other SPID Data for New Connections**

From the date of submission of a Partial Registration Application until the Connection Date the relevant Data Owner shall update the SPID Data submitted in the Partial Registration Application as necessary to ensure that it remains accurate and up to date. In the event that the relevant Data Owner fails to update the SPID Data referred to above, the CMA shall be entitled to request such information from that Data Owner. The relevant Licensed Provider shall provide information including consumption pattern information relating to the Supply Point to the CMA in accordance with CSD 0101 (Registration: New Connections & New Supply Points).

**5.4.4 Notification of Meter Information and Initial Reads for New Connections**

In relation to each New Connection:-

- (i) Scottish Water shall notify the CMA of the meter related SPID Data in accordance with CSD 0101 (Registration: New Connections & New Supply Points);
- (ii) Scottish Water shall provide the CMA with the Initial Read, in accordance with Section 5.9.5, CSD 0101 (Registration: New Connections & New Supply Points) and CSD 0202 (Meter Read Submission: Process); and
- (iii) the CMA shall notify the Initial Read to the Licensed Provider.

**5.4.5 Confirmation of Connection for New Connections**

Scottish Water shall notify the CMA of the Connection Date for each New Connection within two (2) Business Days after the Connection Date in accordance

with CSD 0101 (Registration: New Connections & New Supply Points) and the CMA shall confirm the Connection Date to the Licensed Provider.

**5.4.6 Missing Data for New Connections**

For any New Connection where there is any SPID Data or any other information missing which prevents Registration of the relevant Supply Point, the CMA shall issue a request to the relevant Data Owner to update and/or provide such SPID Data or information to enable the Supply Point for a New Connection to be Registered.

**5.4.7 Failure to Register New Connections prior to the Connection Date**

If any Supply Point for a New Connection is not Registered by the Connection Date, Scottish Water and the Licensed Provider shall comply with CSD 0105 (Error Rectification & Retrospective Amendments) in respect of that Supply Point.

**5.4.8 New Supply Points - Entry Change of Use**

- (i) If a Licensed Provider becomes aware of any Entry Change of Use it shall notify Scottish Water in accordance with CSD 0101 (Registration: New Connections & New Supply Points) and shall perform its obligations in accordance with that CSD so that any New Supply Point(s) required as a result of the Entry Change of Use can be Registered in the Supply Point Register.
- (ii) On receipt of notification of any Entry Change of Use Scottish Water shall perform its obligations in accordance with CSD 0101 (Registration: New Connections & New Supply Points) so that any New Supply Points required as a result of the Entry Change of Use can be Registered in the Supply Point Register. The CMA shall inform Scottish Water of the Registration Start Date for any New Supply Points and Scottish Water shall cease to be entitled to make any direct charge in respect of any premises which have become Eligible Premises with effect from the Registration Start Date.

**5.4.9 New Supply Points - Gap Sites identified by a Licensed Provider**

- (i) If a Licensed Provider identifies any Gap Site it shall notify Scottish Water in accordance with CSD 0101 (Registration: New Connections & New Supply Points) and shall perform its obligations in accordance

with that CSD so that New Supply Point(s) relating to such Gap Site(s) can be Registered in the Supply Point Register.

- (ii) On receipt of notification of any Gap Site under Section 5.4.9(i) Scottish Water shall perform its obligations in accordance with CSD 0101 (Registration: New Connections & New Supply Points) so that any New Supply Points relating to such Gap Site(s) can be Registered in the Supply Point Register.

**5.4.10 New Supply Points - Gap Sites identified by Scottish Water**

- (i) If Scottish Water identifies any Gap Site it shall follow the Gap Site Allocation Process in Section 5.4.11 below and perform its obligations in accordance with that Gap Site Allocation Process and CSD 0101 (Registration: New Connections & New Supply Points) so that New Supply Point(s) relating to such Gap Site(s) are allocated to a Licensed Provider and Registered in the Supply Point Register.

**5.4.11 Gap Site Allocation Process**

- (i) If Scottish Water identifies any Gap Site, within 2 Business Days of such identification Scottish Water will write to the non-household customer at the relevant Eligible Premises (using the form approved by the Commission) informing them that they must now choose a Licensed Provider within 15 Business Days or have one allocated to them. Scottish Water will also give each customer a unique reference number.
- (ii) If a Licensed Provider agrees to supply the non-household customer pursuant to Section 5.4.11(i), that Licensed Provider must notify Scottish Water within 1 Business Day in accordance with Step a of Section 3.1.1 of CSD 0101 (Registration: New Connections & New Supply Points).
- (iii) Having received such notification Scottish Water will submit the T001.0 (Request New SPID) to the CMA and shall identify the Licensed Provider chosen by the non-household customer in the T001.0 request all in accordance with Step b of Section 3.1.1 of CSD 0101 (Registration: New Connections and New Supply Points).

- (iv) The CMA will then Register the new Supply Point(s) in accordance with Section 3.1.1 of CSD 0101 (Registration: New Connections & New Supply Points).
- (v) If Scottish Water does not receive notice from a Licensed Provider within 15 Business Days from the date of its letter to the non-household customer, it will submit the T001.0 (Request New SPID) to the CMA but will not include any information regarding the identity of a Licensed Provider in accordance with Step b of Section 3.4.1 of CSD 0101 (Registration: New Connections & New Supply Points).
- (vi) Having received the T001.0 (Request New SPID) without an allocated Licensed Provider from Scottish Water, the CMA will allocate a Licensed Provider to the non-household customer in accordance with Sections 5.4.11(vii) to (x) below.
- (vii) The CMA shall only allocate customers at Gap Sites to Licensed Providers who hold a Licence and are not solely a Specialist Licensed Provider and/or a Self Supply Licensed Provider. The allocation of a Licensed Provider by the CMA will take place on a strict rotational basis with Licensed Providers being allocated customers in the order they received their Licences, i.e. the first Licensed Provider to be licensed for the Services relevant to the Gap Site will take the first customer, the second Licensed Provider the second customer etc.
- (viii) If there is more than one Supply Point in relation to the Gap Site then all Supply Points in relation to that Gap Site will be allocated by the CMA to the same Licensed Provider.
- (ix) Having allocated a Licensed Provider to the customer, the CMA will then Register the new Supply Point(s) in accordance with Section 3.4.1 of CSD 0101 (Registration: New Connections & New Supply Points).
- (x) Once the CMA has allocated a Licensed Provider to the non-household customer in accordance with Section 5.4.11(vii) above, the Licensed Provider must write to that new customer within 5 Business Days of receiving notification of allocation from the CMA in

accordance with Step c of Section 3.4.1 of CSD 0101 (Registration: New Connections & New Supply Points).

## 5.5 **SPID Data**

### 5.5.1 **Updating the SPID Data**

- (i) For every Supply Point, each Data Owner is responsible for certain elements of the SPID Data associated with the SPID in the Supply Point Register and shall maintain and keep such information up to date in accordance with CSD 0104 (Maintain SPID Data).

### 5.5.2 **Errors in SPID Data**

- (i) If the CMA identifies an error in any SPID Data it shall request the submission of modified SPID Data from the relevant Data Owner in accordance with CSD 0105 (Error Rectification & Retrospective Amendments). If any Data Owner identifies an error in any SPID Data it shall submit modified SPID Data to the CMA in accordance with CSD 0105 (Error Rectification & Retrospective Amendments) as soon as it becomes aware of such error.
- (ii) The CMA shall be entitled to charge the relevant Data Owner for implementing the correction of the error in SPID Data as an Additional Service in accordance with Part 7 (Cost Recovery), Section 7.3.5.

### 5.5.3 **Change of Scottish Water Data**

Where any change occurs to the Scottish Water Data for a Supply Point during a Year, Scottish Water shall notify the CMA of the change in accordance with CSD 0104 (Maintain SPID Data), CSD 0206 (Trade Effluent Processes) and CSD 0201 (Settlement Timetable & Reporting). To avoid doubt, this Section 5.5.3 shall also apply where the Commission approves any application by Scottish Water to depart from the Charges Scheme in respect of a Supply Point or Supply Points made under section 29E of the 2002 Act and on any reversion of such Supply Point(s) to charging in accordance with the Charges Scheme.

## 5.6 Cancellation of Registrations

5.6.1 Each Incoming Licensed Provider shall submit a Cancellation Request to the CMA within the Cancellation Window (in accordance with CSD 0103 (Registration: Cancellations)) if:-

- (i) it becomes aware that it has applied to Register a Supply Point in error due to the Incoming Licensed Provider wrongly identifying the SPID;
- (ii) it becomes aware that it has applied to Register a Supply Point in error due to the Incoming Licensed Provider not having a valid contract with a Customer in relation to that Supply Point; or
- (iii) a Self Supply Licensed Provider informs the Incoming Licensed Provider that the Supply Point(s) in question are validly Registered to that Self Supply Licensed Provider and will remain so as at the Registration Start Date.

5.6.2 Each Outgoing Licensed Provider may submit a Cancellation Request to the CMA within the Cancellation Window (in accordance with CSD 0103 (Registration: Cancellations)) if:-

- (i) there is an Outstanding Debt due to the Outgoing Licensed Provider from the Customer relevant to that Supply Point; or
- (ii) the Outgoing Licensed Provider confirms that the contract with its Customer for that Supply Point remains in full force and effect as at the Registration Start Date; or
- (iii) the Outgoing Licensed Provider is a Self Supply Licensed Provider and the Supply Point(s) in question are validly Registered to it and will remain so as at the Registration Start Date,

and, in each case, the Transfer Registration Application has not been triggered by a new Customer becoming the occupier of the Eligible Premises relevant to that Supply Point.

5.6.3 At any time outside the Cancellation Window requests to cancel Registrations shall be handled as Retrospective Amendments in accordance with CSD 0105 (Error Rectification & Retrospective Amendments).

## 5.7 Responsibility for Supply Points

### 5.7.1 Enduring Responsibility for Supply Points

Each Licensed Provider shall remain responsible for any Supply Point Registered to it until:-

- (i) the Transfer of the Supply Point to another Licensed Provider;
- (ii) Permanent Disconnection of the Supply Point pursuant to Section 5.7.2 below; or
- (iii) an Exit Change of Use occurs in respect of the Eligible Premises to which the Supply Point relates.

### 5.7.2 Disconnections

In the event of the Disconnection of any Connection Point in accordance with the Disconnections Code, Scottish Water shall notify the CMA of the date of the Disconnection and identify the Supply Point(s) related to that Connection Point in accordance with CSD 0104 (Maintain SPID Data). The CMA shall record the Disconnection in the Supply Point Register and confirm that this has been carried out in accordance with CSD 0104 (Maintain SPID Data). The CMA shall ensure that no future Registrations are Accepted for any disconnected Supply Point(s) which has been the subject of a Permanent Disconnection. Scottish Water shall notify the CMA of the date of the reconnection of any Connection Point which has been the subject of a Temporary Disconnection and the CMA shall record such reconnection in the Supply Point Register and confirm that this has been carried out in accordance with CSD 0104 (Maintain SPID Data).

### 5.7.3 Self Supply Licensed Providers

If a Self Supply Licensed Provider is going to cease to be the Licensed Provider for a Customer for the provision of Water Services and/or Sewerage Services at any Supply Point which is Registered to that Self Supply Licensed Provider as a result of it no longer being permitted by its Licence to provide such services:

- (i) the Self Supply Licensed Provider shall inform the CMA immediately of the date on which it will no longer be permitted by its Licence to provide such services (the "Self Supply Licensed Provider Departure Date");
- (ii) the Self Supply Licensed Provider shall use all reasonable endeavours to ensure that the Supply Point(s) in question is Transferred to a Licensed Provider who is not a member of the relevant Self Supply Group by the

Self Supply Licensed Provider Departure Date and shall, if requested to do so by the CMA, provide evidence to the CMA to demonstrate how the Self Supply Licensed Provider has complied with this Section 5.7.3(ii);

- (iii) if there are less than six (6) business days left to the Self Supply Licensed Provider Departure Date and the Supply Point(s) in question is not Transferred and, in the opinion of the CMA, no effective arrangements have been put in place to effect such a Transfer to another Licensed Provider by the Self Supply Licensed Provider Departure Date, the CMA shall allocate the Supply Point(s) in question to any one (1) or more Licensed Provider(s) who is not a member of the relevant Self Supply Group in accordance with the Allocation Process or, in the absence of an approved Allocation Process, in accordance with the process set out in Section 5.3.6(i)(b);
- (iv) the CMA shall Register the Supply Points so allocated to the relevant Incoming Licensed Provider(s) in accordance with CSD 0105 (Error Rectification & Retrospective Amendments); and
- (v) the Incoming Licensed Provider shall be responsible for all Supply Points Registered to it by the CMA from the Registration Start Date.

#### 5.7.4 **Specialist Licensed Providers**

If a Specialist Licensed Provider is going to cease to be the Licensed Provider for a Customer for the provision of Water Services and/or Sewerage Services at any Supply Point which is Registered to that Specialist Licensed Provider as a result of it no longer being permitted by its Licence to provide such services:

- (i) that Specialist Licensed Provider shall inform the CMA immediately of the date on which it will no longer be permitted by its Licence to provide such services (the "Specialist Licensed Provider Departure Date");
- (ii) the Specialist Licensed Provider shall use all reasonable endeavours to ensure that the Supply Point(s) in question is Transferred to another Licensed Provider by the Specialist Licensed Provider Departure Date and shall, if requested to do so by the CMA, provide evidence to the CMA to demonstrate how the Specialist Licensed Provider has complied with this Section 5.7.4(ii);

- (iii) if there are less than six (6) business days left to the Specialist Licensed Provider Departure Date and the Supply Point(s) in question is not Transferred and, in the opinion of the CMA, no effective arrangements have been put in place to effect such a Transfer to another Licensed Provider by the Specialist Licensed Provider Departure Date, the CMA shall allocate the Supply Point(s) in question to any one (1) or more Licensed Provider(s) in accordance with the Allocation Process or, in the absence of an approved Allocation Process, in accordance with the process set out in Section 5.3.6(i)(b);
- (iv) the CMA shall Register the Supply Points so allocated to the relevant Incoming Licensed Provider(s) in accordance with CSD 0105 (Error Rectification & Retrospective Amendments); and
- (v) the Incoming Licensed Provider shall be responsible for all Supply Points Registered to it by the CMA from the Registration Start Date.

## 5.8 **Establishing and Maintaining the Central Settlement System**

The CMA shall operate and maintain the Central Settlement System to meet the requirements of the Market Code including the following CSDs: CSD 0201 (Settlement Timetable & Reporting), CSD 0202 (Meter Read Submission: Process), CSD 0203 (Meter Read Submission: Validation), CSD 0204 (Volume Processing & Estimation), CSD 0205 (Change Calculation, Allocation & Aggregation), CSD 0206 (Trade Effluent Processes), CSD 0301 (Data Transaction Catalogue) and CSD 0003 (Provider of Last Resort). The CMA shall develop the Central Settlement System to take account of Approved Changes and/or Commission Changes.

## 5.9 **Provision of Meter Reads**

### 5.9.1 **General Duties**

Trading Parties are responsible for carrying out and submitting Meter Reads under the Market Code in accordance with CSD 0202 (or otherwise as set out in any CSD) and in so doing each Trading Party shall:-

- (i) ensure it has all necessary consents required to enable it to obtain the Meter Read;
- (ii) take all reasonable steps to ensure that meters are not interfered or tampered with;

- (iii) use all reasonable endeavours to ensure the accuracy of Meter Reads and all related information submitted to the CMA and shall ensure that all submissions are made in a timely fashion;
- (iv) notify the CMA of any signs of interference or tampering and, if the Trading Party so notifying the CMA is not Scottish Water, the CMA shall notify Scottish Water as soon as is reasonably practicable following receipt of the original notification; and
- (v) promptly request meter accuracy tests or report meter faults in accordance with the Operational Code.

#### 5.9.2 **Co-operation among Trading Parties**

Each Trading Party shall co-operate with each other Trading Party by providing meter related information and by carrying out and submitting Meter Reads where the meter configuration for a Supply Point requires such co-operation including, without limitation, in the case of Complex Sites, where Trading Parties are obliged to provide related Meter Reads within the timescales specified in CSD 0202 (Meter Read Submission: Process) or as otherwise specified by the CMA and without any charge for carrying out this service.

#### 5.9.3 **CMA Requested Meter Reads**

The CMA shall be entitled to request that any Trading Party carries out and submits Meter Reads on an ad hoc basis where the CMA reasonably considers this is necessary for the proper implementation of the Market Code and Trading Parties shall comply with any such requests. The CMA and Trading Parties shall also rectify consumption errors in accordance with CSD 0105 (Error Rectification & Retrospective Amendments).

#### 5.9.4 **Regular Cyclic Reads**

- (i) In relation to Monthly Read Meters for all Supply Points for which it is Registered, each Licensed Provider shall carry out or procure that its agent shall carry out a Regular Cyclic Read and submit this to the CMA once a Month in accordance with CSD 0202 (Meter Read Submission: Process). The Licensed Provider shall be entitled to arrange for Customer Reads to be carried out (instead of the Licensed Provider or its agent carrying out a Regular Cyclic Read) on up to ten (10) occasions in any calendar year per Supply Point and in

accordance with CSD 0202 (Meter Read Submission: Process). Where more than two (2) customer reads are submitted in a calendar year, the Licensed Provider (or agent) reads shall be separated by no more than seven (7) months.

- (ii) In relation to Bi-annually Read Meters for all Supply Points for which it is Registered, each Licensed Provider shall carry out or procure that its agent shall carry out a Regular Cyclic Read and submit this at least once every six (6) months in accordance with CSD 0202 (Meter Read Submission: Process). To avoid doubt, the Licensed Provider shall be entitled to arrange for Customer Reads to be carried out (instead of the Licensed Provider or its agent carrying out a Regular Cyclic Read), but only on one (1) occasion in any calendar year per Supply Point and in accordance with CSD 0202 (Meter Read Submission: Process).

#### 5.9.5 **Meter Reads relating to change events**

Scottish Water shall carry out and submit Meter Reads on each of the events set out in CSD 0202 (Meter Read Submission: Process) in accordance with that CSD.

#### 5.9.6 **Meter Accuracy**

Where, on the basis of evidence available to it, the CMA reasonably believes that there is any question or dispute concerning the accuracy of any Meter Read, the CMA shall be entitled to require that the relevant Trading Party requests a meter accuracy test in accordance with the Operational Code.

### 5.10 **Validation**

#### 5.10.1 **Carrying out Validation**

On receipt of any Meter Read the CMA shall carry out:-

- (i) Registration and content validation;
- (ii) duplicate data checking; and
- (iii) volume validation,

all in accordance with CSD 0203 (Meter Read Submission: Validation).

#### 5.10.2 **Validation Failure**

If the Meter Read fails validation, the CMA will notify the Licensed Provider or Scottish Water (as appropriate) of a validation failure in accordance with CSD 0203 (Meter Read Submission: Validation).

5.10.3 On receipt of any notice of a validation failure the Licensed Provider (or Scottish Water (as appropriate) shall respond to the CMA in accordance with CSD 0203 (Meter Read Submission: Validation).

5.10.4 **Estimated Meter Reads**

Where a Meter Read is not provided for a Supply Point or where a Meter Read fails validation in accordance with CSD 0203 (Meter Read Submission: Validation) the CMA shall be entitled to use an estimated Meter Read for the purposes of any Settlement Run in accordance with CSD 0204 (Volume Processing & Estimation).

5.11 **Volume Processing and Estimation**

The CMA shall calculate or be notified of the Actual Volume, Actual Daily Volume, Daily Actual Volume Discharged, Estimated Daily Volume and Trade Effluent Estimated Yearly Volume attributable to each Supply Point, meter or Discharge Point (as appropriate) in accordance with CSD 0204 (Volume Processing & Estimation) and CSD 0206 (Trade Effluent Processes).

5.12 **Charge Calculation, Allocation and Aggregation**

5.12.1 The CMA shall calculate the Wholesale Charges payable by each Licensed Provider for the provision of both Water Services and Sewerage Services (other than Trade Effluent Services) for each Invoice Period in accordance with CSD 0205 (Charge Calculation, Allocation & Aggregation).

5.12.2 The CMA shall calculate the Wholesale Charges payable by each Licensed Provider for the provision of Trade Effluent Services for each Invoice Period in accordance with CSD 0206 (Trade Effluent Processes).

5.13 **Settlement Timetable and Reporting**

5.13.1 The CMA shall carry out Settlement Runs for each Settlement Day and shall issue Settlement Reports all in accordance with CSD 0201 (Settlement Timetable & Reporting) and CSD 0206 (Trade Effluent Processes) as appropriate.

5.13.2 The CMA shall be entitled to carry out Ad-hoc Runs in accordance with Part 9 (Disputes Procedure).

5.14 **Data Transaction Catalogue**

In providing all data required by the Market Code, each Code Party shall ensure that it complies with the requirements of and uses the method of communication specified in the CSD0301 (Data Transaction Catalogue).

5.15 **Supply Points at Eligible Premises with multiple occupancy**

In relation to any Eligible Premises that is occupied as at the Go Live Date by a number of owners and/or tenants or other occupiers, the following rules shall apply in determining the number of Supply Points for that Eligible Premises:-

5.15.1 where the supply of Services to any Eligible Premises as a whole is Metered and there is a Rateable Value for one (1) or more Units within that Eligible Premises, the Eligible Premises will be regarded as having the following Supply Points:-

- (i) one (1) for the supply of Water Services to the Eligible Premises as a whole; and
- (ii) one (1) for the supply of such Sewerage Services as are provided to the Eligible Premises as a whole; and
- (iii) one (1) for each Unit with a separate Rateable Value receiving Surface Water Drainage Services;

5.15.2 where the supply of Services to any Eligible Premises as a whole is Metered and none of the Units within that Eligible Premises has a separate Rateable Value, the Eligible Premises will be regarded as having the following Supply Points:-

- (i) one (1) for the supply of Water Services to the Eligible Premises as a whole; and
- (ii) one (1) for the supply of such Sewerage Services as are provided to the Eligible Premises as a whole;

5.15.3 where the supply of Services to any Eligible Premises as a whole is Unmeasurable or Measurable and there is a Rateable Value for one or more Units within that Eligible Premises, the Eligible Premises will be regarded as having the following Supply Points:-

- (i) one (1) for the supply of Water Services to each Unit within the Eligible Premises; and
- (ii) one (1) for the supply of such Sewerage Services as are provided to each Unit within the Eligible Premises; and

5.15.4 where the supply of Services to any Eligible Premises as a whole is Unmeasurable or Measurable and none of the Units within that Eligible Premises has a separate Rateable Value, the Eligible Premises will be regarded as having the following Supply Points:-

- (i) one (1) for the supply of Water Services to the Eligible Premises as a whole; and

- (ii) one (1) for the supply of such Sewerage Services as are provided to the Eligible Premises as a whole.

To avoid doubt, the above rules shall not apply to any Eligible Premises that have not been occupied by a number of owners and/or tenants or other occupiers prior to the Go Live Date and the definition of Supply Point in Schedule 1 to the Market Code shall apply to such Eligible Premises without reference to this Section 5.15.

## **Part 6: Performance Standards, Monitoring and Issues Resolution**

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### **6.1 Scope**

This Part 6 sets out or refers to:-

- 6.1.1 the Performance Standards relevant to each Trading Party;
- 6.1.2 the role of the CMA in monitoring and reporting on compliance with the Performance Standards and on its own compliance with the Market Code;
- 6.1.3 the role of the CMA in connection with failures to meet the Performance Standards; and
- 6.1.4 the role of the CMA in dealing with enquiries from and resolving issues raised by Trading Parties.

### **6.2 Trading Party Performance Standards**

- 6.2.1 Each Trading Party shall carry out its duties under the Market Code in order to meet the Performance Standards relevant to it.
- 6.2.2 The CMA shall monitor the performance of each Trading Party against the Performance Standards and shall send each Trading Party a report detailing that Trading Party's performance against the Performance Standards on a monthly basis.
- 6.2.3 If a Trading Party fails to meet any of the Performance Standards and any Performance Standard Charges are due in accordance with Sections 6.2.4, 6.2.5 and 6.2.6, then the CMA shall be entitled to invoice that Trading Party for Performance Standard Charges in accordance with CSD 0002 (Performance Standards) and Part 7 provided that the Board shall be entitled, in its discretion to disapply any of the Performance Standard Charges at any time prior to the Review Date. In deciding whether or not to disapply any of the Performance Standard Charges the Board shall consult with the TP.
- 6.2.4 Subject to Sections 6.2.5 and 6.2.6 below, for each period of three months from the Go Live Date each Trading Party shall incur a Performance Standard Charge of £30 for each Performance Standard failed where "failed" has the meaning given in CSD 0002 (Performance Standards).
- 6.2.5 No Performance Standard Charge will be payable by any Trading Party in relation to the first 5 per cent of Performance Standard failures by that Trading Party in the relevant three month period.

- 6.2.6 The aggregate liability of each Trading Party in relation to any Year for Performance Standard Charges shall in no event exceed £100,000.
- 6.2.7 The CMA shall provide a report to the TP on a quarterly basis setting out the extent to which Trading Parties are meeting or failing to meet the Performance Standards, such report to be prepared on a market level basis and shall not specifically identify individual Trading Parties.
- 6.2.8 The CMA shall be entitled to require that a Trading Party carries out Market Tests in accordance with the Market Assurance Process where that Trading Party persistently fails to meet some or all of the Performance Standards relevant to it.
- 6.2.9 Each Trading Party shall keep full and accurate records of the performance of its duties under the Market Code.
- 6.2.10 If a Trading Party incurs any Performance Standard Charges that Trading Party shall provide a written report to the CMA confirming the remedial steps that it will take to avoid such failure recurring.

### 6.3 **Performance Standards and Performance Indicators Review**

- 6.3.1 The CMA shall monitor the performance of each Trading Party against the Performance Indicators during the period from the Go Live Date to the Review Date with a view to considering whether or not such Performance Indicators should become Performance Standards.
- 6.3.2 The Board shall review the Performance Standards and the Performance Indicators in the period of three (3) months immediately prior to the Review Date and shall be entitled to make amendments to the Performance Standards and the Performance Standard Charges and to introduce new Performance Standards and Performance Standard Charges in order to encourage continuous improvement in Trading Parties' compliance with their duties under the Market Code such amended or new Performance Standards and Performance Standard Charges to take effect from the Review Date.
- 6.3.3 The Board shall review the Performance Standards and the Performance Standard Charges on an annual basis thereafter from the first anniversary of the Review Date and shall be entitled to make amendments to the Performance Standards and the Performance Standard Charges and to introduce new Performance Standards and Performance Standard Charges in order to

encourage continuous improvement in Trading Parties' compliance with their duties under the Market Code.

#### **6.4 Monitoring and Enforcement by the CMA**

6.4.1 The CMA shall also monitor compliance by each Trading Party with its duties under the Market Code (other than in relation to the Performance Standards).

6.4.2 The CMA may commence and continue court proceedings on the instructions of the Board against any Trading Party which is, or may be, in breach of any of its duties under Part 7 of the Market Code.

6.4.3 Each Trading Party (other than the Trading Party in breach or possible breach) hereby appoints CMA as agent in its name and on its behalf to commence and take such proceedings, and agrees that CMA shall exclusively have the conduct of the proceedings.

6.4.4 All costs and expenses incurred by CMA in the proceedings (including any amounts awarded to the Trading Party in breach or possible breach) shall be CMA Charges.

6.4.5 Where any amount is recovered from the Trading Party in breach pursuant to such proceedings, such amount shall be taken into account in determining under Section 7.3 the amounts payable by Trading Parties in respect of CMA Charges on such basis as the CMA shall consider fair and reasonable in all the circumstances.

#### **6.5 CMA Performance**

6.5.1 The CMA shall comply with its obligations to receive and issue data in accordance with the Market Code. The CMA shall monitor its compliance with the timescales set out in the Market Code and will provide quarterly reports to the TP setting out the extent to which it is meeting or failing to meet such timescales.

6.5.2 To the extent that the CMA materially or persistently fails to meet certain timescales set out in the Market Code, the CMA shall provide a written report to the TP confirming the remedial steps that it will take to avoid such failure recurring.

#### **6.6 Enquiries and Issues Resolution**

6.6.1 Trading Parties shall be entitled to raise such enquiries with the CMA as are permitted by such relevant Working Procedure as may be in force from time to

time. Trading Parties shall submit enquiries in any format specified by such Working Procedure.

6.6.2 The CMA shall log all permitted enquiries raised by Trading Parties and shall provide assistance to Trading Parties with a view to resolving such enquiries in accordance with the relevant Working Procedure as may be in force from time to time.

6.6.3 Enquiries may only be raised by a Trading Party relating to the CMA's performance of its obligations under Section 5.12.2 where such Trading Party provides evidence to the CMA which demonstrates a material discrepancy between reasonably estimated Wholesale Charges for each Licensed Provider and the Wholesale Charges calculated by the CMA pursuant to Section 5.12.2, provided that an enquiry may only be raised by that Trading Party in respect of that category of Services to which such material discrepancy relates.

## 6.7 Reports

6.7.1 The CMA Charges are inclusive of and the CMA shall release all data and issue all reports as are required by the Market Code in accordance with its terms.

6.7.2 The CMA Charges are inclusive of and the CMA shall provide Market Level Data (and other reports requested by the Commission) to the Commission.

6.7.3 Subject to Section 6.7.4 and the CMA's obligations under Section 10.5, where the Market Code does not expressly require the CMA to release particular data or issue specific reports, the CMA shall be entitled to release data and provide reports to Trading Parties in response to ad hoc requests by Trading Parties therefor as part of the provision of Additional Services, provided that:-

- (i) this Market Code specifies that such data or reports may be so released;
- (ii) any Trading Party(ies) (or the relevant Customer(s)) which is the subject of the data or report has consented to the release in writing;
- (iii) the data or report contains only Market Level Data; or
- (iv) the release of the data or reports is approved by the Board.

6.7.4 The CMA shall not provide any data or report to Scottish Water which provides Scottish Water with information regarding individual Customers save only where such information is strictly necessary to enable Scottish Water to perform its

obligations to enforce Trade Effluent compliance under the Sewerage (Scotland) Act 1968 and only to the extent necessary for the performance of such obligations.

6.7.5 Subject to Section 6.7.3 and 6.7.4 the CMA shall release data and provide reports to any Expert or to any Disputing Parties in order to assist in resolving any Dispute.

## 6.8 **Audit**

6.8.1 Subject to the prior approval of the Board and if requested by the Board, the CMA shall:-

- (i) appoint or remove a Market Auditor on behalf of the Trading Parties;  
and
- (ii) define the scope of any audit or audits to be carried out by the Market Auditor for any Year or other period.

6.8.2 Subject to the prior approval of the Board, Market Tests may also be invoked by the Market Auditor to provide continued assurance of the correct operation of the Market Code in response to either:-

- (i) a reduction in operational performance; or
- (ii) a significant change to wholesale arrangements.

## **Part 7: Cost Recovery**

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### **7.1 Scope**

This Part 7 sets out the requirements in relation to each of the following:-

- 7.1.1 the annual budgetary process for the CMA;
- 7.1.2 the method of calculation of CMA Charges;
- 7.1.3 the payment of CMA Charges by Trading Parties to the CMA; and
- 7.1.4 the handling of any failure to pay CMA Charges.

### **7.2 Annual CMA Budget and CMA Charges Process**

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

- (i) all proposed operating costs of the CMA (excluding those costs provided for by the payment of an Additional Service Charge); and
- (ii) any other proposed costs of the CMA (including any proposed capital expenditure and any finance costs),

which in each case the CMA anticipates will be incurred in the following Year in carrying out its duties under the Market Code (together the "Total Costs"). The draft CMA Budget will also set out the aggregate CMA Charges which the CMA proposes to charge to Trading Parties during the relevant Year, being an amount no greater than the Total Costs. Notwithstanding the foregoing, the first draft CMA Budget shall cover the Transitional Charging Period.

7.2.2 The CMA shall provide the draft CMA Budget to the TP for consultation prior to the start of the relevant Year (and prior to amending the CMA Budget in accordance with Section 7.2.4 below). The CMA shall give due consideration to any representations made by the TP in relation to the CMA Budget. The TP shall provide any such representations to the CMA within twenty (20) Business Days of receipt of the draft CMA Budget.

7.2.3 Subject to Section 7.2.2, the CMA shall finalise the CMA Budget and make copies available to Trading Parties.

7.2.4 If, at any time during the Year to which the CMA Budget relates, the CMA reasonably believes that the CMA will exceed its expected budget, the CMA shall consider what remedial action might be taken or whether any change to the CMA Budget is required. Subject to Section 7.2.2, the CMA may change the CMA

Budget at any time during the relevant Year if the CMA reasonably believes it is necessary to do so.

7.2.5 If the CMA Budget is changed during the relevant Year under Section 7.2.4, the CMA shall, if necessary recalculate the CMA Charges for the remainder of the relevant Year.

7.2.6 Where the CMA considers that a substantial proportion of CMA Charges are likely to be incurred on a significantly uneven basis over the course of a Year:

- (i) the CMA may adjust the profile of recovery of CMA Charges in accordance with Section 7.2.6(ii);
- (ii) 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 CMA Charges; and
- (iii) the CMA shall inform Scottish Water and Licensed Providers of such factors (and the month(s) to which each such factor applies) as soon as they have been approved by the CMA.

7.2.7 The CMA shall be entitled to fund its activities by borrowing. It shall be entitled to recover the cost of any such borrowing by way of CMA Charges.

7.2.8 The CMA shall allocate the costs of capital expenditure equitably as between current and future Trading Parties.

### 7.3 **Recovering the CMA Charges and Other Charges**

#### 7.3.1 **Transitional Charging Period**

The CMA shall be entitled to recover all of the CMA Charges in respect of the Transitional Charging Period ("Transitional Charges") from Scottish Water and Scottish Water shall pay the Transitional Charges on request by the CMA.

#### 7.3.2 **All Subsequent Years**

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

- (i) Scottish Water shall pay one third ( $\frac{1}{3}$ ) of the CMA Charges ("Scottish Water CMA Charges") and any Default CMA Charges in respect of that Year; and

- (ii) Licensed Providers shall pay two thirds ( $\frac{2}{3}$ ) of the CMA Charges ("Licensed Provider CMA Charges") and any Default CMA Charges in respect of that Year.

Each Licensed Provider's share of the Licensed Provider CMA Charges for the first Month following the Go Live Date and all subsequent Months shall be calculated as set out in Sections 7.3.3 and 7.3.4.

### 7.3.3 First Month

$$\text{Licensed Provider Share (per Month)} = \frac{\text{Total Licensed Provider Pending Supply Point Registrations}}{\text{Aggregate Market Pending Supply Point Registrations}} \times 100\%$$

where,

"Licensed Provider Share (per Month)" is the Licensed Provider's percentage share of the Licensed Provider CMA Charges for the first Month following the Go Live Date;

"Total Licensed Provider Pending Supply Point Registrations" is the total number of Supply Point Registrations Registered to the Licensed Provider in the Supply Point Register as at the date which is sixteen (16) Business Days prior to the Go Live Date with a Registration Start Date which is the Go Live Date; and

"Aggregate Market Pending Supply Point Registrations" is the aggregate number of all Supply Points Registered to all Licensed Providers in the Supply Point Register as at the date which is sixteen (16) Business Days prior to the Go Live Date with a Registration Start Date which is the Go Live Date.

### 7.3.4 Subsequent Months

$$\text{Licensed Provider Share (per Month)} = \frac{\text{Total Licensed Provider Supply Points}}{\text{Aggregate Market Supply Points}} \times 100\%$$

where,

"Licensed Provider Share (per Month)" is the Licensed Provider's percentage share of the Licensed Provider CMA Charges for any Month in the relevant Year (excluding the first Month following the Go Live Date);

"Total Licensed Provider Supply Points" is the aggregate number of Supply Points Registered to the Licensed Provider in the Supply Point Register as at the date sixteen (16) Business Days prior to the start of the relevant Month; and

"Aggregate Market Supply Points" is the aggregate number of all Supply Points Registered to all Licensed Providers in the Supply Point Register as at the date which is sixteen (16) Business Days prior to the start of the relevant Month

- 7.3.5 The CMA shall be entitled to charge for providing any Additional Service for a Trading Party in accordance with a schedule of standard charges. Where the Additional Service is requested on a one off or ad hoc basis the CMA shall be entitled to agree a charge for the relevant service with the Trading Party requesting the service.

#### 7.4 **Payment of CMA Charges**

- 7.4.1 Following finalisation of the CMA Budget and the CMA Charges, the CMA shall:-
- (a) notify Scottish Water of the initial amount of the Scottish Water CMA Charges and shall allocate the Scottish Water CMA Charges into Monthly instalments; and
  - (b) notify all Licensed Providers of the initial aggregate Licensed Provider CMA Charges for the Year.
- 7.4.2 The CMA shall prepare for each Month an invoice for Scottish Water detailing:-
- (i) the amount of the Scottish Water CMA Charges and any Default CMA Charges payable by Scottish Water in respect of that Month;
  - (ii) any Additional Service Charge payable by Scottish Water in terms of Section 7.3.5;
  - (iii) any Performance Standard Charges payable by Scottish Water;
  - (iv) any interest payable by Scottish Water under Section 7.7; and
  - (v) the total amount payable by Scottish Water and any value added tax payable thereon.
- 7.4.3 Subject to Section 7.10 the CMA shall prepare for each Month an invoice for each Licensed Provider detailing:-
- (i) the amount of the Licensed Provider's share of the Licensed Provider CMA Charges and any Default CMA Charges payable in respect of that Month and the basis of calculation of such share;
  - (ii) any Additional Service Charge payable by that Licensed Provider in terms of Section 7.3.5;
  - (iii) any Performance Standard Charges payable by the Licensed Provider;

- (iv) any interest payable by the Licensed Provider under Section 7.7; and
- (v) the total amount payable by the Licensed Provider and any value added tax payable thereon.

Save in relation to the first Month after the Go Live Date, each invoice shall be despatched by the CMA to each Trading Party at least fourteen (14) Business Days prior to the start of the relevant Month. An invoice covering the first Month after the Go Live Date shall be despatched by the CMA to each relevant Trading Party not later than seven (7) Business Days prior to the start of the relevant Month.

#### **7.5 Due Date For Payment**

Each Trading Party shall:

- (i) pay its CMA Charges, any Default CMA Charges and any Performance Standard Charges for any Month not later than ten (10) Business Days prior to the start of the Month; and
- (ii) in respect of reconciliation payments payable under Section 7.11 each Trading Party shall make any payment not later than five (5) Business Days after the date of any invoice issued to a Trading Party under Section 7.11.6;

and references to the invoice due date in Section 7.7 and 7.8 shall be to each of the dates on which payment is due under Sections 7.5(i) to (iii) above.

#### **7.6 Method of Payment**

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

#### **7.7 Interest**

If any amount due to the CMA in terms of the Market Code is not received on the invoice due date (which in the case of the Transitional Charges shall be ten (10) Business Days after receipt by Scottish Water of any request by CMA pursuant to Section 7.3.1), the Trading Party required to pay such amount shall pay interest to the CMA 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 Scotland, 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.

## 7.8 Failure to pay

7.8.1 If any Trading Party (a "non-paying Trading Party") fails to pay in full, within ten (10) Business Days after the invoice due date, any amount payable by it in respect of CMA Charges:-

- (i) the CMA shall promptly notify all Trading Parties, the TP and the Commission to that effect, and Section 7.8.2 shall apply; and
- (ii) subject to and with effect from the time at which the CMA decides to treat such amount as a bad debt, such amount shall be recovered by the CMA from all Trading Parties (other than the non-paying Trading party) and each such Trading Party will be liable to pay additional amounts by way of CMA Charges, determined in accordance with this Section 7.8, provided that sums due in respect of Performance Standard Charges shall not be recoverable from all Trading Parties in this manner.

7.8.2 Scottish Water shall pay one third ( $\frac{1}{3}$ ) of any Default CMA Charges and Licensed Providers shall pay two thirds ( $\frac{2}{3}$ ) of any Default CMA Charges. Each Licensed Provider's share of any unpaid CMA Charges to be paid as Default CMA Charges shall be calculated in accordance with that Licensed Provider's Market Share calculated as at the most recent Month in relation to which the CMA has submitted an invoice for CMA Charges to such Licensed Party (the "relevant Month") where Market Share shall be calculated as follows:

$$\text{Licensed Provider Market Share} = \frac{\text{Licensed Provider Wholesale Charges for relevant Month}}{\text{Aggregate Wholesale Charges for relevant Month - nonpaying}} \times 100\%$$

Licensed Provider's Wholesale Charges for relevant month

7.8.3 Where an amount is unpaid in respect of CMA Charges as described in Section 7.8.1 the CMA shall take reasonable steps (including court proceedings if appropriate) to pursue and recover the unpaid amount from the non-paying Trading Party.

7.8.4 If the CMA subsequently recovers any amount from the non-paying Trading Party in respect of the unpaid CMA Charges the amount recovered will be taken into

account in determining under Section 7.3 the amounts payable in subsequent months by Trading Parties in respect of CMA Charges.

7.8.5 Without prejudice to the CMA's continuing entitlement to payment by a non-paying Trading Party in respect of the CMA Charges, a non-paying Trading Party shall indemnify and keep indemnified each other Trading Party on demand in respect of all amounts paid by such other Trading Party to CMA in respect of its liability under Section 7.8.1(ii).

7.8.6 While any amount is outstanding from the non-paying Trading Party in respect of CMA Charges, the CMA will be entitled to withhold any payments which may be due to that Trading Party from the CMA.

#### 7.9 **CMA Conduct**

The obligations of each Trading Party in respect of CMA Charges, Default CMA Charges, Performance Standard Charges and Additional Service Charges provided for in this Part 7 shall not be prejudiced, qualified or affected in any way by any breach by the CMA of any provision of the Market Code, or any other act or omission of the CMA.

#### 7.10 **Minimum Level of CMA Charges**

If any Licensed Provider's share of the Licensed Provider CMA Charges payable in respect of any Month is less than the Minimum Charge the CMA shall not prepare an invoice for Licensed Provider CMA Charges for any such Licensed Provider in respect of such Month but shall roll such Licensed Provider CMA Charges forward into the next Month. The CMA will only prepare an invoice for any such Licensed Provider's CMA Charges following the Month in which such Licensed Provider's aggregate share of Licensed Provider CMA Charges amounts to a sum equal to or in excess of the Minimum Charge.

#### 7.11 **Reconciliation**

7.11.1 In relation to each Year (and the Transitional Charging Period) the CMA shall, not later than twenty five (25) Business Days after publication of its audited accounts for that Year (or part of the Year in the case of the Transitional Charging Period), make a final determination and adjustment in respect of the amounts payable by each Trading Party by way of CMA Charges for that Year (or the Transitional Charging Period) or any amount payable by the CMA in respect of excessive recovery of CMA Charges for that Year (or the Transitional Charging Period).

- (i) If the total CMA Charges recovered for any Year (or the Transitional Charging Period) are less than the Total Costs for that Year (or the

Transitional Charging Period), the shortfall shall be recovered from Trading Parties in accordance with Section 7.11.2.

- (ii) If the total CMA Charges recovered for any Year (or the Transitional Charging Period), are greater than the Total Costs for that Year (or the Transitional Charging Period), the surplus shall be reimbursed to Trading Parties in accordance with Section 7.11.3.

7.11.2 Each Trading Party's liability for any shortfall between CMA Charges recovered and Total Costs shall be calculated by the CMA as follows:

(i) **Transitional Charging Period**

Scottish Water shall be liable for any shortfall between the Transitional Charges recovered and Total Costs.

(ii) **All Subsequent Years**

(a) Scottish Water shall be liable for one third (1/3) of any shortfall between the CMA Charges recovered and Total Costs; and

(b) Licensed Providers shall be liable for two thirds (2/3) of any shortfall between the CMA Charges recovered and Total Costs. Each Licensed Provider's share of such liability shall be calculated as follows:

$$\text{Licensed Provider Share} = \frac{\text{Average Licensed Provider Supply Points over relevant Year}}{\text{Average Aggregate Market Supply Points over relevant Year}} \times 100\%$$

where in the first full Year following the Go Live Date the Average Licensed Provider Supply Points over relevant Year and Average Aggregate Market Supply Points over relevant Year shall be calculated using the averages of the figures submitted for the preceding eleven (11) months for Total Licensed Provider Supply Points and Aggregate Market Supply Points under Section 7.3.4 and for each subsequent Year such averages shall be calculated using the averages of the figures submitted for Total Licensed Provider Supply Points and Aggregate Market Supply Points for the preceding twelve (12) months under Section 7.3.4.

7.11.3 Subject to Section 7.11.4, each Trading Party's entitlement to any surplus referred to in Section 7.11.1(ii) shall be calculated as follows:

(i) **Transitional Charging Period**

The CMA shall retain any surplus accruing in the Transitional Charging Period. The CMA shall take account of any such funds in setting the CMA Budget for the first full Year following the Go Live Date.

(ii) **All Subsequent Years**

(ii)(a) Scottish Water shall be entitled to one third (1/3) of any surplus; and

(ii)(b) Licensed Providers shall be entitled to two thirds (2/3) of any surplus.

Each Licensed Provider's share of such surplus shall be calculated as follows:

$$\text{Licensed Provider Share} = \frac{\text{Average Licensed Provider Supply Points over relevant Year}}{\text{Average Aggregate Market Supply Points over relevant Year}} \times 100\%$$

where in the first full Year following the Go Live Date the Average Licensed Provider Supply Points over relevant Year and Average Aggregate Market Supply Points over relevant Year shall be calculated using the averages of the figures submitted for the preceding eleven (11) months for Total Licensed Provider Supply Points and Aggregate Market Supply Points under Section 7.3.4 and for each subsequent Year such averages shall be calculated using the averages of the figures submitted for Total Licensed Provider Supply Points and Aggregate Market Supply Points for the preceding twelve (12) months under Section 7.3.4.

7.11.4 The CMA shall pay any sums due to Trading Parties in accordance with this Section 7.11 within five (5) Business Days of the date of its final determination under Section 7.11.1 provided that no such reimbursement shall be made:

- (i) to Scottish Water where the sum in question is less than £10,000; or
- (ii) to any Licensed Provider where the sum due to that Licensed Provider is less than five per cent (5%) of the CMA Charges paid or payable by that Licensed Provider in the final Month of the Year to which such sum due relates,

in which case such sum shall be deducted from the next invoice for CMA Charges submitted to the relevant Trading Party under Section 7.4.

- 7.11.5 The CMA 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 and Section 7.10 (relating to Minimum Charges) shall not apply to any payments due under this Section 7.11.
- 7.11.6 The CMA shall invoice any amounts determined to be payable by Trading Parties in the relevant Year under this Section 7.11 and such amounts shall be payable in accordance with Section 7.5(iii).
- 7.11.7 Subject only to Section 7.11.8, the CMA's determination of CMA Charges for any Year (or the Transitional Charging Period) shall be final and binding and no further adjustment shall be made.
- 7.11.8 If, after the final determination under Section 7.11 the CMA 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 CMA Charges for any Year, the CMA may in its discretion direct, and Trading Parties shall be bound by, and the CMA shall give effect to, such adjustments in respect of CMA Charges (payable by and to Trading Parties) in that Year as appears to the CMA to be appropriate.

## 7.12 **Charging Disputes**

- 7.12.1 If a Trading Party disputes any amount shown in any Relevant Invoice, that Trading Party shall nevertheless pay the amount shown in full and may not withhold payment of such amount or any part thereof. A Trading Party shall only be entitled to dispute any amount shown in any Relevant Invoice provided it has notified the CMA of such dispute within one (1) Month of the date on which such Relevant Invoice was issued.
- 7.12.2 Where a Trading Party notifies the CMA of any dispute or query as to the amount shown in any Relevant Invoice, the CMA shall as soon as is reasonably practicable (but not necessarily before the due date for payment) investigate the matter and inform the Trading Party of the outcome of its investigation.
- 7.12.3 Where (pursuant to paragraph 7.12.2 or otherwise) the CMA establishes that, or it is determined by any Expert appointed under Part 9 Section 9.4 that, any error has been made in the determination of the amounts payable by any Trading Party in respect of any Relevant Invoice (whether such error resulted in over-payments or in under-payment by any such Trading Party), the CMA will make such

adjustments, in respect of the subsequent Relevant Invoice (following such establishment or determination) payable in accordance with this Market Code by or to such Trading Party or Trading Parties, as will ensure that the correct amounts have been so paid.

7.12.4 No amount in respect of interest shall be included in any adjustment under paragraph 7.12.3.

7.12.5 Nothing in this Part 7 shall be construed as preventing the CMA from withdrawing and replacing (with the same due date for payment) any Relevant Invoice, before the due date for payment, by agreement with the Trading Party concerned, where the CMA is aware of an error in such invoice or statement.

### 7.13 **Treatment of Performance Standard Charges**

For the avoidance of doubt payments received by the CMA in respect of Performance Standard Charges shall be held by the CMA separately from all other sums received by it pursuant to the Market Code. Such sums will not be taken account of by the CMA when carrying out reconciliations in accordance with Section 7.11 and any redistribution of such sums amongst Trading Parties or other allocation of such sums shall be at the complete discretion of the Board.

## Part 8: Governance

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### 8.1 Scope

This Part 8 sets out the governance process for the Market Code and the change process for the Operational Code. In particular this Part confirms:-

- 8.1.1 the membership of the Board;
- 8.1.2 the role of the Board;
- 8.1.3 the arrangements for meetings of the Board;
- 8.1.4 the mechanism for the Board taking decisions;
- 8.1.5 the Constitution of the TP;
- 8.1.6 the role of the TP;
- 8.1.7 the proceedings of the TP;
- 8.1.8 the processes to be followed by the TP for both Market Code Change Proposals and Operational Code Change Proposals; and
- 8.1.9 various ancillary matters.

### 8.2 Membership of the CMA

8.2.1 Each Original Applicant shall be a Member of CMA.

8.2.2

- (i) On a Trading Party (other than an Original Applicant) satisfying the Admission Conditions that Trading Party shall apply to become a Member of CMA and shall sign and deliver to the CMA Secretary an application for membership in the form required by the Articles of CMA.
- (ii) A Licensed Provider shall not be entitled to become a Member of CMA where that Licensed Provider is a member of a Licensed Provider's Group where another member of that Group is a Licensed Provider and is already a Member of CMA (but for the avoidance of doubt this shall not prevent such parties from becoming Code Parties in accordance with the provisions of this Market Code).

8.2.3 DELETED 15 JULY 2008.

8.2.4 Each Member of CMA agrees with the other Members to exercise its rights as a Member so as to ensure that:-

- (i) CMA fulfils its duties under the Market Code and complies with the Articles of Association of CMA;

- (ii) CMA carries out its duties under the Market Code in accordance with sound business practice and so as to break even in any Year;
- (iii) CMA does not carry out any business or activity other than the duties set out in the Market Code;
- (iv) CMA is independent of the interests of that Member and is not obstructed or interfered with in performing its duties by that Member; and
- (v) the nominated Director of any Member shall take such action as is necessary to discharge any obligation of the Board under the Market Code to the maximum extent permissible provided always that no Director shall be obliged by this Section 8.3.1(v) to take action which would cause a Director to be in breach of any fiduciary or other duty of that Director to the CMA.

8.2.5 DELETED 15 JULY 2008.

8.2.6 DELETED 15 JULY 2008.

8.2.7 DELETED 15 JULY 2008.

8.2.8 DELETED 15 JULY 2008.

8.2.9 The provisions of this Part 8 do not constitute an agreement to alter the Articles of Association of CMA.

### 8.3 **Management of CMA**

#### 8.3.1 **The CMA Board**

- (i) DELETED 15 JULY 2008.
- (ii) The Licensed Providers shall nominate up to two (2) Licensed Provider Directors in accordance with Section 8.3.1(iv) below. The number of Licensed Provider Directors shall not exceed two (2) and when there is only one (1) Licensed Provider there shall be only one (1) Licensed Provider Director and Section 8.3.1(iv) shall apply to the appointment of such single Licensed Provider Director, mutatis mutandis.
- (iii) On or before the Effective Date Scottish Water shall inform the CMA Secretary of its nominated Director in respect of the Transitional Charging Period. Thereafter Scottish Water shall by no later than 1<sup>st</sup> March in each year inform the CMA Secretary of its nominated

Director in respect of the following Year (which for the avoidance of doubt may be the same individual as was nominated for the preceding year or the Transitional Charging Period). Each such nominated person shall have the requisite skills and experience and such nomination shall contain the name, address and details of the relevant skills and experience of the person to be appointed as a Director.

(iv)

- (a) The Licensed Provider Members shall meet during the Transitional Charging Period, on the Indicated Date and thereafter, not later than 1 March every year with a view to nominating the Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate (which for the avoidance of doubt may be the same individuals as nominated for the Transitional Charging Period or the preceding Year).
- (b) The CMA Secretary shall, in consultation with all Licensed Provider Members, fix the date of each Nomination Meeting and shall give each Licensed Provider Member not less than twenty (20) Business Days notice in writing of the date of such meeting. Each Licensed Provider Member shall send one suitably authorised representative to attend each Nomination Meeting.
- (c) Each Licensed Provider Member shall be entitled, by notice to the CMA Secretary given no earlier than ninety (90) days before the date of and not later than twenty four (24) hours before the stated commencement time of the Nomination Meeting, to nominate one (1) individual to be Licensed Provider Director. Such nominated individual shall have the requisite skills and experience and such nomination shall contain the name, address and details of the relevant skills and experience of the nominated individual. Any such proposal to be valid shall be in writing and shall be

accompanied by a written statement from the nominated individual stating that he is aware of the proposal and would be prepared to serve as a Licensed Provider Director if nominated.

(d) At each Nomination Meeting the CMA Secretary shall circulate to each Licensed Provider Member a list of the names of all of the individuals nominated to serve as Licensed Provider Directors. In the event that the number of nominated individuals equals the number of Licensed Provider Directors to be nominated for the Transitional Charging Period or the following Year as appropriate then those individuals shall duly become the nominated Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate. In the event that the number of individuals nominated to serve as Licensed Provider Directors exceeds the number to be elected and the Licensed Provider Members present at the Nomination Meeting cannot agree unanimously on the identity of the Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate, the following procedures shall be applied in sequence:-

- (i) each Licensed Provider Member shall be given a voting paper with the name of every individual nominated to serve as a Licensed Provider Director on it;
- (ii) each Licensed Provider Member shall rank each nominated individual in order of preference by marking the nominated individual which is its first choice as Licensed Provider Director with the number "1" and continuing numbering sequentially in order of preference;
- (iii) the CMA Secretary shall prepare a list ranking the nominated individuals in order according to the

- number of votes cast for each with the individual with the greatest number of votes at the head of the list;
- (iv) the nominated individual whose name appears last on the list shall be removed from that list and shall take no further part in the nomination process. The CMA Secretary shall transfer the votes of all those Licensed Provider Members who voted for the nominated individual excluded in accordance with this Section 8.3.1(iv)(d)(iv) to the second preference nominated individual on the voting paper. The CMA Secretary shall then prepare a revised voting list and the procedure set out in this Section 8.3.1(iv)(d) shall be repeated as often as may be necessary until the number of nominated individuals equals the number of Licensed Provider Directors to be nominated at the Nomination Meeting;
- (v) if, at any point in the procedure set out in Section 8.3.1(iv)(d) the votes cast in favour of nominated individuals at the bottom of the voting list are equal then reference shall be made to second preferences and repeated in relation to each subsequent preference until either a nominated individual can be eliminated or the preferences are exhausted. In the event that preferences are exhausted the nominated individual to be removed from the voting list shall be decided by the drawing of lots in a manner to be determined by the CMA Secretary;
- (vi) if the next preference expressed on a voting paper is for a nominated individual who has

already been excluded then the next preference again shall be referred to;

- (vii) once the procedure set out in this Section 8.3.1(iv)(d) results in a number of nominated individuals in the voting list equal to the number of Licensed Provider Directors to be nominated for the Transitional Charging Period or the following Year as appropriate then these individuals shall duly become the nominated Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate.
- (e) A Nomination Meeting may consist of a conference between Licensed Provider Members who are not all in one place but who are able to speak to each of the others and to be heard by the others simultaneously unless it is necessary to apply the procedures set out in Section 8.3.1(iv)(d)(i)-(vii) to select the nominated Licensed Provider Directors for the Transitional Charging Period or the following year as appropriate in which case each Licensed Provider Member must send one suitably authorised representative to attend the Nomination Meeting in person.
- (v)
  - (a) With the exception of the first three (3) non-executive Directors, who shall be nominated by the Commission, non-executive Directors shall be nominated by the Chairman, having regard to the recommendations of the Nominations Committee.
  - (b) The Nominations Committee shall provide its recommendations to the Chairman in accordance with Regulation 8.4 of the Articles of Association of CMA.
  - (c) Non-executive Directors shall be appointed for a fixed term not exceeding 3 years and shall be eligible for re-

appointment following expiry of their initial or any subsequent term.

- (d) A person appointed as a non-executive Director shall hold office for the period of his term of appointment unless he resigns or is removed from office in accordance with the Articles of Association of CMA.
- (e) The Chairman shall ensure that there are at least two (2) non-executive Directors on the Board at all times. There shall be no limit on the number of non-executive Directors who may be appointed to the Board at one time.
- (vi) The appointment of any person nominated under Section 8.3.1(iii) as the Director nominated by Scottish Water shall take effect on commencement of the Year for which they are so nominated at which time the person previously nominated as the Scottish Water Director shall cease to hold office. The appointment of any person to be a Licensed Provider Director under Section 8.3.1(iv)(d) shall take effect on commencement of the Year following such nominations under Section 8.3.1(iv)(d). Any person nominated under Section 8.3.1(v) to be a non-executive Director shall be appointed for such term as is determined pursuant to Sections 8.3.1(v)(c) and 8.3.1(v)(d).
- (vii) DELETED 15 JULY 2008.

### 8.3.2 **Directors**

- (i) DELETED 15 JULY 2008
- (ii) **Removal of Directors**
  - (a) Scottish Water may elect to remove and replace the Director nominated by it by giving notice to the CMA Secretary, such notice must contain that Member's replacement nomination in accordance with Section 8.3.2(iii) below.
  - (b) The Licensed Providers may by unanimous agreement between themselves elect to remove and replace any Director nominated by them by giving notice to the CMA Secretary, such notice must contain the Licensed Providers'

replacement nomination(s) in accordance with Section 8.3.2(iii) below.

(iii) Where a Director nominated by Scottish Water or the Licensed Providers ceases to be a Director by reason of resignation, removal (including under Section 8.3.2(ii)(a) or (b)), death, incapacity or any other reason in accordance with the provisions of the Articles of Association of CMA or the UK Companies Acts (as shall be amended from time to time), Scottish Water or the Licensed Provider Members (as appropriate) shall nominate a replacement Director (such nomination to include the name, address, date of birth and relevant skills and experience of such nominee) in accordance with Section 8.3.1(iii) or 8.3.1(iv) (as appropriate).

8.3.3 DELETED 15 JULY 2008.

8.3.4 DELETED 15 JULY 2008

8.3.5 DELETED 15 JULY 2008

#### 8.4 **Role of the CMA Board**

The Board shall carry out any activities within the scope of the Market Code Objectives and consistent with the Market Code Principles including the following activities:-

8.4.1 authorise the appointment, removal and remuneration of the Market Auditor and agreement of an audit plan by the CMA with the Market Auditor;

8.4.2 approve the CMA Budget and proposed CMA Charges;

8.4.3 review and approve any Market Audit Reports;

8.4.4 confirm satisfactory completion of Market Assurance Processes by any Trading Party;

8.4.5 provide a forum for discussion among Code Parties regarding the operation and development of the Central Systems and the Market Code;

8.4.6 report to the Commission and the Market Auditor on the activities of the Board;

8.4.7 authorise enforcement action in respect of a Trading Party or authorise the issue of a Termination Notice to a Trading Party; and

8.4.8 approve reports and the release of data in accordance with the Market Code.

8.5 DELETED 15 JULY 2008

#### 8.6 **The Technical Panel (TP)**

8.6.1 There is hereby established a panel which shall be constituted in accordance with the further provisions of this Section 8.6.

- 8.6.2 The TP shall comprise the following TP Members:
- (i) a person appointed on behalf of each Original Applicant (except the CMA), who shall be appointed by each Original Applicant giving notice to the TP Secretary of the name and address of its appointee;
  - (ii) subject to Section 8.6.2(iii) a person appointed on behalf of each Trading Party (other than the Original Applicants), who shall be appointed by each Trading Party giving notice to the TP Secretary of the name and address of its appointee on such Trading Party satisfying the Admission Conditions;
  - (iii) a Licensed Provider shall not be entitled to appoint a member to the TP where that Licensed Provider is a member of a Licensed Provider's Group where another member of that Group is a Licensed Provider and has already appointed a member to TP.
- 8.6.3 The CMA Chairman shall also act as TP chairman. The TP chairman shall be entitled to attend and chair all meetings of the TP but not to vote. If the CMA Chairman is unable to be present at a meeting of the TP he may appoint an alternate to act as chairman of that meeting.
- 8.6.4 The CEO of the CMA and a person appointed to represent the Commission shall both be entitled to attend at and speak at all meetings of the TP but not to vote ("Affiliated Member").
- 8.6.5 There shall be a secretary to the TP who shall be appointed by the CMA.
- 8.6.6 The TP shall carry out the following activities:
- (i) keep the contents of the Market Code under review to ensure that it continues to reflect the Market Code Objectives and Market Code Principles and where the TP believes that a Market Code Change would result in the Market Code better reflecting the Market Code Objectives and Market Code Principles it shall make a Market Code Change Proposal in accordance with its power under Section 8.7.1;
  - (ii) consider and vote on any Market Code Change Proposal and/or any Operational Code Change Proposal;
  - (iii) consider and provide its views on any Commission Change;
  - (iv) consider and provide its views on the draft CMA Budget; and

- (v) receive reports on compliance by Code Parties as specified in Sections 6.2.7 and 6.5.1.

8.6.7 A person shall cease to hold office as a TP Member if:

- (i) he resigns his office by notice delivered to the TP Secretary; or
- (ii) if the TP resolves that he should cease to hold office,

and upon any person ceasing to hold office as a TP Member a new TP Member shall be appointed as appropriate in accordance with Section 8.6.2.

8.6.8 A person appointed as a TP Member, when acting in that capacity:

- (i) shall act impartially and shall be guided by the Market Code Principles and Market Code Objectives;
- (ii) shall not be representative of and shall act without undue regard to the particular interests of the body or person by whom he was appointed as a TP Member;
- (iii) shall not be appointed as a TP Member unless he shall have first:

- (a) confirmed in writing to the CMA for the benefit of all Code Parties that he agrees to act as a TP Member in accordance with the Market Code and acknowledges the requirements of this Section 8.6.8; and
- (b) where that person is employed by a Code Party, provided to the TP Secretary a letter from his employer agreeing that he may act as a TP Member and that the requirement in Section 8.6.8(ii) shall prevail over his duties as an employee.

8.6.9 Where the chairman of the TP (on the application of a TP Member) agrees in advance in writing, a TP Member may appoint a person to be his alternate, and may remove a person so appointed by giving notice of such appointment or removal to the TP Secretary. Any alternate appointed in accordance with this Section 8.6.9 shall be entitled to attend, speak and vote at any meeting of the TP where the TP Member who appointed him is not present. Such alternate shall cast one (1) vote for the TP Member by whom he was appointed in addition to any vote which he may hold if he is also a TP Member. All alternates must act in accordance with the provisions of Section 8.6.8.

8.6.10 Meetings of the TP shall be held at regular intervals and at least every three (3) months at such time and place in Scotland as the TP shall decide. The TP

Secretary shall also convene a meeting of the TP before the next regular meeting if required in order to consider any Market Code Change Proposal or Operational Code Change Proposal.

- 8.6.11 Any meeting of the TP shall be convened by the TP Secretary by notice to each TP Member and any alternate appointed in accordance with Section 8.6.9, setting out the date, time and place of the meeting and (unless the TP has otherwise decided) giving at least five (5) 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 Commission and the CMA.
- 8.6.12 With the consent of all TP Members and the chairman of the TP the requirements of Section 8.6.11 may be waived or modified.
- 8.6.13 A meeting of the TP may consist of a conference between TP Members and the chairman of the TP 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 TP 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 TP Members are in Scotland.
- 8.6.14 No business shall be transacted at any meeting of the TP unless a quorum is present at the meeting. A quorum shall be three (3) TP Members, each of whom must be entitled to vote at that meeting, and the chairman of the TP (or his alternate). Where there is only one Licensed Provider the quorum shall be two (2) TP Members who are all entitled to vote at that meeting and the chairman of the TP (or his alternate).
- 8.6.15 At any meeting of the TP any matter to be decided shall be put to a vote of TP Members upon the request of the chairman of the TP or any TP Member. Each TP Member shall cast one (1) vote unless:
- (i) such TP Member represents a Trading Party that does not hold a Permanent Licence; or
  - (ii) such TP Member is nominated as member on behalf of more than one (1) Trading Party, in which case such person shall cast one (1) vote for each Trading Party by which he has been nominated.

8.6.16 Any matter to be decided shall be decided by:-

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

For the purposes of this Section 8.6.16 a Qualifying Majority shall be calculated as follows:-

<b>Total No. of Licensed Providers represented on the TP at the time of the Vote</b>	<b>Qualifying Majority</b>
1	1 member nominated by Licensed Providers
2 or 3	2 members nominated by Licensed Providers
4	3 members nominated by Licensed Providers
5 or 6	at least 4 members nominated by Licensed Providers
7 or 8	at least 5 members nominated by Licensed Providers
9 or more	at least 6 members nominated by Licensed Providers

8.6.17 A resolution in writing signed by or on behalf of all of the TP 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 TP and such an instrument may consist of several instruments in like form each signed by or on behalf of one or more members of the TP.

## 8.7 Market Code Change Process

### 8.7.1 Market Code Change Proposals

- (i) A Market Code Change Proposal may be made by:-
  - (a) any Trading Party;
  - (b) the TP; or
  - (c) the CMA.
- (ii) A Market Code Change Proposal made pursuant to Section 8.7.1(i) will be submitted in writing to the TP Secretary and will contain the following information:-
  - (a) the name of the Proposer;

- (b) a description (in reasonable but not excessive detail) of the issue or defect which the Market Code Change Proposal seeks to address;
  - (c) a description (in reasonable but not excessive detail) of the Market Code Change Proposal and of its nature and purpose including confirmation of how the Market Code Change Proposal falls within the Market Code Objectives and is consistent with the Market Code Principles;
  - (d) draft legal text for those parts of the Market Code which would require change or would otherwise be affected by the Market Code Change Proposal;
  - (e) where the Proposer considers that the Market Code Change Proposal is urgent, a statement of that fact and an indication of why the Proposer considers this to be the case;
  - (f) where possible, an indication of the impact of the Market Code Change Proposal on the Operational Code, Wholesale Services Agreements, any Licence or any other industry code, agreement or document; and
  - (g) where possible, an indication of the impact of the Market Code Change Proposal on the Central Systems and any interfacing systems used by Trading Parties.
- (iii) No Market Code Change Proposal may purport to change or affect the role, rights or obligations of the Commission under the Market Code.
  - (iv) Where a Market Code Change Proposal is received by the TP Secretary more than ten (10) Business Days prior to the next meeting of the TP, the TP Secretary will place the Market Code Change Proposal on the agenda of the next TP meeting, and otherwise will place it on the agenda of the next succeeding TP meeting. The TP Secretary will also send a copy of the Market Code Change Proposal to each TP Member, the TP chairman and the Affiliated Members.
  - (v) The TP will consider, evaluate and determine whether or not to approve each Market Code Change Proposal as soon as reasonably

practicable, taking due account of its complexity, importance and urgency and having regard to whether or not such proposal is within the Market Code Objectives and consistent with the Market Code Principles.

- (vi) The TP may (but shall not be obliged to) require impact assessments to be conducted to identify, without limitation, potential cost implications and practical issues in adopting any Market Code Change Proposal.
- (vii) The TP may (but shall not be obliged to) determine to conduct a consultation on a Market Code Change Proposal with any such persons who may properly be considered to have an appropriate interest in the Market Code Change Proposal. Any consultation will be conducted by the TP Secretary.
- (viii) Subject to Section 8.7.1(x) a decision of the TP taken in accordance with Section 8.6.15 will constitute approval of the Market Code Change Proposal by the TP. The TP shall recommend in the approval the time and date on which the Market Code Change Proposal is to be implemented, and shall approve draft legal text amending the Market Code.
- (ix) The TP Secretary will promptly provide a Final Report in respect of each Market Code Change Proposal to each Code Party and the Commission.
- (x) The Commission shall be entitled to block any TP decision to approve any Market Code Change Proposal taken in accordance with this Section 8.7 if the Commission considers that the decision is not within the Market Code Objectives or is not consistent with the Market Code Principles. Such a decision must be notified to:-
  - (a) each TP Member;
  - (b) the TP Secretary;
  - (c) the TP chairman; and
  - (d) the CMA,

within thirty (30) Business Days of the date on which the Commission receives the Final Report relating to any Market Code Change Proposal.

- (xi) A Market Code Change Proposal approved by the TP will be an "Approved Change" if and when the Commission either gives its consent in writing to the TP to such Market Code Change Proposal or the Commission fails to notify its objection in writing to the TP within thirty (30) Business Days of the date on which the Commission received the Final Report in respect of such Market Code Change Proposal.
- (xii) The Market Code will be amended in accordance with the terms of the Approved Change.
- (xiii) Any Change to the Market Code will take effect from the time and date specified in the Approved Change.
- (xiv) The TP Secretary will forthwith notify:-
  - (a) the Affiliated Members;
  - (b) each TP Member; and
  - (c) the TP chairman,
 of the Change and the effective date of the Change.

#### 8.7.2 **Commission Changes to the Market Code**

- (i) If and to the extent that the Commission considers that making a Change is necessary in the interests of securing the orderly participation of Trading Parties in the provision of Services and would be consistent with the Market Code Principles, the Commission may require that a Change be made to the Market Code (a "Commission Change")
- (ii) The Commission may, at its discretion, consult with the TP and the CMA in advance of requiring a Commission Change where it considers it appropriate to do so.
- (iii) The Market Code will be amended in accordance with the terms of the Commission Change.
- (iv) Any Change to the Market Code will take effect from the time and date specified in the Commission Change.

- (v) The TP Secretary will forthwith notify:-
  - (a) the CMA;
  - (b) each TP Member; and
  - (c) the TP chairman,
 of the Change and the effective date of the Change.

## 8.8 Operational Code Change Process

### 8.8.1 Operational Code Change Proposal

- (i) An Operational Code Change Proposal may be made by any Trading Party.
- (ii) An Operational Code Change Proposal made pursuant to Section 8.8.1(i) will be submitted in writing to the TP Secretary and will contain the following information:-
  - (a) the name of the Proposer;
  - (b) a description (in reasonable but not excessive detail) of the issue or defect which the Operational Code Change Proposal seeks to address;
  - (c) a description (in reasonable but not excessive detail) of the Operational Code Change Proposal and of its nature and purpose including confirmation of how the Operational Code Change Proposal falls within the Operational Code Objectives and is consistent with the Operational Code Principles;
  - (d) draft legal text for those parts of the Operational Code which would require change or would otherwise be affected by the Operational Code Change Proposal;
  - (e) where the Proposer considers that the Operational Code Change Proposal is urgent, a statement of that fact and an indication of why the Proposer considers this to be the case; and
  - (f) where possible, an indication of the impact of the Operational Code Change Proposal on the Market Code, Wholesale Services Agreements, any Licence or any other industry code, agreement or document.

- (iii) Where an Operational Code Change Proposal is received by the TP Secretary more than ten (10) Business Days prior to the next meeting of the TP, the TP Secretary will place the Operational Code Change Proposal on the agenda of the next meeting of the TP, and otherwise will place it on the agenda of the next succeeding TP meeting. The TP Secretary will also send a copy of the Operational Code Change Proposal to each TP Member, the TP chairman and the Affiliated Members.
- (iv) The TP will consider, evaluate and determine whether or not to approve each Operational Code Change Proposal as soon as reasonably practicable, taking due account of its complexity, importance and urgency and having regard to whether or not such proposal is within the Operational Code objectives and consistent with the Operational Code Principles.
- (v) The TP may (but shall not be obliged to) require impact assessments to be conducted to identify, without limitation, potential cost implications and practical issues in adopting any Operational Code Change Proposal.
- (vi) The TP may (but shall not be obliged to) determine to conduct a consultation on an Operational Code Change Proposal with any such persons who may properly be considered to have an appropriate interest in the Operational Code Change Proposal. Any consultation will be conducted by the TP Secretary.
- (vii) The TP Secretary will promptly provide a Final Report in respect of each Operational Code Change Proposal to each Code Party and the Commission.
- (viii) Subject to Section 8.8.1(ix), a decision of the TP taken in accordance with Section 8.6.15 will constitute approval of the Operational Code Change Proposal by the TP. The TP shall recommend in the approval the time and date on which the Operational Code Change Proposal is to be implemented, and shall approve draft legal text amending the Operational Code.

- (ix) The Commission shall be entitled to block any TP decision to approve any Operational Code Change Proposal taken in accordance with this Section 8.8 if the Commission considers that the decision is not within the Operational Code Objectives or is not consistent with the Operational Code Principles. Such a decision must be notified to:-
- (a) each TP Member;
  - (b) the TP Secretary;
  - (c) the TP chairman; and
  - (d) the CMA,
- within thirty (30) Business Days of the date on which the Commission receives the Final Report relating to any Operational Code Change Proposal.
- (x) An Operational Code Change Proposal approved by the TP will be an "Approved Change" if and when the Commission either gives its consent in writing to the TP to such Operational Code Change Proposal or the Commission fails to notify its objection in writing to the TP within thirty (30) Business Days of the date on which the Commission received the Final Report in respect of such Operational Code Change Proposal.
- (xi) The Operational Code will be amended by Scottish Water in accordance with the terms of the Approved Change and a new version will be published by Scottish Water.
- (xii) Any Change to the Operational Code will take effect from the time and date specified in the Approved Change.
- (xiii) The TP Secretary will forthwith notify:-
- (a) the Affiliated Members;
  - (b) each TP Member; and
  - (c) the TP chairman,
- of the Change and the effective date of the Change.

#### 8.8.2 **Commission Changes to the Operational Code**

- (i) If and to the extent that the Commission considers that making a Change is necessary in the interests of securing the orderly participation of Trading Parties in the provision of Services and would

be consistent with the Operational Code Principles, the Commission may require that a Change be made to the Operational Code (a "Commission Change").

- (ii) The Commission may, at its discretion, consult with the TP and the CMA in advance of requiring a Commission Change where it considers it appropriate to do so.
- (iii) The Operational Code will be amended by Scottish Water in accordance with the terms of the Commission Change and a new version will be published by Scottish Water.
- (iv) Any Change to the Operational Code will take effect from the time and date specified in the Commission Change.
- (v) The TP Secretary will forthwith notify:-
  - (a) the CMA;
  - (b) each TP Member; and
  - (c) the TP Chairman,
 of the Change and the effective date of the Change.

## 8.9 Urgent Change

8.9.1 In the event that a Market Code Change Proposal or Operational Code Change Proposal is deemed by the CEO at any time to be urgently required to maintain the integrity of the Central Systems (an "Urgent Change"), the CEO shall make such changes to the procedure for evaluating such Urgent Change under this Part 8 as he deems appropriate, provided always that the TP shall be required to consider, evaluate and determine whether or not to approve any Urgent Change. In doing so the CEO shall keep the TP and the Board advised of such changes.

8.9.2 Any modification to the process by which an Urgent Change may be determined in terms of Section 8.9.1 above shall be subject to ratification by the Commission prior to any decision whether or not to approve any urgent change is made by the TP. In the event that the Commission does not ratify any such modification to the process for determination of an Urgent Change such change proposal will revert to the status of an ordinary Market Code Change Proposal or Operational Code Change Proposal and must be re-submitted to the TP Secretary in accordance with Sections 8.7.1(ii) or 8.8.1(ii) (as appropriate), and thereafter will follow the process otherwise set out in Sections 8.7.1 or 8.8.2 (as appropriate).

## 8.10 Liability

### 8.10.1 Director Indemnity

Subject to the provisions of the Companies Acts (as defined in section 744 of the Companies Act 1985 as amended), but without prejudice to any indemnity to which the person concerned may otherwise be entitled, every Director or other officer of CMA (other than any person (whether an officer or not) engaged by CMA as auditor) shall be indemnified out of the assets of CMA against any liability incurred by him in respect of any allegations or claims for negligence, default, breach of duty or breach of trust in relation to the affairs of CMA, provided that this Clause 8.11.1 shall be deemed not to provide for, or entitle any such person to, indemnification to the extent that it would cause this Clause 8.11.1, or any element of it, to be treated as void under the Companies Act 1985 (as amended) or otherwise under the Companies Acts. The CMA shall, upon request, provide the relevant Director with a written indemnity to that effect. For the avoidance of doubt nothing in this Section 8.10.1 shall be deemed to allow any Director recovery of personal charges and expenses incurred pursuant to his appointment as a Director.

8.10.2 The CMA shall recover all costs incurred or suffered by it in providing indemnities to each Director in accordance with Section 8.10.1 by way of CMA Charges.

8.10.3 Notwithstanding Sections 8.10.1 and 8.10.2, the CMA can, if it deems appropriate, insure each Director (including the Chairman and the CEO), and/or the CMA Secretary against any and all Costs properly incurred or suffered by him in relation to the Board or his office as a Director or as CMA Secretary or the due exercise by him of his powers, duties and responsibilities in that office and all claims, demands or proceedings arising out of or in connection with the same. The cost of any such insurances taken out under this Section 8.10.3 to the CMA shall be included in the CMA Budget and recovered from Trading Parties by way of CMA Charges.

### 8.10.4 TP Member Indemnity

All Code Parties agree that the CMA shall indemnify and keep indemnified (the costs of such indemnity to be funded in accordance with Section 8.10.5), TP Members in respect of all Costs properly incurred or suffered by such person when acting in or in connection with his office under the Market Code, or in what he in good faith believes to be the proper exercise and discharge of his powers, duties,

functions and discretions of that office in accordance with the Market 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 TP Member. The CMA shall, upon request, provide the relevant TP Member with a written indemnity to that effect. For the avoidance of doubt nothing in this Section 8.10.4 shall be deemed to allow any party recovery of personal charges and expenses incurred pursuant to his appointment as a TP Member.

8.10.5 The CMA shall recover all Costs incurred or suffered by it in providing indemnities to each TP Member in accordance with Section 8.10.4 by way of CMA Charges.

8.10.6 Notwithstanding Sections 8.10.4 and 8.10.5, the CMA can, if it deems appropriate, insure each TP Member against any and all Costs properly incurred or suffered by him in relation to the TP or his office as a TP Member or the due exercise by him of his powers, duties and responsibilities in that office and all claims, demands or proceedings arising out of or in connection with the same. The cost of any such insurances taken out under this Section 8.10.6 to the CMA shall be included in the CMA Budget and recovered from Trading Parties by way of CMA Charges.

## **Part 9: Disputes Procedure**

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### **9.1 Scope**

This Part 9 sets out the process for dealing with any dispute or difference among Code Parties of any nature arising out of or in connection with the Market Code.

### **9.2 Disputes**

Subject to any contrary provision of:-

9.2.1 the 2005 Act;

9.2.2 any Licence; or

9.2.3 the rights, powers, duties or obligations of the Commission or the Scottish Ministers under the 2005 Act, any Licence or otherwise howsoever,

any dispute or difference between or among Code Parties of any nature arising out of or in connection with the Market Code (a "Dispute") will be resolved in accordance with this Part 9. A Code Party involved in a Dispute is referred to as a "Disputing Party".

### **9.3 Initial Discussion**

9.3.1 Where a Dispute arises between or among Trading Parties, a representative of any of the Trading Parties concerned who has authority to resolve the Dispute will:-

(i) notify the CMA of the existence and subject matter of the Dispute (together with details of any potentially Related Dispute) in writing (copied to the other Disputing Party(ies)); and

(ii) the Disputing Party(ies) will meet with the CMA (or, if so agreed, speak by telephone) within ten (10) Business Days of giving notice to the CMA (or within such longer period as may be agreed between the Disputing Parties, acting reasonably) and seek to resolve it.

9.3.2 Where a Dispute arises which relates to the performance or actions of the CMA, a representative of each of the Code Parties concerned (including the CMA) who has authority to resolve the Dispute will meet within ten (10) Business Days (or within such longer period as may be agreed, acting reasonably) of any Disputing Party notifying the existence and subject matter of the Dispute to the other Disputing Party(ies) and seek to resolve it.

9.3.3 The CMA shall provide all reasonable assistance to any Disputing Parties in order to seek to resolve a Dispute and shall be entitled to carry out Ad-hoc Runs for this purpose which right shall, for the avoidance of doubt, be in addition to the CMA's

right under Section 9.4.2.2. The CMA shall also be entitled to require the carrying out of Market Tests by any Trading Party in accordance with CSD 0001 (Market Entry & Assurance) if and to the extent that such Market Tests will assist in resolving the Dispute.

9.3.4 Each Disputing Party (other than the CMA) shall co-operate with the other Disputing Parties in seeking to resolve a Dispute and shall, subject to Section 9.3.5, provide (or authorise the CMA to release) any data relating to that Disputing Party which may assist in resolving the Dispute to the other Disputing Parties, the CMA or an Expert.

9.3.5 Each party receiving the data referred to in Section 9.3.4 above will be obliged to hold such data in accordance with the provisions of Section 10.5.

9.3.6 Subject to Sections 9.3.7 and 9.3.8, if the Disputing Parties are unable to resolve a Dispute within ten (10) Business Days of the meeting (or telephone communication) referred to in Section 9.3.1(ii) or 9.3.2 above or within such longer period as may be agreed among the Disputing Parties, acting reasonably, and notified to the CMA (if the CMA is not a party to the Dispute) then any of the Disputing Parties may require that the Dispute be referred to an Expert for determination in accordance with Section 9.4.

9.3.7 Where a Dispute relates to a Trading Party disputing a Relevant Invoice the Disputing Party may not require that the Dispute be referred to an Expert unless it has first sought to resolve the Dispute in accordance with Section 7.12.

9.3.8 Where a Dispute relates to the CMA's performance of its obligations under Section 5.12.2 (Charge Calculation Allocation and Aggregation) a Disputing Party may not require that the Dispute be referred to an Expert unless it has first raised an enquiry in accordance with any relevant Working Procedure in place from time to time, provided always that this Section 9.3.8 shall not apply if no such Working Procedure is in place at the time at which any Disputing Party wishes to require that the Dispute be referred to an Expert.

#### 9.4 **Reference to the Expert**

##### 9.4.1 **Appointment of the Expert**

9.4.1.1 A Disputing Party wishing to refer a Dispute to an Expert for determination under Section 9.3.6 shall provide the other Disputing Party(ies) (and where it is not a Disputing Party the CMA) with: (i)

notice of its intention to refer the Dispute to an Expert and (ii) notice of a proposed Expert. The Disputing Parties shall endeavour within five (5) Business Days of such notice to agree upon the selection of an Expert and may meet for this purpose. In the event of failure to reach such agreement, the Expert shall be appointed by the Commission on the application of any Disputing Party.

9.4.1.2 On selection of a suitable Expert under Section 9.4.1.1, the Disputing Party which instigated the referral shall forthwith provide the Expert with an "Expert Notification".

9.4.1.3 An Expert Notification shall include the following:

- (a) the names of the Disputing Parties and a summary of the Dispute (the terms of such summary to be agreed by the Disputing Parties);
- (b) a request that the Expert confirm within five (5) Business Days whether or not he is willing and able to accept the appointment;
- (c) a request for certification of the Expert's scale of fees and expenses;
- (d) a statement that the Expert's fees and expenses will be paid as provided in Section 9.4.4;
- (e) a statement that the information disclosed in the Expert Notification (and any information subsequently disclosed to the Expert relating to the Dispute) is confidential and should be treated in accordance with Section 10.5 as if the Expert were a Code Party and that it should not be disclosed, copied or revealed whether the appointment is accepted or not;
- (f) a copy of this Section 9.4 and a request for confirmation that the Expert is able and willing to act in accordance with the procedure set out herein; and
- (g) a request for confirmation that the Expert does not hold any interest or duty which would or potentially would conflict with the performance of his duties under his contract with the

Disputing Parties, and that he will inform the Disputing Parties immediately in the event of any such conflict arising.

#### 9.4.2 **Determination by the Expert**

9.4.2.1 Where a Dispute has been referred to an Expert by a Disputing Party, the Disputing Parties shall promptly provide to the Expert all information reasonably requested by such Expert relating to the Dispute.

9.4.2.2 The CMA shall provide all reasonable assistance to any Expert appointed under this Section 9.4 in order to seek to resolve a Dispute and shall carry out Ad-hoc Runs when requested to do so by the Expert.

9.4.2.3 The Expert shall be required by the Disputing Parties to use all reasonable endeavours to render his determination, with full reasons, within twenty five (25) Business Days following his receipt of the information requested, or if this is not possible as soon thereafter as may be reasonably practicable, and the Disputing Parties shall cooperate fully with the Expert to achieve this objective.

9.4.2.4 The Expert shall determine any Dispute referred to him as an Expert and not as an arbiter or mediator.

9.4.2.5 The Expert shall determine any Dispute referred to him in accordance with the provisions of the Market Code to which the Dispute relates and shall in making such determination have regard to the Market Code Principles and Market Code Objectives.

#### 9.4.3 **Effect of Expert Determination**

9.4.3.1 The determination of the Expert shall be final and binding upon the Disputing Parties.

9.4.3.2 No Disputing Party shall commence proceedings in respect of or refer to any court any finding by the Expert, whether made at any time after his appointment or in his determination, as to the Dispute or the construction of or otherwise in respect of the Market Code.

#### 9.4.4 **Costs**

9.4.4.1 The Expert shall provide the Disputing Parties with a breakdown of:-  
(a) his fees; and

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

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

## 9.5 Related Disputes

9.5.1 If a Dispute arising under, out of or in connection with this Market Code relates to a dispute or difference under the Operational Code or a dispute or difference under a Wholesale Services Agreement ("Related Dispute") and where the Related Dispute has been referred to an expert for determination (the "Related Procedure"), any Disputing Party may or may procure that any party to the Operational Code or any party to a Wholesale Services Agreement (as appropriate) shall as soon as practicable give to the Expert the following information:-

- (i) a copy of the Operational Code and/or the relevant Wholesale Services Agreement (as appropriate);
- (ii) the basis and grounds for consolidation of the Dispute hereunder and any Related Dispute;
- (iii) the cases of the parties to the Related Dispute; and
- (iv) any relief sought by the parties to the Related Dispute.

9.5.2 On receiving the information set out above and within ten (10) Business Days of the referral of the Dispute to the Expert in accordance with Section 9.4 the Expert may, at the request of all of the parties to all of the Related Disputes immediately

order consolidation of the Dispute and the Related Disputes and shall in such circumstances have the authority and power referred to in Section 9.6 below.

9.6 In the event of the Expert ordering consolidation of the Dispute and the Related Dispute in accordance with Section 9.5.2, the Expert shall have the authority and power to direct that all matters arising in both the Dispute and the Related Dispute are consolidated in whatever manner the Expert determines and the Disputing Parties shall thereafter abide by and implement such consolidation and any such direction.

9.7 In the event that the Dispute is consolidated with any Related Dispute the Expert shall reach a decision on (and the Disputing Parties shall attempt to resolve) the Dispute and any Related Dispute at the same time. Accordingly, any Related Dispute will be determined subject to and in accordance with the terms of Sections 9.4.2 to 9.4.4 above.

9.8 **Exclusion of certain rights and remedies**

9.8.1 Subject to Sections 9.8.2 and 9.8.6, the rights and remedies of the Trading Parties provided under the Market Code are exclusive and not cumulative and exclude and are in place of all substantive rights or remedies express or implied and provided by common law or statute in respect of the subject matter of the Market Code, including any rights which any Trading Party may possess in delict (which shall include actions brought in negligence and/or nuisance) or for breach of trust.

9.8.2 Subject to Sections 9.8.3, 9.8.4 and 9.8.6, each of the Trading Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases a Trading Party which is liable to another (or others), its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the Market Code and undertakes not to enforce any of the same except as expressly provided herein.

9.8.3 The provisions of Sections 9.8.1 and 9.8.2 are without prejudice to a Trading Party's right to any equitable remedies and/or interim relief which may be available to the Trading Party.

9.8.4 For the avoidance of doubt, nothing in this Section 9.8 shall apply to the rights and remedies which a Trading Party may have against another Trading Party under any agreement entered into pursuant to the Market Code, provided that a Trading Party shall not be entitled to recover damages or an account more than once in respect of the same matter.

9.8.5 Without prejudice to Section 9.8.1, where any provision of the Market Code provides for any amount to be payable by a Trading Party upon or in respect of that Trading Party's breach of any provision of the Market Code (including the payment of any Performance Standard Charges), each Trading Party agrees and acknowledges that the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages or an account in respect of such breach or the event or circumstance giving rise thereto.

9.8.6 For the avoidance of doubt, nothing in this Section 9.8 shall prevent:-

- (i) the CMA from commencing and continuing court proceedings in accordance with Section 6.4.2 against any Trading Party which is, or may be in breach of any of its duties under Part 7 of the Market Code;  
or
- (ii) any Trading Party from enforcing any obligation owed to it pursuant to Section 7.8.5.

## **Part 10: General Terms**

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### **10.1 Scope**

This Part 10 sets out the general terms and conditions which will apply to the Market Code.

### **10.2 Liability of the CMA**

10.2.1 The Code Parties acknowledge that:-

- (i) the CMA is not intended to make distributable profits or losses in any Year; and
- (ii) if any Trading Party were to make any claim against the CMA the financial consequences of such claim would be borne by the Trading Parties themselves.

10.2.2 Accordingly, subject to the further provisions of this Section 10.2 and Section 10.3, 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 CMA; and each Trading Party (to the fullest extent permitted by law) waives any such claims against the CMA and releases the CMA from any such liability in respect of any breach by the CMA of any provision of the Market Code or in delict (including negligence) or otherwise.

10.2.3 Nothing in Section 10.2.2 shall exclude or limit the liability of the CMA for death or personal injury arising as a result of its negligence.

### **10.3 Trading Party Particularly Prejudiced by the CMA Breach**

10.3.1 Subject to the remaining provisions of this Section 10.3 where a Trading Party (the "Claimant Party") was unfairly and particularly prejudiced by a breach by the CMA, and in particular the circumstances in which such breach occurred, and in which Costs were suffered or incurred by the Claimant Party as a result of such breach, were not such as to result in some Costs being suffered or incurred by all Trading Parties, then Section 10.2 shall not exclude or limit the liability of the CMA to the Claimant Party in respect of such breach (an "Actionable Breach").

10.3.2 A Trading Party may not bring a claim, or refer any claim to an Expert under Part 9, against the CMA in respect of an Actionable Breach more than six (6) Months after the date on which the breach occurred or commenced or (if later) more than three (3) Months after the Trading Party became or could reasonably be expected to become aware of the breach.

- 10.3.3 A Trading Party may not make a claim, or refer any claim to an Expert under Part 9, against the CMA in respect of an Actionable Breach if the amount of the Trading Party's loss resulting from such breach is less than £50,000.
- 10.3.4 The aggregate liability of the CMA under this Section 10.3 shall in no event exceed £750,000 per Year.
- 10.3.5 The CMA shall take out and maintain in full force and effect professional indemnity insurance sufficient to meet any liability under this Section 10.3.

#### 10.4 **Liability of the Trading Parties**

- 10.4.1 Subject to Sections 10.4.2 and 10.4.4 each Trading Party (the "First Party") shall be liable to any other Trading Party (the "Second Party") at all times (including after termination of this Market Code) for any Costs suffered or incurred by the Second Party arising from breach of this Market Code by the First Party (whether in negligence, delict or otherwise) save to the extent that any such Cost is attributable to the fault or negligence of the Second Party.
- 10.4.2 The First Party shall be liable to the Second Party in terms of Section 10.4.1 for all Costs, arising directly from the breach, negligence, delict or other circumstance giving rise to the liability and shall not be liable for any indirect loss of any nature suffered or allegedly suffered by the Second Party.
- 10.4.3 No Trading Party excludes or limits liability for death or personal injury arising as a result of its negligence.
- 10.4.4 The aggregate liability of any Trading Party under this Section 10.4 shall in no event exceed:-
- (i) in the case of a Licensed Provider the lower of (a) 0.25% of the aggregate Wholesale Charges payable by that Licensed Provider in that Year as calculated by the CMA; and (b) £750,000; and
  - (ii) in the case of Scottish Water the lower of (a) 0.25% of the aggregate Wholesale Charges payable by all Licensed Providers in that Year as calculated by the CMA; and (b) £750,000.
- 10.4.5 Each Trading Party acknowledges that it shall not be entitled to recover the same Costs from any other Trading Party under this Market Code, any Wholesale Services Agreement or the Operational Code more than once.

## 10.5 Confidentiality

### 10.5.1 Confidentiality Obligation

The Code Parties shall each secure that all confidential information which comes into their ownership, possession or control, or the ownership, possession and control of an Affiliated Company, pursuant to or in the course of the negotiation, implementation or performance of this Market Code relating to the affairs of any other Code Party or its operation or management, or otherwise in connection with or in anticipation of the performance of this Market Code or any Customer, Eligible Premises or otherwise ("Confidential Information") shall not be disclosed during the continuance of this Market Code to any third party except insofar as this may be required for the proper operation of this Market Code or except where disclosure is otherwise expressly permitted by the provisions of this Market Code.

### 10.5.2 Code Parties

Where Confidential Information is disclosed by any receiving Code Party as permitted under this Market Code, the receiving Code Party shall (subject to Section 10.5.3(iv) and without prejudice to its obligations under this Section 10.5) take all reasonable steps to secure that the person to whom the information is disclosed:-

- (i) is aware of the receiving Code Party's obligations under this Part 10 in relation thereto; and
- (ii) does not use or disclose the information other than as is permitted of such Code Party in accordance with this Part 10.

### 10.5.3 Exceptions

Nothing in this Part 10 shall apply:-

- (i) to the disclosure or use by the receiving Code Party of Confidential Information to which any other Code Party has consented in writing;
- (ii) to any Confidential Information which:-
  - (a) before it is obtained by the receiving Code Party is in the public domain; or
  - (b) after it is obtained by the receiving Code Party enters the public domain, in either case otherwise than as a result of a breach by the receiving Code Party of its obligations under this Part 10;

- (iii) to the disclosure of any Confidential Information to any person if and to the extent that the receiving Code Party is required to make such disclosure in accordance with this Code to such person;
- (iv) to the disclosure of any Confidential Information required to be:-
  - (a) in compliance with the duties of the receiving Code Party under the 2005 Act or any other requirement of a Relevant Authority;
  - (b) in compliance with the conditions of any Licence or any document referred to in any Licence with which the Licensed Provider is required by virtue of the 2005 Act or any Licence to comply;
  - (c) in compliance with any other Law;
  - (d) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
  - (e) pursuant to any judicial or arbitral process or tribunal having jurisdiction in relation to the receiving Code Party; or
- (v) to the disclosure of any Confidential Information lawfully in the possession of the receiving Code Party before the disclosure to it under or in connection with this Market Code.

#### 10.5.4 **Survival**

The confidentiality provisions of this Part 10 shall continue to bind Code Parties and the CMA, for a period of five (5) years after the termination of this Market Code, irrespective of the reason for such termination. Where a Code Party exits the Market Code, this Part 10 continues to apply to that Code Party.

## 10.6 **Freedom of Information**

10.6.1 The Code Parties acknowledge that the Freedom of Information (Scotland) Act 2002 (the "FOISA") and the Environmental Information (Scotland) Regulations 2004 (the "EISRs") may apply to information (including Confidential Information) supplied in compliance with this Market Code, where the Code Party supplying or receiving the information is subject to the requirements of the FOISA or the EISRs.

10.6.2 In the event that a request for information pursuant to the FOISA or the EISRs is received by a Code Party (the "Receiving Body"), subject to the requirements of that legislation, responsibility for determining whether the information requested should be disclosed or may be withheld in accordance with FOISA or the EISRs lies with the Receiving Body at their absolute discretion. Any disclosure made by the Receiving Body as a consequence of a requirement of FOISA or EISRs shall not be a breach of Section 10.5 provided that the extent of such disclosure shall not exceed what is required by FOISA or EISRs.

10.6.3 In accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities under the Freedom of Information (Scotland) Act 2002 as amended or replaced from time to time, the Receiving Body will inform the Code Party as soon as reasonably practicable following the receipt of any request for information (including Confidential Information) relating to that Code Party and will afford that Code Party an opportunity to make representations to the Receiving Body regarding that request for information within five (5) Business Days of notification of the request being sent by the Receiving Body.

## 10.7 **Default and Termination**

10.7.1 A Licensed Provider will be classed as a Defaulting Trading Party if:-

- (i) the Licensed Provider has failed to pay an amount properly due by it, under the Market Code where:-
  - (a) it is in excess of ten (10) Business Days from the payment due date;
  - (b) on or after the Business Day specified in Section 10.7.1(ii)(a) above the CMA has issued notice to that Licensed Provider to pay the outstanding amount; and
  - (c) the amount invoiced has remained unpaid for a further ten (10) Business Days after the date of the CMA's notice under Section 10.7.1(i)(b) above;
- (ii) the Licensed Provider fails to pay an amount properly due by it under the Market Code on three (3) or more occasions in a twelve (12) month period and fails to remedy such non-payment upon the first two (2) occasions within the following periods from the date of notice thereof from the CMA:-

- (a) ten (10) Business Days in the first instance; and
  - (b) five (5) Business Days in the second instance;
- (iii) the Licensed Provider is in material breach of an obligation under the Market Code, where:-
- (a) the Licensed Provider could reasonably remedy the breach;
  - (b) the CMA has issued notice to the Licensed Provider to remedy the breach;
  - (c) within ten (10) Business Days after the date of the CMA's notice under Section 10.7.1(iii)(b) above the Licensed Provider does not either:-
    - (i) remedy the breach in all material respects where the breach is capable of remedy within such period of ten (10) Business Days; or
    - (ii) where the breach is not so capable of remedy, provide to the CMA a programme (setting out the steps to be taken by the Licensed Provider and the timetable for taking such steps) for the remedy of the breach as soon as practicable;
  - (d) in the case of Section 10.7.1(iii)(c)(ii) the Licensed Provider does not:-
    - (i) remedy the breach in all material respects with all reasonable diligence and so far as reasonably practicable in accordance with the programme provided under that Section or a revised programme pursuant to Section 10.7.1(iii)(d)(ii) below; and
    - (ii) where, notwithstanding, the reasonable diligence of the Licensed Provider, it is not reasonably practicable for the Licensed Provider to remedy the breach in accordance with that programme, provide to the CMA a revised such programme; and
  - (e) the breach remains unremedied in any material respect following the expiry of five (5) Business Days after a further

notice by the CMA to the Licensed Provider to the effect that the Licensed Provider has not complied with Sections 10.7.1(iii)(c) or (d);

- (iv) the Licensed Provider is in material breach of an obligation under the Market Code, where:-
  - (a) the Licensed Provider could not reasonably remedy the breach;
  - (b) the CMA has issued notice to the Licensed Provider to remedy the breach;
  - (c) at any time within the period of twelve (12) months following the date of the CMA's notice under Section 10.7.1(iv)(b) above there occurs a further material breach by the Licensed Provider of the same provision of the Market Code; and
  - (d) the CMA has given notice of such further breach to the Licensed Provider and a period of ten (10) Business Days has expired following such notice;
- (v) the Licensed Provider is subject to an Insolvency Event;
- (vi) where any of the Licensed Provider's Licence(s) is/are revoked by the Commission; or
- (vii) the Licensed Provider:
  - (a) has not satisfied the Trading Conditions or satisfactorily completed any Market Tests which that Licensed Provider is required to undertake in accordance with the Market Assurance Process within one (1) year of the date on which it was admitted as a Code Party; or
  - (b) the Licensed Provider fails to satisfy the CMA, acting reasonably, that the Licensed Provider is using reasonable endeavours to satisfy the Trading Conditions or complete any Market Tests which that Licensed Provider is required to undertake in accordance with the Market Assurance Process.

10.7.2 Where a Licensed Provider is a Defaulting Trading Party, the CMA (subject to the approval of the Board) will issue a Termination Notice to the Licensed Provider

Defaulting Trading Party, specifying the date on which that Licensed Provider will cease to be a Trading Party under the Market Code.

10.7.3 In advance of a Licensed Provider becoming a Defaulting Trading Party, if a Licensed Provider is aware that it is likely to be required to exit the market, the Licensed Provider shall seek to find a trade purchaser for its customer base and, the Licensed Provider shall inform the CMA. The CMA will then inform:-

- (i) the Commission; and
- (ii) all Licensed Providers that the Supply Points will become available.

10.7.4 **Termination**

- (i) This Market Code may be terminated by agreement in writing of all the Code Parties with the prior consent in writing of the Commission to take effect from the later of the date agreed between the Code Parties and the date of the said consent of the Commission; or
- (ii) this Market Code may be terminated by direction or other act of the Commission to take effect from the date specified by the Commission.

10.8 **Force Majeure**

10.8.1 For the purposes of this Market Code, Force Majeure means, in relation to any Code Party, any event or circumstances (or combination of events or circumstances) not reasonably foreseeable by such Code Party, which is beyond the reasonable control of the Code Party and which results in or causes the failure of that Code Party to perform any of its obligations under this Market Code, but:-

- (i) a strike, lockout or other industrial action by a Code Party's own employees or those of its agents or contractors (unless forming part of a national strike) shall not be Force Majeure;
- (ii) the act or omission of any agent or contractor of a Code Party shall not be Force Majeure; and
- (iii) compliance with any Law, code or direction or act of the Commission shall not be Force Majeure.

10.8.2 Subject to this Section 10.8, the affected Code Party shall be relieved from liability for any delay or failure in the performance of any obligation under this Market Code which is caused by or results from Force Majeure. The affected Code Party shall be relieved from liability under the Market Code only for so long as and to the

extent that the occurrence of Force Majeure and/or the effects of such occurrence could not be overcome by measures which the affected Code Party might reasonably be expected to take with a view to resuming performance of its obligations. The provisions of this Part 10 shall not excuse a failure to pay money when due.

10.8.3 Following any occurrence of Force Majeure the affected Code Party shall:-

- (i) as soon as reasonably practicable notify the other relevant Code Parties of the occurrence and nature of the Force Majeure, the expected duration (insofar as this can reasonably be assessed) and the obligations of the affected Code Party which are affected; and
- (ii) from time to time thereafter provide to the other Code Parties reasonable details of developments in the matters notified under Section 10.8.3(i) and the steps being taken by the affected Code Party to overcome the Force Majeure occurrence or its effects and to resume performance of its relevant obligations.

## 10.9 Notices

10.9.1 References in this Part 10 to a notice are to a notice or communication to be given by one Code Party to another. Such notices shall be sent to the registered address or facsimile number given in the Accession Agreement or the Framework Agreement (as appropriate).

10.9.2 Any notice given by delivery shall be given by letter delivered by hand, and any notice given by post shall be sent by first class recorded delivery post.

10.9.3 Any notice shall be deemed to have been received:-

- (i) in the case of delivery by hand, when delivered;
- (ii) in the case of first class recorded delivery post, on the second day following the day of posting; or
- (iii) in the case of facsimile, on acknowledgement by the recipient Code Parties facsimile receiving equipment.

10.9.4 Except where a notice is required under Part 1 (Commencement Objectives and Principles) or this Part 10, nothing in this Section 10.9 shall restrict the means of communication of ordinary data which flows on a day to day basis in accordance with the Market Code.

**10.10 Assignment**

No Code Party may assign or transfer (whether outright or in security) any or all of its rights or obligations under this Market Code unless they have the prior written agreement of the other Code Parties.

**10.11 Entire Agreement**

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

**10.12 Waiver**

No failure to exercise, nor any delay in exercising, on the part of a Code Party of any right, power or remedy under this Market 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.

**10.13 No Partnership**

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

**10.14 Illegality**

The invalidity or unenforceability of any provision of this Market Code shall not affect the validity or enforceability of the remaining provisions of this Market Code.

**10.15 Intellectual Property Rights**

## 10.15.1

- (i) Where data, software, user manuals, documentation or training material is provided by the CMA to enable Trading Parties to undertake their obligations set out in the Market Code, the CMA grants the Trading Parties, for the duration of this Market Code, a non-exclusive, royalty-free, non-transferable licence to use the data, software, user manuals documentation or training material for that purpose (and for no other purpose).
- (ii) Except as permitted by applicable law, Trading Parties must not, without the CMA's prior written consent, copy, de-compile or modify

the software, nor copy the user manuals documentation or training material, nor knowingly allow any other person to do so.

- (iii) Where data or software is provided by Trading Parties, to enable the CMA to undertake its obligations set out in this Market Code, Trading Parties grant the CMA, for the duration of this Market Code, a non-exclusive, royalty-free, non-transferable licence to use the data or software for that purpose (and for no other purpose).
- (iv) The CMA shall be entitled to grant to any of its subcontractors, service suppliers or agents, the sub-licences of the licence set out in this Part 10 as may be required to enable the CMA to undertake its obligations set out in the Market Code.
- (v) All IPR in the data submitted to the CMA shall remain the property of the Trading Party to which that data relates. All IPR in the data created by the CMA, or its subcontractors, shall be the property of the Trading Party(ies) to which that data relates and not that of the CMA itself.

10.15.2 Code Parties shall not make use of or permit anyone else to make use of the registered or unregistered trade marks, trading names, brand names, devices, styles, emblems or other manifestations associated with other Code 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 Code Party's, or such Affiliated Company's, registered trade mark or common law rights.

#### 10.16 **Survival**

Notwithstanding the provisions of Part 1 (Commencement, Objectives and Principles), Section 1.3., Part 8 (Governance) Section 8.2.7 and Part 10 (General Terms) Section 10.7.2 the provisions of Part 7 (Cost Recovery), Part 9 (Disputes Procedure) and Part 10 (General Terms) shall continue to bind any party who ceases to be a Code Party irrespective of the reason for such cessation.

#### 10.17 **Jurisdiction**

10.17.1 Subject and without prejudice to the other provisions of this Part 10, the Code Parties submit to the exclusive jurisdiction of the Scottish courts.

10.17.2 Nothing in this Section 10.17 shall be taken as permitting a Code Party to commence proceedings in the Scottish Courts where this Market Code provides for an alternative form of dispute resolution.

**10.18 Governing Law**

The construction, validity and performance of this Market Code shall be governed in all respects by Scots law.

**SCHEDULE 1**  
**DEFINITIONS, INTERPRETATION AND HIERARCHY**

**1. Definitions**

In this Market Code and the Schedules hereto, subject to any express provisions to the contrary, the following words or expressions shall have the meanings ascribed to them below.

<b>Term</b>	<b>Means</b>
"Accept" or "Accepted" or "Acceptance"	the acceptance of a Registration Application or Transfer Registration Application by the CMA in accordance with Section 5.3.2(ii);
"Accession Agreement"	an agreement in the form set out in Part 1 of Schedule 4 (Accession Agreements) whereby an Applicant accedes to the Framework Agreement;
"Actionable Breach"	the meaning given in Section 10.3.1;
"Actual Daily Volume" or "DV <sub>A</sub> "	the daily Volume supplied in relation to a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.1 of CSD 0204 (Volume Processing & Estimation);
"Actual Volume" or "AV"	the actual Volume of Trade Effluent Services supplied in relation to a Discharge Point, as notified to the CMA in Data Transaction T025 and as used by the CMA in accordance with section 2.2.1 of CSD 0206 (Trade Effluent Processes);
"Actual Weighted Average Unit Rate" or "AWA"	the actual weighted average unit rate applicable to a meter or Supply Point (as the context may

<b>Term</b>	<b>Means</b>
	require), as calculated by the CMA in accordance with section 2.2.3 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Actual Yearly Volume" or "YV <sub>A</sub> "	the total Volume supplied in relation to a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.2.3 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Additional Service"	the carrying out of any activity or providing any service or report by the CMA for a Trading Party or any other party where such activity, service or report is not a requirement of the Market Code or where the Market Code specifies that the CMA may charge a specific charge;
"Additional Service Charge" or "ASC"	the amount charged for any Additional Service in accordance with Section 7.3.5;
"Ad-hoc Run"	any ad hoc Settlement Run or runs of the Central Settlement System carried out by the CMA pursuant to Part 9 (Disputes Procedure) or for any other reason;
"Admission Application"	the form specified by the CMA to be used by Applicants who wish to become a party to the Market Code;
"Admission Conditions"	the conditions specified in Section 1.3.3;
"Affiliated Company"	in relation to a Code Party means a Subsidiary

<b>Term</b>	<b>Means</b>
	Undertaking or Holding Company of that Code Party, or another Subsidiary Undertaking of such Holding Company;
"Affiliated Member"	the meaning given in Section 8.6.4;
"Aggregate Market Pending Supply Point Registrations"	the meaning given in Section 7.3.3;
"Aggregate Market Supply Points"	the meaning given in Section 7.3.4;
"Allocation Process"	the process by which the CMA shall allocate to Licensed Providers the Supply Points Registered to a Trading Party in Designated Circumstances, such process to be introduced by the CEO as a Market Code Change Proposal in accordance with Section 8.7;
"Annual Non-domestic Allowance" or "ANDA"	the Actual Yearly Volume of Foul Sewerage Services supplied in relation to a Supply Point, as notified to the CMA in Data Transactions T021.0 and/or T02300 and as used by the CMA in accordance with section 2.2.1 of CSD 0206 (Trade Effluent Processes);
"Annual Non-Volumetric Charge" or "ANVC"	the annual non volumetric charge payable in respect of a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.1 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Applicant"	any person(s) wishing to become a party to the

<b>Term</b>	<b>Means</b>
	Market Code;
"Application Window"	the meaning given in Section 5.3.1(ii);
"Approved Change"	any Change approved by the TP in accordance with Section 8.7.1(xi) or 8.8.1(x);
"Average Licensed Provider Supply Points over relevant Year"	the meaning given in Sections 7.11.2 and 7.11.3;
"Average Aggregate Market Supply Points over relevant Year"	the meaning given in Sections 7.11.2 and 7.11.3;
"Band"	the particular element of the Declining Block Charge to which a particular Unit Rate is applicable, the upper and lower parameters of which are more specifically set out in the Wholesale Charges Scheme;
"Bi-annually Read Meters"	any meter other than a Monthly Read Meter;
"Board"	the board of Directors of CMA appointed in accordance with the provisions of Part 8 (Governance);
"Business Day" or "BD"	the period of 08:00 to 18:00 hours on any day other than a Saturday or Sunday or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971;
"Cancellation"	any cancellation of the Registration of a Supply Point carried out in accordance with Section 5.6

<b>Term</b>	<b>Means</b>
	and CSD 0103 (Registration: Cancellations);
"Cancellation Request"	an application by an Incoming Licensed Provider or an Outgoing Licensed Provider to cancel a Transfer Registration Application submitted on one of the grounds set out in Section 5.6.1 or Section 5.6.2;
"Cancellation Window"	the period of five (5) Business Days from the Registration Confirmation Date;
"Capacity Volume Charge" or "C <sub>c</sub> "	the Wholesale Charge, as set out in the Wholesale Charges Scheme, payable in respect of the provision of Water Services or Sewerage Services, in relation to a, meter or Supply Point (as the context may require), which charge is based on the Chargeable Meter Size(s) attributable to the, meter or Supply Point as relevant;
"Central Settlement System"	the systems and business processes operated and maintained by the CMA to support the calculation of Wholesale Charges;
"Central Systems"	the Central Settlement System and the Supply Point Register;
"Chairman"	the chairman of the Board or any person performing that role in terms of Section 8.3.3(v);
"Change"	any variation, amendment, addition to, deletion from or other change to the Market Code or the

<b>Term</b>	<b>Means</b>
	Operational Code;
"Chargeable Meter Size"	the chargeable meter size applicable to any, meter or Supply Point (as that context may require) as set out in the relevant SPID Data;
"Charges"	the CMA Charges or the Transitional Charges or the Performance Standard Charges as appropriate;
"Charges Scheme"	Scottish Water's charging policy and charge levels, set out for each financial year, as approved by the Commission under Section 29A of the 2002 Act;
"Chief Executive Officer" or "CEO"	the chief executive officer of the CMA from time to time;
"Claimant Party"	the meaning given in Section 10.3.1;
"CMA"	any body established by or under any directions made by the Commission relating inter alia to the central market agency to exercise certain central market functions in relation to the participation of Licensed Providers in the provision of Water Services and Sewerage Services, the first such body being Central Market Agency Limited, a company limited by guarantee with registered number SC328635 and having its registered office at Ochil House, Springkerse Business Park, Stirling, FK7 7XE;

Term	Means
"CMA Budget"	the annual budget for the CMA prepared in terms of Section 7.2;
"CMA Charges"	the charges levied on Code Parties in order to fund the CMA Budget as set out in Part 7;
"CMA Custodian"	the meaning given in Section 2.3.3(i);
"CMA Escrow Agreement"	the meaning given in Section 2.3.3(i);
"CMA Material"	the meaning given in Section 2.3.3(iii);
"CMA Secretary"	the person appointed as company secretary to the CMA;
"Code Party"	all Trading Parties who are a party to this Market Code in accordance with its terms and the CMA;
"Codes"	the Operational Code, the Disconnections Code and the Market Code;
"Code Subsidiary Documents" or "CSDs"	the detailed processes that facilitate the performance of duties under the Market Code as set out in Schedules 6 – 20 of the Market Code;
"Commission"	the body established under section 1 of the 2002 Act;
"Commission Change"	a Change to either the Market Code or the Operational Code proposed by the Commission in accordance with Sections 8.7.2 or 8.8.2;

<b>Term</b>	<b>Means</b>
"Complex Site"	any arrangement whereby two or more Supply Points are interdependent, in that, to derive Volume supplied in relation to one or more of the Supply Points, the CMA will require a Meter Read from both a Main Meter and Sub Meter(s) (which meters may not necessarily relate to the Supply Point in question);
"Confidential Information"	the meaning given in Section 10.5.1;
"Confirmation Notice"	a notice issued by the CMA to the Licensed Provider Accepting or rejecting any Registration Application or Transfer Registration Application (subject to receipt of any valid Cancellation Request);
"Connection Date"	the date on which a New Connection is made in accordance with Processes 1 - 4 of the Operational Code or the date notified by Scottish Water to the CMA for the new connection where it relates to a New Supply Point;
"Connection Point"	in relation to any Supply Point(s), the point at which the private pipework supplying water to the Supply Point(s) connects to the Public Water Supply System;
"Contract Manager"	the senior manager appointed by each Trading Party in accordance with the Market Code;
"Costs"	liabilities, losses, charges, damages, costs and expenses (including legal and other professional

<b>Term</b>	<b>Means</b>
	costs and out of pocket disbursements properly incurred), and including any tax thereon in each case of whatever nature;
"Customer"	at any time, any occupier of Eligible Premises for whom one or more Supply Points are Registered in accordance with Part 5 (Market Design) and who is entitled to receive one or more Services;
"Customer Read"	the Meter Read with Meter Read Type U provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Daily Actual Volume Discharged" or "DAVD"	the daily actual Volume of Trade Effluent Services supplied in relation to a Discharge Point, as calculated by the CMA in accordance with section 2.2.1 of CSD 0206 (Trade Effluent Processes);
"Daily Availability Charge" or "AC <sub>c</sub> "	the daily availability charge payable in respect of a Discharge Point as calculated by the CMA in accordance with section 2.2.2 of CSD 0206 (Trade Effluent Processes);
"Daily Operating Charge" or "OP <sub>c</sub> "	the daily operating charge payable in respect of a Discharge Point as calculated by the CMA in accordance with section 2.2.2 of CSD 0206 (Trade Effluent Processes);
"Daily Non-domestic Allowance" or "DNDA"	the daily non-domestic allowance made in respect of a Discharge Point, as calculated by the CMA in accordance with section 2.2.1 of CSD 0206 (Trade Effluent Processes);

<b>Term</b>	<b>Means</b>
"Daily Non-Volumetric Charge" or "DNVC"	or the daily non volumetric charge payable in respect of a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.1 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Daily Trade Effluent Charge" or "DTEC"	the daily trade effluent charge payable in respect of a Discharge Point as calculated by the CMA in accordance with section 2.2.2 of CSD 0206 (Trade Effluent Processes);
"Daily Volume" or "DV"	either the Actual Daily Volume, Estimated Daily Volume or Derived Daily Volume as the context may require;
"Data Item"	each of the data items listed against each of the Data Transactions in the Data Transaction Catalogue;
"Data Owner"	in relation to each SPID, Scottish Water shall be the data owner of those items of data set out opposite its name in the Data Transaction Catalogue and the relevant Licensed Provider shall be the data owner of those items of data set out opposite "Licensed Provider" in the Data Transaction Catalogue;
"Data Transaction"	each of the data transactions listed and numbered in the Data Transaction Catalogue;
"Data Transaction Catalogue" or "DTC"	the list of Data Transactions and Data Items set out in CSD 0301;

<b>Term</b>	<b>Means</b>
"Declining Block Charge"	the particular Wholesale Charge, as set out in the Wholesale Charges Scheme, payable in respect of the provision of Water Services or Sewerage Services in relation to a meter or Supply Point (as the context may require), which charge is based on the Volume supplied in relation to that meter or Supply Point and which is not a Capacity Volume Charge;
"Deduced Meter Read"	the Meter Read deduced by the CMA in relation to a Complex site, in accordance with in Section 2.1.3 of CSD 0204 (Volume Processing & Estimation);
"Default CMA Charges"	the charges levied on Trading Parties by the CMA to recover unpaid CMA Charges calculated in accordance with Section 7.8;
"Default Services"	the meaning given in the standard licence conditions contained in any Licence;
"Defaulting Trading Party"	a Trading Party satisfying the conditions of Section 10.7.1;
"Derived Daily Volume" or "DV <sub>D</sub> "	the Daily Volume derived as being supplied in relation to a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with Section 2.3 of CSD 0204 (Volume Processing & Estimation);
"Designated Circumstances"	the circumstances specified in Sections 5.3.6,

<b>Term</b>	<b>Means</b>
	5.7.3 and 5.7.4 in which a Licensed Provider is to be regarded as providing Water Services and/or Sewerage Services in respect of a Supply Point;
"Designated Services"	those Default Services which a Licensed Provider is regarded as providing to a Supply Point in Designated Circumstances;
"Designated Time"	the point in time from which a Licensed Provider is to be regarded as providing Designated Services;
"Direction(s)"	the Water Services Codes and Services) Directions 2007 (or any other direction which amends, replaces or supplements, or is made in respect of substantially the same subject matter as that direction);
"Director"	any individual appointed as a director of CMA;
"Discharge Point"	<p>in relation to any Eligible Premises, the point at which Trade Effluent Services are provided and (to avoid doubt):</p> <p>(a) a Discharge Point will always relate to a sewerage Supply Point; and</p> <p>(b) a sewerage Supply Point may have more than one (1) Discharge Point related to it;</p>
"Discharge Point Identification" or "DPID"	the unique identifier allocated to a Discharge Point by Scottish Water and notified to the CMA in Data Transactions T021 (Notify DPID) and/or

<b>Term</b>	<b>Means</b>
	T02300 (Notify Meter Association);
"Disconnection"	the Permanent Disconnection or the Temporary Disconnection of a Supply Point in accordance with the Disconnections Code;
"Disconnections Code"	the code made by the Commission pursuant to section 19 of the 2005 Act, as in force from time to time and supplemented by any disconnections guidance published by the Commission from time to time;
"Dispute"	the meaning given in Section 9.2;
"Disputing Party"	the meaning given in Section 9.2;
"Effective Date"	the date specified in the Direction;
"EISRs"	the meaning given in Section 10.6.1;
"Eligible Premises"	the meaning given to it by section 27(1) of the 2005 Act;
"End Read"	the Meter Read with Meter Read Type E provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Entry Change of Use"	any reconfiguration at any Eligible Premises such that Water Services and/or Sewerage Services are to be provided to New Supply Point(s) where no such Supply Point(s) are Registered in the Supply Point Register;

<b>Term</b>	<b>Means</b>
"Error Rectification" or "ER"	the meaning given in CSD 0105 (Error Rectification & Retrospective Amendments);
"Estimated Daily Volume" or "DV <sub>E</sub> "	the daily Volume estimated as being supplied in relation to a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.2 of CSD 0204 (Volume Processing & Estimation);
"Estimated Daily Volumetric Charge" or "EDC"	the estimated daily volumetric charge payable in respect of a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.2.2 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Estimated Weighted Average Unit Rate" or "EWA"	the estimated weighted average unit rate applicable to a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.2 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Estimated Yearly Volume" YV <sub>E</sub> "	the total Volume supplied in relation to a meter or Supply Point (as the context may require), as estimated by the CMA in accordance with section 2.2.1 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Exempt Customer"	any person who qualifies for exemption from certain charges pursuant to the Water and Sewerage Charges (Exemption) (Scotland) Regulations 2002;

<b>Term</b>	<b>Means</b>
"Exit Change of Use"	any reconfiguration of any Eligible Premises to which a Supply Point relates such that they cease to be Eligible Premises;
"Expert"	a person with appropriate qualifications and experience to resolve a Dispute, appointed under Section 9.4.1;
"Expert Notification"	the meaning given in Section 9.4.1;
"Final Read"	the Meter Read with Meter Read Type F provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Final Report"	the report prepared by the TP Secretary in respect of each Market Code Change Proposal or Operational Code Change Proposal which shall set out the TP's decision to approve or reject such proposal giving reasons for such decision and summarising all of the views expressed at the TP relating to such proposal. The report shall specify the time and date on which the TP believes any Market Code Change Proposal or Operational Code Change Proposal (as appropriate) should be implemented and contain the final version of draft legal text relating to that Market Code Change Proposal or Operational Code Change Proposal;
"First Party"	the meaning given in Section 10.4.1;

<b>Term</b>	<b>Means</b>
"Free Allocation"	the Volume of Water Services or Sewerage Services, supplied (or available to be supplied) in relation to a meter or Supply Point (as the context may require), for which no Wholesale Charge is payable under the Wholesale Charges Scheme, which allocation is based on the Chargeable Meter Size(s) attributable to that meter or Supply Point;
"FOISA"	the meaning given in Section 10.6.1;
"Force Majeure"	the meaning given in Section 10.8;
"Foul Sewerage Services"	making arrangements for or in relation to <ul style="list-style-type: none"> <li>(i) the provision of sewerage to, and the disposal of sewage from any Eligible Premises, through the Public Sewerage System where the sewage and/or the related water supply is Metered; or</li> <li>(ii) the provision of sewerage to, and the disposal of sewage from any Eligible Premises, through the Public Sewerage System, where both the sewage and the related water supply are Unmeasurable; or</li> <li>(iii) the provision of sewerage to, and the disposal of sewage from any Eligible Premises through the Public Sewerage System where the sewage and/or the related water supply is Measurable but is not Metered;</li> </ul>

<b>Term</b>	<b>Means</b>
"Framework Agreement"	the framework agreement entered into among the Original Applicants on the Effective Date;
"Gap Site"	any Eligible Premises which is in receipt of Water Services and/or Sewerage Services where no Supply Points are Registered in relation to such Eligible Premises in the Supply Point Register;
"Gap Site Allocation Process"	the process set out in Section 5.4.11 by which Licensed Providers are allocated to a non-household customer at a Gap Site identified by Scottish Water;
"Go Live Date"	1 April 2008 or such other date as may be determined by or under a direction given by the Commission;
"High Volume Interface"	the meaning given in the Data Transaction Catalogue;
"Historical Consumption Data"	consumption data specific to a Supply Point for the period of twelve (12) Months prior to the proposed Registration Start Date for a Transfer;
"Holding Company"	the meaning specified in section 736 of the Companies Act 1985 as amended;
"Incoming Licensed Provider" or "Incoming LP"	the Licensed Provider to whom a Supply Point is proposed to Transfer pursuant to a Transfer Registration Application;
"Indicated Date"	the date on which the CMA Secretary requires

<b>Term</b>	<b>Means</b>
	the Licensed Provider Members to meet with a view to nominating the Licensed Provider Directors for the Transitional Charging Period which shall not occur until at least two Licensed Providers have been granted Permanent Licences;
"Industry Level Estimate Table"	the table showing Estimated Yearly Volume for each Chargeable Meter Size, as designated as such by the CMA from time to time;
"Initial Read"	the Meter Read with Meter Read Type I provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Insolvency Event"	that:- <ul style="list-style-type: none"> <li>(i) a Code Party is unable or is deemed unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;</li> <li>(ii) the value of the assets of a Code Party are less than its liabilities (taking into account contingent and prospective liabilities);</li> <li>(iii) a moratorium is declared in respect of any indebtedness of a Code Party under Part I</li> </ul>

**Term****Means**

of the Insolvency Act 1986;

- (iv) a Code Party is insolvent or is deemed to be insolvent for the purposes of the law;
  - (v) any corporate action, legal proceedings or other procedure or step is taken in relation to or with a view to:-
    - (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a Code Party other than a solvent liquidation or reorganisation of any Code Party;
    - (b) a composition, compromise, assignment or arrangement with any creditor of any Code Party;
    - (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a Code Party), receiver, administrative receiver, administrator (whether appointed out of court or otherwise), compulsory manager, trustee in bankruptcy, judicial custodian or factor, or other similar officer in respect of any Code Party or any of its assets; or
    - (d) enforcement of any security over any assets of any member of a Code Party,
- or any analogous procedure or step is taken in any jurisdiction; or

<b>Term</b>	<b>Means</b>
	(vi) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a Code Party;
"Intellectual Property Rights" or "IPR"	any and all intellectual property or industrial rights of any description anywhere in the world including without limitation to the foregoing generality any patents, trade marks, domain names, registered designs, copyright (including without limitation to the foregoing generality rights in computer software, object and source code), rights in the nature of copyright, database rights, semi-conductor topography rights, unregistered design rights, rights in and to trade names, business names, product names and logos, inventions, databases, discoveries, specifications, formulae, processes, know how, trade secrets, confidential information and any analogous or similar right in any jurisdiction (whether any such rights referred to in this definition are registered, unregistered, registerable or not and any applications or rights to apply for registration of any of them together with any registered rights resulting from any such applications or rights to apply for registration);
"Invoice Period"	a calendar month and (where the contract requires) includes a part of a calendar month;
"Invoice Period Non-Volumetric Charge" or "IPNVC"	the invoice period non-volumetric charge payable in respect of a meter or Supply Point (as the

<b>Term</b>	<b>Means</b>
	context may require), as calculated by the CMA in accordance with section 2.1.2 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Invoice Period Trade Effluent Charge" or "IPTEC"	the invoice period trade effluent charge, payable in respect of a Discharge Point as calculated by the CMA in accordance with section 2.2.3 of CSD 0206 (Trade Effluent Processes);
"Law"	any Act of Parliament or of the Scottish Parliament, any statutory instrument or other subordinate legislation of either parliament, any exercise of the Royal Prerogative, any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, any applicable guidance direction or determination with which a Code Party is bound to comply and any applicable judgement of a relevant court of law which creates binding precedent in Scotland;
"Licence"	a Water Services Licence or a Sewerage Services Licence;
"Licensed Provider" or "LP"	a Water Services provider or a Sewerage Services provider as those terms are defined in sections 6(2) and 6(4) of the 2005 Act respectively;
"Licensed Provider CMA Charges"	the meaning given in Section 7.3.2(ii);
"Licensed Provider Director"	the Directors of the Board appointed in

<b>Term</b>	<b>Means</b>
	accordance with Section 8.3.1(iv);
"Licensed Provider Members"	those members of the CMA which are Licensed Providers;
"Licensed Provider Share (per Month)"	the meaning given in Section 7.3;
"Licensed Provider's Group"	the Licensed Provider, any Subsidiary Undertaking or Parent Undertaking of the Licensed Provider or any Subsidiary Undertaking of any such Parent Undertaking;
"Low Volume Interface"	the meaning given in the Data Transaction Catalogue;
"Main Meter"	the primary meter in relation to a Complex Site, there being only one such primary meter for each Complex Site;
"Market Assurance Process"	the processes administered by the CMA that each Licensed Provider must complete before starting to trade under the Market Code and that Scottish Water and Licensed Providers must complete in certain other circumstances in accordance with CSD 0001 (Market Entry & Assurance);
"Market Auditor"	the person or persons appointed to audit the operation of the market in terms of Section 6.8.1;
"Market Audit Reports"	reports prepared by the Market Auditor and made available to Code Parties following any

<b>Term</b>	<b>Means</b>
	audit carried out under Section 6.8;
"Market Code" or "MC"	this code comprising Parts 1 to 10, Schedules 1 to 20 and as designated as the Market Code in force for the time being by or under the directions made by the Commission for that purpose;
"Market Code Change Proposal"	a proposal made in accordance with Section 8.7.1 to Change the Market Code;
"Market Code Objectives"	the meaning given in Section 1.2.1;
"Market Code Principles"	the meaning given in Section 1.2.1;
"Market Design"	all of the processes, data flows, Registration requirements, data validation, Volume and Wholesale Charge calculations which require to be carried out to enable competition for Supply Points among Licensed Providers;
"Market Domain Data"	data required by the CMA in order to perform the processes set out in the CSDs, that is not Scottish Water Data, SPID Data or Trading Data;
"Market Level Data"	data from which no individual Trading Party can be identified and which cannot be identified as belonging or relating to any individual Trading Party;
"Market Readiness Process"	the processes administered by the CMA that Scottish Water and each Licensed Provider must complete prior to the Go Live Date in accordance

<b>Term</b>	<b>Means</b>
	with the document entitled "Market Readiness Assurance Strategy for the Water Market in Scotland" as prepared and updated by the CMA from time to time;
"Market Share"	the meaning given in Section 7.8.2;
"Market Tests"	such tests as may be required by the CMA pursuant to the Market Readiness Process and also as specified in CSD 0001 (Market Entry & Assurance);
"Measurable Supply Point"	a Supply Point which is capable of being Metered but for which no meter or meters have been installed and "Measurable" shall be construed accordingly;
"Member"	a member of the CMA;
"Meter Advance Period"	the days between two (2) consecutive Meter Reads of the same meter;
"Meter Advance Volume" or "VM <sub>A</sub> "	the Volume supplied in relation to any meter or Supply Point (as the context may require) between two (2) consecutive Meter Reads of the same meter as calculated by the CMA in accordance with section 2.1.1 of CSD 0204 (Volume Processing & Estimation);
"Meter Information"	the meter identification (e.g. the manufacturer's serial number), the physical meter size and the number of digits on the meter's register;

<b>Term</b>	<b>Means</b>
"Metered"	any Water Services or Sewerage Services for which Usage is calculated from a metered source or a series of related metered sources,;
"Meter Read"	the reading of any meter for any purpose required under the Market Code and, as the context requires, includes the data collected by such reading as submitted to the CMA in accordance with the processes set out in the CSDs;
"Meter Read Type"	the Data Item denoting the Meter Read Type of a Meter Read;
"Minimum Charge"	the amount determined by the CMA from time to time as being a minimum threshold level for invoicing CMA Charges pursuant to Section 7.4;
"Month"	a calendar month;
"Monthly Read Meters"	any meter which carries:- <ul style="list-style-type: none"> <li>(i) an 80mm Tariff or above (including all appropriate sub-meters); or</li> <li>(ii) supplies subject to Schedule 3 Agreements; or</li> <li>(iii) supplies to a Supply Point taking more than 100,000m<sup>3</sup> per annum;</li> </ul>
"Multi Meter Supply Point"	a Metered Supply Point which has more than one (1) metered source and which is not a

Term	Means
"New Connection"	Complex Site;  any new connection of a Supply Point made pursuant to any of Processes 1 - 4 of the Operational Code;
"New Supply Point"	any first Registration of a Supply Point made pursuant to an Entry Change of Use or in relation to a Gap Site;
"Non-paying Trading Party"	the meaning given in Clause 7.8;
"Nomination Meeting"	the meeting of Licensed Provider Members which shall be held on the Indicated Date in respect of the Transitional Charging Period and thereafter not later than 1 <sup>st</sup> March in every Year with a view to nominating the Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate;
"Nominations Committee"	the committee constituted in accordance with Section 8.3.5;
"Non-Return to Sewer Allowance"	the applicable adjustment to the Volume of Sewerage Services supplied in relation to any meter or Supply Point, as such adjustment is further described, defined and set in the Wholesale Charges Scheme;
"Opening Read"	the Meter Read with Meter Type O provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);

<b>Term</b>	<b>Means</b>
"Operational Code"	the code designated as such by or under the Direction;
"Operational Code Change Proposal"	a proposal made in accordance with Section 8.8.1;
"Operational Code Objectives"	the meaning given in Section 1.2.3;
"Operational Code Principles"	the meaning given in Section 1.2.3;
"Original Applicant"	an Original Party to the Framework Agreement as such term is defined in the Framework Agreement and as listed in the Schedule of the Framework Agreement;
"Outgoing Licensed Provider" or "Outgoing LP"	the Licensed Provider Registered in relation to a Supply Point immediately prior to the proposed Registration of that Supply Point to a new Licensed Provider taking effect;
"Outstanding Debt"	<p>(i) any debt properly due by a Customer of a Licensed Provider in respect of a Supply Point where the debt:-</p> <p>(a) has not been paid by the due date;</p> <p>(b) has been demanded in writing by the Licensed Provider after the original due date setting a new due date for payment not less than five (5) Business Days after receipt of the written demand; and</p> <p>(c) has not been paid in full by the</p>

<b>Term</b>	<b>Means</b>
	new due date; or
	(ii) any sum not paid by a Customer of a Licensed Provider following allocation of Supply Point(s) to that Licensed Provider pursuant to Section 5.3.6 where the sum:-
	(a) has been demanded in writing by the Licensed Provider setting a date for payment on at least two separate occasions in each case allowing not less than five (5) Business Days after receipt of the written demand for payment; and
	(b) has not been paid in full by the last due date so notified;
"Parent Undertaking"	the meaning given in section 258 of the Companies Act 1985 as amended (and "parent" shall be construed accordingly);
"Part"	each section of the Market Code, the headings for which are listed on the contents page of the Market Code;
"Partial Registration Application"	an application in the form prescribed by the CMA from time to time to Register a Supply Point or Supply Points at a New Connection or a New Supply Point;
"Party A"	the meaning given in Section 9.4.4;
"Party B"	the meaning given in Section 9.4.4;

<b>Term</b>	<b>Means</b>
"Permanent Disconnection"	the disconnection of a Connection Point where that Connection Point will not be used again, and "Permanently Disconnected" shall be construed accordingly;
"Permanent Market Design"	those systems and processes required to enable the CMA to perform its duties under the Market Code with effect from the Go Live Date;
"Performance Indicators"	the areas of performance for each Trading Party to be monitored by the CMA set out in table 2 of CSD 0002 (Performance Standards);
"Performance Standard Charges"	any charges to be applied for failure to meet any Performance Standards as updated and amended from time to time in accordance with Part 6;
"Performance Standards"	the standards of performance for each Trading Party set out in table 1 of CSD 0002 (Performance Standards), as updated and amended from time to time in accordance with Part 6;
"Permanent Licence"	any licence granted by the Commission under Section 6 of the 2005 Act with the exception of the licences granted by the Commission on 31 October 2006;
"POLR Supply Points"	the meaning given in Section 5.3.6(i);
"Proposer"	the Trading Party or the CEO, as the case may

<b>Term</b>	<b>Means</b>
	be, proposing a Change to the Market Code or the Operational Code;
"Provider of Last Resort" or POLR"	a Licensed Provider appointed under the Allocation Process or the process set out in Section 5.3.6(i)(b) in accordance with CSD 0003 (Provider of Last Resort);
"Public Sewerage System"	any and all of the sewers (and junctions therewith), drains, SUD systems, sewage treatment works and other similar infrastructure which are (either or both): (a) vested in Scottish Water; or (b) used by Scottish Water (or a person acting on its behalf or under its authority) in connection with the exercise of Scottish Water's core functions as respects the provision of sewerage or the disposal of sewage;
"Public Water Supply System"	the meaning given to it in the 2005 Act;
"Qualifying Majority"	such number of TP Members as indicated in column 2 of the table in Section 8.6.15;
"Rateable Value"	the rateable value of any particular Supply Point, as contained in the SPID Data for that Supply Point;
"Re-Read"	the Meter Read with Meter Type R provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Receiving Body"	the meaning given in Section 10.6.2;

<b>Term</b>	<b>Means</b>
"Reconnection Read"	the Meter Read with Meter Read Type Y provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Registration"	the linkage between a Supply Point and a Licensed Provider at any point in time in the Supply Point Register, and "Register" and "Registered" shall be construed accordingly;
"Registration Application"	an application in the form prescribed by the CMA from time to time to Register a Supply Point;
"Registration Application Date" or "RAD"	the date of receipt by the CMA of a Registration Application or a Transfer Registration Application;
"Registration Confirmation Date" or "RCD"	the date on which the CMA issues a Confirmation Notice;
"Registration End Date" or "RED"	the day preceding the Registration Start Date of an Incoming Licensed Provider;
"Registration Start Date" or "RSD"	the date on which the Incoming Licensed Provider becomes Registered for any Supply Point;
"Regular Cyclic Read"	the Meter Read with Meter Read Type C provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Related Dispute"	the meaning given in Section 9.5;

<b>Term</b>	<b>Means</b>
"Related Procedure"	the meaning given in Section 9.5;
"Related Water Supply Meter" or "RWSM"	for a Supply Point where the Sewerage Services are not directly Metered and there is a related Supply Point for Water Services, any meter or meters measuring the supply of Water Services to such Supply Point;
"Relevant Applicant"	any Original Applicant or Applicant;
"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 Commission;
"Relevant Date"	in respect of any Relevant Employee, the date of a Relevant Transfer from the outgoing CMA to the successor CMA;
"Relevant Employees"	those employees of the departing CMA entity or of any of its subcontractors, who are wholly or substantially engaged in carrying out the duties of the CMA entity under the Market Code immediately prior to the Relevant Date;
"Relevant Invoice"	any invoice or statement issued under Clauses 7.4.1, 7.4.2, 7.4.3, 7.11.4 or 7.11.6;
"Relevant Transfer"	a relevant transfer for the purpose of the TUPE

<b>Term</b>	<b>Means</b>
	Regulations or the Acquired Rights Directive 77/187 (as amended, re-enacted or extended from time to time);
"Reserved Matters"	those matters reserved to the Board as set out in Part 3 of Schedule 3 (Establishment of CMA);
"Resignation Notice"	a resignation notice in the form specified by the CMA from time to time;
"Retrospective Amendment" or "RA"	the meaning given in CSD 0105 (Error Rectification & Retrospective Amendments);
"Review Date"	1 April 2009 or the first anniversary of the Go Live Date, whichever is the later;
"Schedule"	the twenty (20) schedules annexed to and forming part of this Market Code;
"Schedule 3 Agreement "	an agreement in respect of which the Commission has made a determination under paragraph 2 of schedule 3 to the 2005 Act;
"Scottish Ministers"	the First Minister and such other Ministers as may be appointed by the First Minister under Section 47 of the Scotland Act 1998, as well as the Lord Advocate and Solicitor General for Scotland;
"Scottish Water" or "SW"	the body established under Part 3 of the 2002 Act and any statutory successor to or assignee of such body;

<b>Term</b>	<b>Means</b>
"Scottish Water Business Stream"	Scottish Water Business Stream Limited, a limited liability company with registered number SC294924 and having its registered office at Castle House, 6 Castle Drive, Dunfermline, KY11 8GG;
"Scottish Water CMA Charges"	the meaning given in Section 7.3.2(i);
"Scottish Water Data"	all of the information which the CMA requires (whether contained in or relative to the Wholesale Charges Scheme or otherwise), in relation to the processes set out in the CSDs, which information is to be provided by Scottish Water in accordance with the Settlement Timetable;
"Second Party"	the meaning given in Section 10.4.1;
"Self Supply Group"	has the meaning given in Part C (Standard Conditions Applying to Self-Supply Water Services and Sewerage Services Licences) of the standard conditions (determined by the Commission under paragraph 2(2) of Schedule 2 to the 2005 Act) of water and sewerage services licences;
"Self Supply Licensed Provider"	a Licensed Provider which has Part C (Standard Conditions Applying to Self-Supply Water Services and Sewerage Services Licences) of the standard conditions (determined by the Commission under paragraph 2(2) of Schedule 2

Term	Means
"Self Supply Licensed Provider Departure Date"	to the 2005 Act) of its licence in effect;  the meaning given in Section 5.7.3;
"Sensitive Customers"	the meaning given in the Operational Code;
"Service Category"	either Water Services or Sewerage Services as appropriate;
"Service Component"	that component of Water Services and Sewerage Services for which differing Wholesale Charges are payable, as such component is shown in Table 1 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Service Element"	that element of Water Services and Sewerage Services for which differing Wholesale Charges are payable, as such element is shown in Table 1 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Services"	any Water Services, Foul Sewerage Services, Surface Water Drainage Services or Trade Effluent Services;
"Settlement Day"	each period beginning at 00.00 hours and ending at (but not including) 24.00 hours during which Water Services or Sewerage Services are provided in relation to any Supply Point from and after the Go Live Date;

Term	Means
"Settlement Day Non-Volumetric Charge" or "SDNVC"	the settlement day non-volumetric charge payable in respect of a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.1.1 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Settlement Day Volume" or "SDV"	the settlement day volume supplied in relation a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.2.2 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Settlement Day Volumetric Charge" or "SDVC"	the settlement day volumetric charge payable in respect of a meter or Supply Point (as the context may require), as calculated by the CMA in accordance with section 2.2.2 of CSD 0205 (Charge Calculation, Allocation & Aggregation);
"Settlement Process"	the process of calculation of the Wholesale Charges in respect of each Supply Point;
"Settlement Reports"	the reports to be provided by the CMA to Scottish Water and each Licensed Provider in accordance with the Settlement Timetable set out in CSD 0201 (Settlement Timetable & Reporting);
"Settlement Run"	the preliminary run, the first, second and third runs performed for each Settlement Day and the Tariff Year Settlement Run, as specified in CSD 0201 (Settlement Timetable & Reporting);

<b>Term</b>	<b>Means</b>
"Settlement Timetable"	the timetable set out in CSD 0201 (Settlement Timetable & Reporting);
"Sewerage Services" or "SS"	all Foul Sewerage Services, Surface Water Drainage Services and Trade Effluent Services which are provided to any Eligible Premises;
"Sewerage Services Licence"	a licence granted under section 6(3) of the 2005 Act;
"Single Meter Supply Point"	a Metered Supply Point which has one (1) metered source;
"Specialist Licensed Provider"	a Licensed Provider which has Part D (Standard Conditions Applying to Specialist Water Services and Sewerage Services Licences) of the standard conditions (determined by the Commission under paragraph 2(2) of Schedule 2 to the 2005 Act) of its licence in effect;
"Specialist Licensed Provider Departure Date"	the meaning given in Section 5.7.4;
"SPID"	a unique identifier allocated to each Supply Point by the CMA in accordance with CSD 0101 (New Connections & New Supply Points);
"SPID Data"	the data to be provided by each Data Owner for each Supply Point as specified in the Data Transaction Catalogue;

<b>Term</b>	<b>Means</b>
"SPID Status"	the trading status of a SPID in the Central Systems;
"Sub Meter"	a meter, the Volume supplied in relation to which, is a proportion of the Volume supplied in relation to a Main Meter;
"Subsidiary Undertaking"	the meaning given in section 258 of the Companies Act 1985 as amended (and "subsidiary" shall be construed accordingly);
"Successor CMA"	the body appointed to assume the role of CMA by the Trading Parties in accordance with Section 2.3.1(ii);
"Supply Point Register"	the database (and any related business processes) which is operated and maintained by the CMA to facilitate the Registration of Supply Points to Licensed Providers and the Transfer of Supply Points from one Licensed Provider to another Licensed Provider and which holds the data required to comply with CSD 0101 (Registration: New Connections & New Supply Points), CSD 0102 (Registration: Transfers), CSD 0103 (Registration: Cancellations), CSD 0104 (Maintain SPID Data), CSD 0105 (Error Rectification & Retrospective Amendments), CSD 0206 (Trade Effluent Processes), CSD 0301 (Data Transaction Catalogue) and CSD 0003 (Provider of Last Resort);
"Supply Point "	subject always to Section 5.15 of the Market

<b>Term</b>	<b>Means</b>
	Code, in relation to any Eligible Premises, the point at which Water Services or Sewerage Services are provided and (to avoid doubt):- (a) any Eligible Premises that receives both Water Services and Sewerage Services shall have two (2) Supply Points; and (b) any Eligible Premises that receives either Water Services or Sewerage Services only shall have one (1) Supply Point;
"Surface Water Drainage Services"	making arrangements for or in relation to drainage from or in relation to any Eligible Premises to the Public Sewerage System (comprising property and roads drainage as appropriate);
"Technical Panel" or "TP"	the panel appointed by the Board comprised of individuals with the requisite skills and experience to advise the Board on technical matters in relation to the Market Code;
"TP Members"	the persons appointed in accordance with Section 8.6.2;
"TP Secretary"	the secretary to the TP appointed from time to time in accordance with Section 8.6.5;
"Tariff Year Settlement Run"	the final Settlement Run performed by the CMA in relation to any Year;
"Temporary Disconnection"	the disconnection of a Connection Point where

<b>Term</b>	<b>Means</b>
	Services will be capable of being provided again in the future to the related Supply Point(s) provided that if such disconnection continues for a period in excess of three (3) months such disconnection shall become a Permanent Disconnection, and "Temporarily Disconnected" shall be construed accordingly;
"Temporary Disconnection Read"	the Meter Read with Meter Read Type X provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Termination Notice"	a notice issued to a Defaulting Trading Party intimating the date that Trading Party will cease to be a Trading Party under the Market Code;
"Total Costs"	the meaning given in Section 7.2.1;
"Total Licensed Provider Pending Supply Point Registrations"	the meaning given in Section 7.3.3;
"Total Licensed Provider Supply Points"	the meaning given in Section 7.3.4;
"Trade Effluent"	the meaning given in section 59(1) of the Sewerage (Scotland) Act 1968;
"Trade Effluent Estimated Yearly Volume"	the estimated yearly Volume of Trade Effluent Services to be supplied in relation to a Discharge Point, as notified to the CMA in accordance with Data Transactions T021.0 (Notify DPID) and/or T02300 (Notify Meter Association);

<b>Term</b>	<b>Means</b>
"Trade Effluent Meter"	a meter which relates to the provision of Trade Effluent Services;
"Trade Effluent Services"	those Sewerage Services that are not Foul Sewerage Services or Surface Water Drainage Services in so far as they relate to Trade Effluent;
"Trading Conditions"	<p>that each Licensed Provider:</p> <ul style="list-style-type: none"> <li>(i) has entered into a Wholesale Services Agreement; and</li> <li>(ii) has been admitted as a party to the Operational Code; and</li> <li>(iii) has not failed to pay any amount due to the CMA under Part 7,</li> </ul> <p>and in addition to apply to Scottish Water Business Stream only:</p> <ul style="list-style-type: none"> <li>(iv) that Scottish Water Business Stream holds a Permanent Licence which has not been the subject of any successful appeal notified within fourteen (14) days of the date of the grant of such Permanent Licence;</li> </ul>
"Trading Data"	the information generated and subsequently held by the CMA in carrying out its duties under the Market Code;
"Trading Party"	all Licensed Providers who are a party to this Market Code in accordance with its terms and Scottish Water;

<b>Term</b>	<b>Means</b>
"Trading Party's Group"	the Trading Party, any Subsidiary Undertaking or Parent Undertaking of the Trading Party or any Subsidiary Undertaking of such Parent Undertaking;
"Trading Status"	the status accorded to any SPID in the Central Systems being either "complete" or "incomplete";
"Transfer"	the completion of implementation of any Transfer Registration Application for any Supply Point such that the Supply Point becomes Registered to a different Licensed Provider and "Transferred" and "Transferring" shall be construed accordingly;
"Transfer Payment"	a payment made by the successor CMA to the departing CMA and approved by the Board of the Successor CMA;
"Transfer Read"	the Meter Read with Meter Read Type T provided to the CMA in accordance with CSD 0202 (Meter Read Submission: Process);
"Transfer Registration Application" or "TRA"	a Registration Application made in connection with a Transfer;
"Transition"	the process of developing and testing the Permanent Market Design and the migration and population of the data into the Permanent Market Design and initial operation of the Permanent Market Design;

Term	Means
"Transitional Charges"	the meaning given in Section 7.3.1;
"Transitional Charging Period"	the period from the Effective Date until the Go Live Date;
"TUPE Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI2006/246) as amended, re-enacted or extended from time to time;
"Unit"	any distinct part of any Eligible Premises which is capable of separate occupation by a tenant or other occupier;
"Unit Rate"	the particular rate that is applicable to a particular Band, as set out in the Wholesale Charges Scheme;
"Unmeasurable "	any Water Services or Sewerage Services for which Scottish Water notifies the CMA that the supply is unmeasurable including any supply for which Scottish Water determines that meter installation is infeasible in accordance with Process 8 of the Operational Code;
"Urgent Change"	the meaning given in Section 8.8.1;
"Usage"	for any period, the total volume of water delivered to or foul sewage or trade effluent removed from any Eligible Premises over that period;

<b>Term</b>	<b>Means</b>
"Vacant Premises"	any Eligible Premises which have been unoccupied by any Customer for a period in excess of one (1) Month;
"Volume"	the volume of Water Services, Foul Sewerage Services, Surface Water Drainage Services or Trade Effluent Services (or any combination of the above as the context may require) supplied in relation to any Discharge Point, meter or Supply Point, in the relevant period, whether actual or estimated, as calculated by or notified to the CMA in accordance with CSD 0204 (Volume Processing & Estimation) or CSD 0206 (Trade Effluent Processes) as the context requires;
"Volume Limit"	the volume limit applicable to any particular Band, Free Allocation or Capacity Volume Charge, as specified in the Wholesale Charges Scheme;
"Water Services" or "WS"	making arrangements for or in relation to:- <ul style="list-style-type: none"> <li>(i) the supply of water through the Public Water Supply System where the supply is Metered; or</li> <li>(ii) the supply of water through the Public Water Supply System to a Supply Point where the supply is Unmeasurable; or</li> <li>(iii) the supply of water through the Public Water Supply System where the supply is Measurable but is not Metered;</li> </ul>

<b>Term</b>	<b>Means</b>
"Water Services Licence"	a licence granted under section 6(1) of the 2005 Act;
"Wholesale Charges"	the charges due and payable to Scottish Water by each Licensed Provider under the Charges Scheme;
"Wholesale Charges Scheme"	Scottish Water's charges scheme setting out its charges for Water Services and Sewerage Services approved by the Commission under Section 29A of the 2002 Act from time to time;
"Wholesale Services Agreement"	any agreement entered into pursuant to section 16 of the 2005 Act;
"Working Procedures"	the best practice guidance for various working practices and processes in relation to the Market Code developed and issued by the CMA from time to time following consultation with Trading Parties;
"Year"	1 April to 31 March;
"Year Trade Effluent Charge" or "YTEC"	means the year trade effluent payable in respect of a Discharge Point, as calculated by the CMA in accordance with section 2.2.4 of CSD 0206 (Trade Effluent Processes);
"the 2002 Act"	the Water Industry (Scotland) Act 2002; and
"the 2005 Act"	the Water Services etc (Scotland) Act 2005.

## 2. Interpretation

In this Market Code:-

- 2.1 any words or expressions used in the 2002 Act or the 2005 Act shall, unless the contrary intention appears, have the same meaning when used in this Market Code;
- 2.2 references to the masculine shall include the feminine and references in the singular shall include references in the plural and *vice versa*;
- 2.3 references to the word "include" or "including" are to be construed without limitation;
- 2.4 save as otherwise expressly provided references to time are to local time;
- 2.5 except where the context otherwise requires, references to a particular Part, Section or Schedule shall be a reference to that Part, Section or Schedule in or to the Market Code;
- 2.6 except where the context otherwise requires, references in a Schedule to a particular Annex shall be a reference to that Annex to that Schedule;
- 2.7 the table of contents, the headings to each of the Parts, Sections and Schedules are inserted for convenience only and shall be ignored in construing this Market Code.
- 2.8 a derivative term of any defined or interpreted term shall be construed in accordance with the relevant definition or interpretation;
- 2.9 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;
- 2.10 references to the 2002 Act and the 2005 Act include, where the context permits, reference to any orders or regulations made pursuant to the Act; and
- 2.11 a reference to a document is to the version of such document in force for the time being, subject to any express provision to the contrary in the Market Code.

## 3. Hierarchy

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

- (i) any Law;
- (ii) the Market Code.

**SCHEDULE 2**  
**CMA EXIT PLAN AND TRANSFER PROVISIONS**

**1. General**

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- 1.1 In the event of the removal of any CMA in accordance with Part 2 (CMA Duties), Section 2.3.2, that departing CMA shall co-operate with the Trading Parties and the Successor CMA to ensure that a smooth handover and continuation of the CMA's duties under the Market Code takes place.
- 1.2 The Members shall comply with any direction given by the Board to wind up any CMA should it no longer be capable of fulfilling the duties set out in the Market Code by reason of it being subject to an Insolvency Event or if it is no longer required to fulfil those duties due to termination of this Market Code. Any distribution of assets of any departing CMA effected as part of a winding up shall be made to the Successor CMA to the extent such an organisation has duties and/or obligations relating to the Market Code or any replacement or amendment thereof or thereto, or otherwise in accordance with the Articles of Association of the departing CMA.

**2. Transfer of Services, Responsibilities and Assets**

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**2.1 Transfer of Services, Responsibilities and Assets**

On ceasing to be a Code Party in accordance with Part 2 (CMA Duties), Section 2.3.1, the departing CMA shall:-

- 2.1.1 transfer to the Successor CMA all ownership and/or licences of Intellectual Property Rights (including all information in its possession) relevant to carrying out its duties under the Market Code, including those relating to the Central Systems;
- 2.1.2 transfer to the Successor CMA all assets belonging to the CMA which are required by the Successor CMA to carry out its duties under the Market Code;
- 2.1.3 in respect of any third party software required to enable the Successor CMA to undertake its obligations set out in the Market Code assign to the Successor CMA its licence 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 CMA a non-exclusive, perpetual and irrevocable licence to use such third party software;

- 2.1.4 provide to the Successor CMA any of the data in its possession (including all archived and other historical records of trading under the Market Code) in a format nominated by the Successor CMA, together with all training manuals, code, materials, reports, working papers, algorithms and other related documentation relevant to carrying out its duties under the Market Code and any other information and all copies thereof;
- 2.1.5 cease to use the data and, at the request of the Successor CMA, shall destroy all copies of the data then in its possession;
- 2.1.6 make all reasonable endeavours to assign or novate in favour of the Successor CMA any contracts, licences, equipment leases and maintenance agreements which are required by the Successor CMA to operate the Central Systems or otherwise carry out its duties under the Market Code;
- 2.1.7 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 CMA against all Costs arising in connection with such emoluments or outgoings, or a failure by the departing CMA to discharge them. For the avoidance of doubt the departing CMA will not be responsible for emoluments and outgoings in respect of the Relevant Employees arising on or after the Relevant Date;
- 2.1.8 in so far as the TUPE Regulations apply to the transfer of the Relevant Employees from the departing CMA to the Successor CMA, 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 all reasonable endeavours to procure that the Relevant Employees shall nonetheless transfer to the employment of the Successor CMA;
- 2.1.9 indemnify the Successor CMA from and against:-
- (i) all Costs arising in connection with any claim against the Successor CMA by any Relevant Employee arising from any act, fault or omission of the departing CMA 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 delict or otherwise (in all cases whether arising under British or European law); and

- (ii) Costs incurred by the Successor CMA 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 CMA 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 CMA 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 CMA'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;

- 2.1.10 transfer or make available to the Successor CMA all assets (excluding heritable and leasehold property), equipment, facilities, documentation and Transitional Services which are required by the Successor CMA to operate the Central Systems;
- 2.1.11 render all reasonable assistance to the Successor CMA if requested by the Successor CMA in order to effect an orderly assumption by the Successor CMA of the duties carried out by the departing CMA under the Market Code;
- 2.1.12 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 CMA all information reasonably required by the Successor CMA 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 CMA or its

relevant sub-contractor is aware and shall warrant that such information is true, complete and accurate in all material respects;

2.1.13 not and shall procure that any relevant sub-contractor shall not, from and after the earlier of the date upon which the departing CMA

- (i) is aware that it is or is likely to be subject to an Insolvency Event; or
- (ii) the date upon which it could reasonably be expected to be aware that it is or is likely to be subject to an Insolvency Event

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 CMA, such consent not to be unreasonably withheld or delayed; and

2.1.14 use reasonable endeavours to comply with any reasonable request by the Successor CMA to facilitate a meeting between it and any Relevant Employee prior to the Relevant Date.

## 2.2 **Transitional Services**

For a period of three (3) Months from the removal date referred to in Section 2.3.2(ii), the departing CMA shall, where required by the Trading Parties or the Successor CMA, provide or procure the provision of:-

- 2.2.1 training and systems support for the Successor CMA;
- 2.2.2 parallel running of systems with the Successor CMA;
- 2.2.3 the moving, relocation or delivery of assets referred to in paragraph 2.1;
- 2.2.4 any relevant practical and procedural information to the Successor CMA not already covered by paragraph 2.1; and
- 2.2.5 personnel to assist with the requirements of paragraph 2.2.1 to 2.2.4, (together the "Transitional Services").

## 3. **Asset Transfer Costs**

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3.1 In the event of the removal of any CMA in accordance with Part 2 (CMA Duties), Section 2.3.2 and subject always to:-

- (i) any outstanding liabilities of the departing CMA under the Market Code; and
- (ii) the satisfactory provision by the departing CMA of any Transitional Services required under paragraph 2.2,

the departing CMA shall be entitled to receive a Transfer Payment from the Successor CMA. The Trading Parties will approve any Transfer Payment prior to such payment being made by the Successor CMA.

3.2 Such Transfer Payment shall comprise:-

3.2.1 sums relating to those assets to be transferred and which are equivalent to the market value of those assets at the transfer date; and/or

3.2.2 sums determined by the Trading Parties.

**SCHEDULE 3**  
**ESTABLISHMENT OF CMA**

**Part 1**

**Memorandum**

THE COMPANIES ACTS 1985 AND 1989

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COMPANY LIMITED BY GUARANTEE AND  
NOT HAVING A SHARE CAPITAL

---

MEMORANDUM OF ASSOCIATION  
OF  
CENTRAL MARKET AGENCY LIMITED

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- I. The Company's name is "CENTRAL MARKET AGENCY LIMITED".
- II. The Company's registered office is to be situated in Scotland.
- III. A. The objects for which the Company is established are to support the fulfilment and discharge of the obligations of the Central Market Agency set out in the Market Code in force for the time being by or under any directions made by the Water Industry Commission for Scotland.  
B. In furtherance of the objects for which the Company is established, but not otherwise, the Company shall have the following powers:-
  - (1) To promote and organise co-operation in the achievement of the above objects and to that end to bring together individuals and representatives of relevant authorities and bodies and to co-operate with any other body.
  - (2) To obtain, collect and receive money and funds by way of contributions, donations, affiliation fees, subscriptions, grants, loans and any other lawful method, and to take,

accept and receive legacies, gifts and bequests of property of any description (and whether subject to any special trust or not), and to issue and make appeals and to take such other steps as may be required for the purpose of procuring contributions to the funds of the Company by way of donations, affiliation fees, subscriptions, grants, loans, legacies, gifts and bequests of any property (whether subject to any special trust or not) and any other lawful method.

- (3) To act as a source of information and advice to central government, local authorities, universities and other organisations.
- (4) To promote, encourage and/or facilitate research into, and the study of matters connected in any way with, the objects of the Company.
- (5) To gather, produce and distribute information.
- (6) To publish newspapers, periodicals, books, leaflets, reports and other publications and to present, promote, organise, provide, manage and produce films, broadcasts, meetings, seminars, classes, courses, lectures and exhibitions, whether on the premises of the Company or elsewhere, and to levy such charges as the Directors may think fit in connection with the foregoing.
- (7) To purchase, feu, take on lease or in exchange, hire or otherwise acquire any heritable, leasehold or moveable property for the occupation or use of the Company (whether exclusively or jointly with any body or person); to enter into contracts necessary for the design, approval, construction, provision, maintenance and management of any buildings or facilities; to sell or otherwise dispose of or turn to account any such property; and to furnish, equip, fit out, maintain, alter, enlarge or improve any heritable or leasehold property owned, occupied or used by the Company.
- (8) To subscribe for, take, purchase or acquire and hold any share or shares or other interests in or securities of any company carrying on or intending to carry on any business capable of being carried on so as directly or indirectly to benefit the Company.
- (9) To invest and deal with the funds and monies of the Company not immediately required in or upon such investments, securities or property as may be thought fit.

- (10) To borrow or raise money on such terms and on such security as may be thought fit; and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, floating charge, standard security or lien over the whole or any part of the property and undertaking (whether present or future) of the Company and by like mortgage, charge, floating charge, standard security or lien to secure and guarantee the performance by the Company of any obligation or liability it may undertake.
- (11) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts.
- (12) To undertake and execute trusts, gratuitously or otherwise, the undertaking whereof may be incidental to the attainment of the objects of the Company or any of them.
- (13) To employ and remunerate any appropriate person or persons and, subject to Clause IV hereof, to give pensions, gratuities or other appropriate financial aid to any person who has served the Company or to the husband, wife, children or other relatives or dependants of any such person; to make payments towards insurance; and to form and contribute to pensions, provident and benefit funds for the benefit of any such person or of the husband, wife, children or other relatives or dependants of any such person.
- (14) To engage and employ consultants and advisers.
- (15) To arrange, maintain and keep up insurance against any risk, loss or liability to which the Company or any of the members, Directors or other officers of the Company or any of the employees or voluntary workers of the Company may be subject.
- (16) To apply for or otherwise acquire any patent, trademark, copyright or other industrial property right.
- (17) To transfer or dispose of, with or without any consideration, any part of the property or assets of the Company not required for the objects of the Company to any body provided that such body is not carrying on business for profit or gain and prohibits the distribution of its income or property among its members to an extent at least as great as is imposed under or by virtue of Clause IV hereof.

- (18) To amalgamate with or affiliate to, or takeover or otherwise acquire or enter into any arrangement with, any body having objects similar to those of the Company and which prohibits the distribution of its income or property among its members to an extent at least as great as is imposed under or by virtue of Clause IV hereof.
- (19) To enter into any arrangement with any authority or organisation (supreme, national, municipal, local or otherwise) or any university, college, museum or any other body or person.
- (20) To pay the costs and expenses of and incidental to the formation and incorporation of the Company.
- (21) To do all other things incidental or conducive to the attainment of the objects for which the Company is established.

And throughout this Clause the word "body" includes any association, body corporate, company, corporation, firm, foundation, institution, organisation, partnership, society, trust or aggregate of persons (whether incorporated or unincorporated).

Provided that:-

- (i) in case the Company shall take or hold any property which may be the subject of any trust, the Company shall deal with or invest the same only in such manner as allowed by law, having regard to such trust; and
- (ii) the objects of the Company shall not extend to the regulation of relations between workers and employers or organisations of workers and organisations of employers;

IV. The income and property of the Company, whencesoever derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Company.

Provided that nothing herein shall prevent any payment in good faith by the Company:-

- (a) of reasonable and proper remuneration to any member, officer or employee of the Company (including any Director of the Company) for any services rendered to the Company, provided always that, where a Director of the Company is to be appointed to a salaried office of the Company or to be paid remuneration in return for services

rendered, such Director of the Company shall be excluded from, and shall not participate in, the determination of the Company's Directors in regard to such appointment or the amount of such remuneration;

- (b) of interest on money lent by any member of the Company or by any Director of the Company at a rate per annum not exceeding two per centum more than the base rate from time to time and for the time being of the Bank of Scotland or three per centum, whichever is the greater;
- (c) of reasonable and proper rent for premises let to the Company by any member of the Company or by any Director of the Company;
- (d) of out-of-pocket expenses to any Director of the Company; and
- (e) of reasonable and proper fees, remuneration or other benefit in money or money's worth for any services rendered, or goods supplied, to the Company by any company in which a Director of the Company is a member (provided that such Director shall not hold more than one hundredth part of the capital of such company or, if such Director is the holder of more than one hundredth part of the capital of such company, provided that such Director absents himself or herself from any meeting at which the supply of any such services or goods is discussed and such services are rendered or such goods are supplied on terms and conditions which the other Directors consider are advantageous to the Company), and such Director shall not be bound to account to the Company for any share of profits he or she may receive in respect of such payment.

V. The liability of the members is limited.

VI. Every member of the Company undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she or it is a member of the Company, or within one year after he or she or it ceases to be a member of the Company, for payment of the debts and liabilities of the Company contracted before he or she or it ceases to be a member of the Company, and of the costs, charges and expenses of winding-up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding £1 including, and without prejudice to, any membership dues or other sums properly payable in accordance with the Articles of Association of the Company).

- VII. If upon the winding-up or dissolution of the Company there remains, after the satisfaction of all the Company's debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other body or bodies (within the meaning of Clause III hereof) having objects similar to the objects of the Company, and which prohibits or prohibit the distribution of its or their income and property to its or their members to an extent at least as great as is imposed on the Company under or by virtue of Clause IV hereof, such body or bodies to be determined by the members of the Company at or before the time of dissolution, and in so far as effect cannot be given to the aforesaid provision, then to some other charitable object.

WE, the subscribers to this Memorandum of Association, wish to be formed into a company pursuant to this Memorandum.

Name: Scottish Water  
Address: Castle House  
6 Castle Drive  
Carnegie Campus  
Dunfermline  
KY11 8GG

.....

Authorised signatory

.....

.....

Authorised signatory / Witness

Date

Details of witness (if relevant):

Name:

Address:

Name: The Water Industry Commission for Scotland  
Address: Ochil House  
Springkerse Business Park  
Stirling  
FK7 7XE

.....

Authorised signatory

.....

.....

Authorised signatory / Witness

Date

Details of witness (if relevant):

Name:

Address:

**Part 2**

**Articles of Association**

THE COMPANIES ACTS 1985 AND 1989

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COMPANY LIMITED BY GUARANTEE AND

NOT HAVING A SHARE CAPITAL

---

ARTICLES OF ASSOCIATION

OF

CENTRAL MARKET AGENCY LIMITED

---

**PRELIMINARY**

1. The Regulations contained in Table C in the Schedule to the Companies (Tables A to F) Regulations 1985 shall not apply to the Company, but the following shall be the Regulations of the Company.

**INTERPRETATION**

2.1 In these Regulations:-

- (a) "the Act" means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force;
- (b) "the Articles" means the Articles of Association of the Company;
- (c) "body" includes any association, body corporate, company, corporation, firm, foundation, institution, organisation, partnership, society, trust or aggregate of persons (whether incorporated or unincorporated);
- (d) "Chairman" means at any time the person at that time holding office as chairman of the Company pursuant to Regulation 9.1;

- (e) "Commission" means the body established under section 1 of the Water Industry (Scotland) Act 2002;
- (f) "clear days" in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
- (g) "the Company" means Central Market Agency;
- (h) "Directors" means the Directors from time to time and for the time being of the Company, and "Director" means any one of such Directors;
- (i) "executed" includes any mode of execution;
- (j) "Market Code" means at any time the document designated at that time as the Market Code by or under directions made by the Commission for that purpose;
- (k) "Ordinary Resolution" means a resolution of the members of the Company on which more than 50 per cent of the votes cast are in favour of the resolution;
- (l) "person" means any individual or body;
- (m) "Secretary" means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary;
- (n) "Special Resolution" means a resolution of the members of the Company on which 75 per cent or more of the votes cast are in favour of the resolution; and
- (o) "the United Kingdom" means Great Britain and Northern Ireland.

2.2 Unless the context otherwise requires, words or expressions contained in these Regulations bear the same respective meanings as in the Act but excluding any statutory modification thereof not in force when these Regulations become binding on the Company.

2.3 Words importing the singular number only shall include the plural number, and vice versa.

2.4 Unless the context otherwise requires, words or expressions defined in the Market Code shall have the meaning in these Articles which is given to them respectively in the Market Code.

## **MEMBERS**

- 3.1 The members of the Company shall be the subscribers to the Memorandum of Association of the Company and such other persons as may from time to time be admitted to membership of the Company by the Directors.
- 3.2 No person shall be admitted to membership of the company who:-
- (a) has not satisfied the Admission Conditions, or
  - (b) pursuant to Section 8.2.2(ii) of the Market Code is not entitled to become a member of the Company
- 3.3 Every person who wishes to become a member of the Company shall deliver to the Company, duly executed by that person, an application for membership or consent to become a member of the Company, in either case in such form and detail as the Directors require.
- 3.4 The Directors shall not be obliged to give any reason for refusing to admit any person to membership of the Company.
- 3.5 On the Secretary receiving the application or consent required by Regulation 3.3, the Secretary shall add such application to the agenda for the next meeting of the Directors. At that meeting the Directors shall:-
- (i) approve the issue of, and issue, a certificate of membership in the Company to that applicant; and
  - (ii) instruct the Secretary to enter the name of that applicant in the register of members.
- 3.6 The members of the Company may be required to pay to the Company an annual subscription or other sums or dues requested related to the budgeting and financial administration of the Company. Different rates of annual subscription may be fixed for different members of the Company. The rate or rates of annual subscription payable by the members of the Company, the subscription year of the Company, the subscription payment date or dates and the proportion of the annual subscription payable in respect of part only of a subscription year shall be fixed by the members of the Company in General Meeting, provided that until so determined the rate or rates of subscription, the subscription year, the subscription payment date or dates or annual or periodic dues payable and such proportion may be determined by the Directors.
- 3.7 A member of the Company shall cease to be a member of the Company forthwith upon:-
- (a) the delivery to the Secretary at the registered office of the Company of a notice in writing by that member resigning as a member of the Company;

- (b) the dissolution of that member;
  - (c) the termination of that member's membership of the Company in accordance with Regulations 3.9 or 3.10 below; or
  - (d) that member ceasing to be a Code Party for whatever reason and the Directors serving notice on that member notifying it of the termination of its membership of the Company.
- 3.8 A person who ceases (for whatever reason) to be a member of the Company shall not be entitled to any refund (in whole or in part) of any subscription paid by that person to the Company.
- 3.9 The Directors shall be entitled (but shall not be bound) to terminate the membership of the Company of any member of the Company:-
- (a) who shall become insolvent or apparently insolvent or who shall suspend payment to or compound with that member's creditors;
  - (b) in respect of whose property and undertaking, or any part thereof, a receiver is appointed;
  - (c) in respect of whom an effective winding-up order is made or an effective winding-up resolution is passed (other than for the purpose of any amalgamation or reconstruction); or
  - (d) in respect of whom an administration order is made.
- 3.10 The Directors shall be entitled (but shall not be bound) to terminate the membership of the Company of any member of the Company if any subscription other sums or dues payable by that member to the Company:-
- (a) is in excess of ten days from the payment due date; and
  - (b) on or after the day specified in Regulation 3.10(a) above the Directors have issued notice to that Member to pay the outstanding amount; and
  - (c) the amount invoiced has remained unpaid for a further ten days after the date of the Director's notice under Regulation 3.10(b) above; or

(d) the Member fails to pay an amount properly due by it on three or more occasions in a twelve month period and fails to remedy such non-payment upon the first two occasions within the following periods from the date of notice thereof from the Directors:-

- (i) ten days in the first instance; and
- (ii) five days in the second instance.

3.11 The rights and privileges of a member of the Company shall be personal and shall not be transferable or transmissible by any means.

3.12 A register of the members for the time being of the Company shall be kept by the Secretary and shall contain each member's name, address and date of admission to membership of the Company and such register shall, in so far as applicable, comply with the provisions of Section 352 of the Act.

#### **GENERAL MEETINGS**

4.1 The Company shall in each calendar year hold a General Meeting as the Company's Annual General Meeting in addition to any other General Meeting of the Company held in that calendar year, and the Company shall specify the General Meeting as the Annual General Meeting in the notice calling it. Not more than 15 months shall elapse between the date of one Annual General Meeting of the Company and that of the next, provided that so long as the Company holds the Company's first Annual General Meeting within 18 months of the Company's incorporation, the Company need not hold such first Annual General Meeting in the calendar year of the Company's incorporation or in the following calendar year. Each Annual General Meeting of the Company shall be held at such time and place as the Directors shall appoint.

4.2 All General Meetings of the Company other than Annual General Meetings shall be called Extraordinary General Meetings.

4.3 The Directors may, whenever they think fit, convene an Extraordinary General Meeting of the Company, and an Extraordinary General Meeting of the Company shall also be convened on such requisition or, in default, may be convened by such requisitionists, as provided by Section 368 of the Act. If at any time there are not within the United Kingdom sufficient Directors capable of acting to form a quorum, any Director may convene an Extraordinary General

Meeting of the Company in the same manner as nearly as possible as that in which General Meetings of the Company may be convened by the Directors.

4.4 An Annual General Meeting of the Company and a General Meeting of the Company called for the passing of a Special Resolution shall be called by at least 21 clear days' notice in writing, and a General Meeting of the Company other than an Annual General Meeting or a General Meeting for the passing of a Special Resolution shall be called by at least 14 clear days' notice in writing. The notice shall specify the place, the day and the hour of the General Meeting and, in the case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in General Meeting, to the members of the Company, to the Directors and to the Auditors of the Company; provided that a General Meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Regulation, be deemed to have been duly called if it is so agreed:-

- (a) in the case of a General Meeting called as the Annual General Meeting of the Company, by all the members of the Company entitled to attend and vote thereat; and
- (b) in the case of any other General Meeting, by a majority in number of the members of the Company having a right to attend and vote at the General Meeting, being a majority together representing not less than 95 per cent of the total voting rights at that General Meeting of all the members of the Company.

4.5 The accidental omission to give notice of any General Meeting of the Company to, or the non-receipt of a notice of a General Meeting of the Company by, any person entitled to receive notice shall not invalidate the proceedings at that General Meeting.

#### **PROCEEDINGS AT GENERAL MEETINGS**

5.1 All business shall be deemed special that is transacted at an Extraordinary General Meeting of the Company and also all that is transacted at an Annual General Meeting of the Company, with the exception of the consideration of the accounts, balance sheets and reports of the Directors and Auditors, the election of Directors in place of those retiring and the appointment of, and the fixing of the remuneration of, the Auditors.

5.2 No business shall be transacted at any General Meeting of the Company unless a quorum of members of the Company is present; save as herein otherwise provided three (3) members of

the Company (present in person or by proxy or by representative appointed in accordance with Regulation 7.1 below) shall be a quorum. If and for so long as the Company has less than three (3) members, that number of members (present in person or by proxy or by representative appointed in accordance with Regulation 7.1 below) shall be a quorum.

- 5.3 If a General Meeting of the Company has been convened upon the requisition of members of the Company and within half an hour from the time appointed for the Meeting a quorum is not present, the Meeting shall be dissolved; if within half an hour of the time appointed for any other General Meeting of the Company a quorum is not present or a quorum ceases to be present during any General Meeting of the Company, the Meeting shall stand adjourned to the same day in the following week (or, if that day is not a Business Day, the next Business Day following that day), at the same time and if at the adjourned General Meeting a quorum is not present within half an hour from the time appointed for the General Meeting, the member or members of the Company present in person or by proxy or by representative appointed in accordance with Regulation 7.1 below shall be a quorum.
- 5.4 The Chairman of the Directors shall preside as chairman at every General Meeting of the Company at which he is present. If the Chairman is unable to be present at a meeting, he may appoint an alternate to act as chairman of that meeting.
- 5.5 If at any General Meeting of the Company no Director is willing to act as chairman or if no Director is present within 15 minutes after the time appointed for holding the General Meeting, the members of the Company present in person or by proxy or by representative appointed in accordance with Regulation 7.1 below shall choose one of their own number to be chairman of the General Meeting.
- 5.6 The chairman of a General Meeting of the Company may, with the consent of the General Meeting if a quorum is present at the General Meeting (and shall if so directed by the General Meeting), adjourn the General Meeting from time to time and from place to place, but no business shall be transacted at any adjourned General Meeting of the Company other than the business left unfinished at the General Meeting of the Company from which the adjournment took place. When a General Meeting of the Company is adjourned for 30 days or more, notice of the adjourned General Meeting shall be given as in the case of an original General Meeting of the Company. Save as aforesaid, it shall not be necessary to give any notice of an

adjournment or of the business to be transacted at an adjourned General Meeting of the Company.

- 5.7 Subject to the provision of Regulation 6.1, at any General Meeting of the Company a resolution put to the vote of the General Meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman of the General Meeting or by any member of the Company present in person or by proxy or by representative appointed in accordance with Regulation 7.1 below. Unless a poll be so demanded, a declaration by the chairman of the General Meeting that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 5.8 Except as provided in Regulation 5.11 below, if a poll is duly demanded it shall be taken in such manner and at such time as the chairman of the General Meeting of the Company directs, and the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll was demanded.
- 5.9 Any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.
- 5.10 The demand for a poll may be withdrawn.
- 5.11 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.
- 5.12 In the case of an equality of votes at any General Meeting of the Company, whether on a show of hands or on a poll, the chairman of the General Meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote.
- 5.13 Subject to the provisions of the Act, a resolution in writing signed by all the members of the Company (or, being bodies, by their duly authorised representatives) shall be as valid and effective as if such resolution had been passed at a General Meeting of the Company duly convened and held, and may consist of several documents in the like form, each signed by or on behalf of one or more of the members of the Company.

- 5.14 The Directors shall be at liberty to invite any person or persons, not being a member or members of the Company to attend at any General Meeting of the Company. The Chairman of the Directors may invite that person to speak at the meeting (but that person will have no vote).
- 5.15 A Director shall, notwithstanding that he or she is not a member of the Company, be entitled to attend and speak at any General Meeting of the Company.

### **VOTES OF MEMBERS**

- 6.1 Subject to the provisions of Regulation 6.2, on a show of hands every member of the Company who (being an individual) is present in person, or (being a body) is present by a duly authorised representative who is not a member entitled to vote, shall have one vote and on a poll every member of the Company shall have one vote. On a poll, votes may be given personally or by proxy or by a representative appointed in accordance with Regulation 7.1 below.
- 6.2 For the duration of any period after the Go Live Date during which any member does not have any Supply Points(s) Registered to it the vote of such member in person or by proxy at a meeting held during that period shall not be counted in the votes for or against a resolution.
- 6.3 No objection shall be raised to the qualification of any voter at any General Meeting of the Company except at the General Meeting or adjourned General Meeting at which the vote objected to is tendered, and every vote not disallowed at the General Meeting shall be valid. Any objection made in due time shall be referred to the chairperson of the General Meeting whose decision shall be final and conclusive.
- 6.4 An instrument appointing a proxy shall be in writing in common form or in any other form which the Directors shall approve and shall be under the hand of the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a body, either under seal or under the hand of a duly authorised officer or attorney of the body. A proxy need not be a member of the Company.
- 6.5 An instrument appointing a proxy and any authority under which it is executed and a copy of such authority certified notarially or in some other way approved by the Directors shall:-
- (a) be deposited at the registered office of the Company or at such other place within the United Kingdom as is specified in the notice convening the General Meeting of the

Company or in any instrument of proxy sent out by the Company in relation to the General Meeting of the Company not less than 48 hours before the time for holding the General Meeting or adjourned General Meeting at which the person named in the instrument proposes to vote; or

- (b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
- (c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, delivered at the General Meeting of the Company at which the poll was demanded to the chairman of that General Meeting or to the Secretary or to any Director;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

6.6 An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

6.7 A vote given or poll demanded by a proxy or by the duly authorised representative of a body shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the registered office of the Company or at such other place at which the instrument of proxy was duly deposited before the commencement of the General Meeting of the Company or adjourned General Meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the General Meeting or adjourned General Meeting) the time appointed for taking the poll.

#### **REPRESENTATIVES AT MEETINGS**

7.1 Subject always to Regulation 7.2 below, any body which is a member of the Company may by resolution of its directors or other governing body or committee authorise such person as it thinks fit to act as its representative at any General Meeting of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the body which that person represents as that body could exercise if it were an individual member of the Company.

- 7.2 The Company may by Ordinary Resolution, passed at a General Meeting of the Company, require any member of the Company who has appointed a representative under Regulation 7.1 above to terminate the appointment of such representative on the grounds that such representative has brought the Company or the objects of the Company into disrepute, and from and after the passing of such Ordinary Resolution such representative shall not be entitled to exercise any powers on behalf of the member by whom such representative was appointed.

## **DIRECTORS**

- 8.1 The number of Directors shall not be subject to any maximum. The Company need have only one Director for so long as the Company is dormant within the meaning of Section 249AA of the Companies Act 1985; at any other time the Company shall have a minimum of four (4) Directors unless otherwise agreed unanimously in writing by the members of the Company.
- 8.2 The Directors at any time shall comprise:-
- (a) one (1) Director nominated at that time by Scottish Water in accordance with Sections 8.3.1(iii), 8.3.2(ii)(a) and 8.3.2(iii) of the Market Code (“Scottish Water Director”);
  - (b) up to two (2) Licensed Provider Directors who are nominated at that time in accordance with Sections 8.3.1(ii), 8.3.1(iv), 8.3.2(ii)(b) and 8.3.2(iii) of the Market Code (each being a “Licensed Provider Director”);
  - (c) the Chief Executive Officer at that time appointed pursuant to Regulation 10.3;
  - (d) the Chairman at that time appointed pursuant to Regulation 9.1, and
  - (e) at least two (2) non-executive Directors, nominated at that time in accordance with Section 8.3.1(v) of the Market Code (except for the first three (3) non-executive Directors who shall be nominated by the Commission) having regard to the recommendations of the Nominations Committee provided in accordance with Regulation 8.4 (each being a “non-executive Director”).
- 8.3 (a) Any nomination by Scottish Water of a person as a nominated Director pursuant to Section 8.3.1(iii) of the Market Code shall take effect at the commencement of the year for which they are so nominated, and any removal and replacement pursuant to Section

8.3.2(ii)(a) of the Market Code of a Scottish Water Director, shall take effect upon such notice of such removal and replacement (as the case may be) being deemed to have been received by the Secretary pursuant to Section 10.9.3 of the Market Code.

(b) Any nomination of a person as a Licensed Provider Director pursuant to Section 8.3.1(iv)(d) shall take effect at the commencement of the year for which they are so nominated.

(c) Any removal and replacement of a Licensed Provider Director pursuant to Section 8.3.2(ii)(b) of the Market Code shall take effect upon notice of such removal and replacement being deemed to have been received by the Secretary pursuant to Section 10.9.3 of the Market Code. As soon as reasonably practicable following receipt of such notice by the Secretary, the Secretary shall update the Register of Directors of the Company and notify the Registrar of Companies of such removal and replacement.

8.4 (a) There shall be a Nominations Committee, the membership of which shall comprise the Chairman and all non-executive Directors.

(b) The quorum of the Nominations Committee shall be two (2).

(c) The Nominations Committee shall be responsible for identifying and nominating candidates to assume the role of non-executive Director of the Company to replace existing non-executive Directors whose term of appointment is due to expire or who have resigned or been removed from the role.

(d) The Nominations Committee shall meet at least three (3) months in advance of the date on which an existing non-executive Director's term of appointment is due to expire in order to recommend a replacement to the Chairman.

(e) The Nominations Committee shall meet as soon as is reasonably practicable after the Chairman is made aware that an existing non-executive Director intends to resign or has been removed from his role.

8.5 The business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Act or by the Articles, required to be exercised by the Company in

General Meeting, subject nevertheless to the provisions of the Act or the Articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Company in General Meeting; but no regulation made by the Company in General Meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

- 8.6 Subject to Clause IV of the Company's Memorandum of Association, the Directors shall be entitled to remuneration for any services actually provided by them to the Company and shall be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any Committee of the Directors or any General Meeting of the Company or otherwise in connection with the business of the Company.
- 8.7 The first Directors shall be such persons as shall sign the statement required by Section 10 of the Act consenting to be Directors of the Company.
- 8.8 The continuing Directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below the number fixed by or pursuant to the Articles as the minimum number of Directors, the continuing Directors may act for the purposes of (i) increasing the number of the members of the Company, (ii) increasing the number of Directors and/or (iii) convening a General Meeting of the Company, but for no other purpose.
- 8.9 The Directors shall have power from time to time and at any time to appoint any person to be a Director of the Company either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors shall not at any time exceed the number fixed by or pursuant to the Articles.
- 8.10 The Company may by Ordinary Resolution, of which special notice has been given in accordance with Section 379 of the Act, remove from office any Director notwithstanding anything in the Articles or in any agreement between the Company and that Director.
- 8.11 The Company in General Meeting may appoint any person to be a Director of the Company either to fill a casual vacancy or as an additional Director.
- 8.12 The office of a Director shall be vacated if he or she:-
- (a) resigns his or her office by notice in writing sent to or left with the Secretary at the registered office of the Company; or

- (b) is removed from office by resolution passed by the Company in General Meeting pursuant to Section 303 of the Act; or
- (c) becomes of unsound mind and the Directors resolve that he or she be removed from office; or
- (d) becomes bankrupt or insolvent or apparently insolvent or makes any arrangement or composition with his or her creditors; or
- (e) is prohibited by law from being a Director or ceases to hold office by virtue of any provisions of the Act; or
- (f) accepts remuneration in contravention of Clause IV of the Memorandum of Association of the Company; or
- (g) is no longer eligible to be appointed as a Director due to the withdrawal of membership by his or her nominating member.

8.13 All acts done by the Directors or by any Committee of the Directors or by any person acting as a Director or as a member of any such Committee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or any person acting as aforesaid or that any Director or any member of the relevant Committee of the Directors was disqualified, be as valid as if every Director or every such person had been duly appointed.

8.14 The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, as security for any debt, liability or obligation of the Company or of any third party.

8.15 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such a manner as the Directors shall from time to time determine.

8.16 The Directors shall cause minutes to be made:-

- (a) of all appointments of officers made by the Directors or by the Company in General Meeting;

- (b) of the names of the Directors present at each meeting of the Directors and of the names of the members of any Committee of the Directors present at each meeting of the Committee; and
- (c) of all resolutions and proceedings at all General Meetings of the Company and at all meetings of the Directors and of any Committee of the Directors.

## **DIRECTORS INTERESTS**

8.17 Subject to the provisions of the Act and Regulation 8.18, and provided that he has disclosed to the Directors the nature and extent of his interest, a Director notwithstanding his office:-

8.17.1 may be a party to, or otherwise interested in, any existing or proposed transaction or arrangement with the Company or in which the Company is otherwise interested;

8.17.2 may be a Director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise interested; and

8.17.3 shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

8.18 Subject to the provisions of the Act, but notwithstanding that he shall have declared his interest in the matter a Director shall not be entitled to vote or to be counted in the quorum at a meeting of the Directors or of any committee of Directors, and shall be excluded from, and shall not participate in, the determination of the Directors in regard to a matter on which he has, directly or indirectly, an interest or duty which conflicts or may conflict with the interests of the Company. In relation to an alternate Director the interest of his appointor shall be treated as the interest of the alternate in addition to any interest which the alternate may otherwise have.

8.19 For the purposes of Regulations 8.17 and 8.18:-

- 8.19.1 a general notice to the Directors that a Director is a member of a specified firm or company and is to be regarded as interested in contracts which are made with the company or firm after the date of the notice shall be deemed to be a sufficient disclosure of his interest in relation to the contract;
- 8.19.2 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any transaction or arrangement with the persons specified in the notice; and
- 8.19.3 an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

#### **ALTERNATE DIRECTORS**

- 8A.1 Any Director (other than an alternate director) may appoint any other person previously approved by resolution of the Directors and willing to act, to be an alternate director and may remove from office an alternate director so appointed by him.
- 8A.2 An alternate director shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his appointer is a member, to attend and vote at any such meeting at which the Director appointing him is not personally present and generally to perform all the functions of his appointer as a Director in his absence but shall not be entitled to receive any remuneration from the Company for his services as an alternate director. But it shall not be necessary to give notice of such a meeting to an alternate director who is absent from the United Kingdom.
- 8A.3 An alternate director shall cease to be an alternate director if his appointer ceases to be a Director; but if a Director retires by rotation or otherwise but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate director made by him which was in force immediately prior to his retirement shall continue after his reappointment.

8A.4 Subject to Regulation 8A.1 any appointment or removal of an alternate director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.

8A.5 Save as otherwise provided in the Articles, an alternate director shall be deemed for all purposes to be a Director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him.

#### **MEETINGS OF THE DIRECTORS**

9.1 (a) The first Chairman will be selected and appointed by the Commission. Such appointment will not be from among the Directors. Subsequent Chairmen will be selected, appointed, reappointed, removed and replaced by the Directors by voting in accordance with Regulation 9.12 provided always that before the appointment of any new Chairman or the reappointment of the existing Chairman notice of such proposed appointment or reappointment shall be given to the Commission and such appointment or reappointment may only be made by the Directors where the Commission has not directed that such appointment or reappointment may not be made within twenty (20) Business Days of receipt of such notice.

(b) The Chairman shall be appointed as a Director by the Directors.

(c) The term of office of the Chairman will be a period of three (3) years. The Chairman will be eligible for reappointment on expiry of his term of office. Unless reappointed, he will cease to hold office on expiry of his term of office. He will also cease to hold office if:-

(i) he resigns from office by notice delivered to the Secretary;

(ii) the Directors resolve that he should cease to hold office; or

(iii) he ceases to be a Director.

9.2 The Chairman will preside as chairman at every meeting of the Directors at which he is present. If the Chairman is unable to be present at a meeting he may appoint an alternate to act

as the Chairman of that meeting. If neither the Chairman nor his alternate is present at a meeting within half an hour of the time appointed for holding the meeting, or if the Chairman or his alternate is otherwise unable or unwilling to preside, the Directors will appoint one of their number to act as chairman of the meeting.

- 9.3 (a) Meetings of the Board will be held at regular intervals and at least once every three (3) Months, at such time and place in Scotland as the Board may decide.
- (b) Any Director may notify matters for consideration at a meeting in addition to those notified by the Secretary to all Directors not less than three (3) Business Days before the date of the meeting.
- (c) The proceedings of a meeting of the Board will not be invalidated by the accidental failure to send notice of the meeting or accompanying papers to, or non-receipt of the same by, any person entitled to receive such notice and papers.
- (d) Where any matter not contained in the agenda and not notified under Regulation 9.3(c) is put before a meeting of the Board, and in the opinion of the Board it is necessary, in view of the urgency of the matter, that the Board resolves upon it at the meeting, the Board may resolve upon the matter.
- (e) The Directors may, by unanimous decision, decide to dispense with the requirements of Regulations 9.3 or 9.4 as to the notice required for convening a meeting in relation to any particular Board meeting.
- 9.4 A Director may request the Secretary to convene a Board meeting. Such a request must be accompanied by the name of one other Director who supports such additional Board meeting and detail the matters the Director wants to be discussed at the Board meeting. The Secretary will promptly convene the requested Board meeting as soon as practicable but not less than five (5) Business Days after the request.
- 9.5 Any meeting of the Board will be convened by the Secretary by notice to each Director (and to each Affiliated Board Member). Notice will be given by electronic mail at least five (5) Business Days before the date of the meeting, accompanied by an agenda of the matters for

consideration at the meeting and any supporting papers available to the Secretary at that time. Supporting papers received late will be circulated as and when received.

- 9.6 A meeting of the Board may consist of a conference between Directors 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. In this case, there is no requirement that the Directors are in Scotland. A Director or a member of the relevant Committee 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. Such a meeting shall be deemed to take place where the largest group of those participating in the conference is assembled or, if there is no such group where the chairperson of the meeting then is. The word "meeting" when referring to a meeting of the Directors, or of a Committee of the Directors, in the Articles shall be construed accordingly.
- 9.7 Meetings will be open to attendance by any person invited by a Director. The Chairman may invite that person to speak at the meeting (but that person will have no vote).
- 9.8 As soon as practicable after each meeting, the Secretary will prepare and send to the Directors the minutes of the meeting (including confirmation of all decisions taken), which will be approved (or amended and approved) at the next meeting of the Board.
- 9.9 The quorum necessary for the transaction of business of the Board may be fixed from time to time by the Directors and, unless so fixed at any other number:-
- (a) if at any time, and for so long as, there is only one (1) Licensed Provider Director will be two (2) Directors present; and
  - (b) in all other circumstances will be four (4) Directors present.
- 9.10 If, within half an hour after the time for which the meeting of the Board has been convened, a quorum is not present or, if during a meeting such a quorum ceases to be present, the meeting will be adjourned to the same day in the following week (or, if that day is not a Business Day, the next Business Day following that day) at the same time. The Secretary will give notice of the adjourned meeting as far as practicable. If at the adjourned meeting there

is not a quorum present within half an hour of the time for which the meeting was convened, those present in person will be a quorum.

- 9.11 At any meeting of the Board any matter to be decided will be put to a vote upon the request of the Chairman or any Director.
- 9.12 (a) Subject to Regulation 9.12(b), in deciding any matter at any meeting of the Board, each Director will be entitled to only one vote, and the chairman of any meeting shall not have an additional or casting vote.
- (b) In deciding any matter concerning enforcement action against a Trading Party, or concerning the issue of a Termination Notice to a Trading Party, any Director who is also employed by or acts under a contract for services with that Trading Party, or a member of that Trading Party's Group shall not be entitled to any vote relative to such decisions.
- 9.13 If a Director, is not present at a meeting, he may lodge a written proxy vote with the Secretary before the meeting is held, and on a vote being taken on any matter at the meeting, that proxy vote will be counted as if it was a vote cast by the Director concerned at the meeting.
- 9.14 No decision of the Board put to a vote shall be taken unless it is voted for by a simple majority of the votes cast at the meeting (and an abstention shall not be counted as a cast vote).
- 9.15 Any resolution in writing signed by or on behalf of all Directors will be valid and effectual as if it has been passed at a duly convened and quorate meeting of the Board. The resolution may consist of several instruments in like form signed by or on behalf of one or more Directors.

#### **CHIEF EXECUTIVE AND EMPLOYEES**

- 10.1 The Directors may from time to time appoint and remove a Chief Executive who shall hold office on such terms and conditions and for such remuneration as may be fixed by the Directors. Other than any matters specifically identified as exclusively reserved to the Board by the members of the Company unanimously in writing. The Directors may delegate to the Chief Executive such powers and duties as the Directors think fit.
- 10.2 The Directors may also appoint, and in the Directors' discretion remove, such employees and agents for permanent, temporary or special services as the Directors may from time to time

think fit and may determine their powers and duties and fix their salaries and emoluments and other terms and conditions of employment or engagement.

- 10.3 (a) The first Chief Executive Officer will be selected and appointed by the Commission. Subsequent to such appointment the Chief Executive Officer will be selected, appointed, removed and replaced by the Directors by voting in accordance with Regulation 9.12.
- (b) The Chief Executive Officer must not be appointed from among the Directors.
- (c) The person appointed as Chief Executive Officer under Regulation 10.3(a) from time to time shall be appointed as a Director by the Directors.
- (d) The Chief Executive Officer shall have such delegated authority from the Directors as the Directors determine and shall be responsible for the day to day running of the Company. The Reserved Matters and those matters listed in Section 8.4 of the Market Code are reserved to the Directors and may not be delegated to the Chief Executive Officer.
- (e) The Chief Executive Officer will provide such regular reports to the Directors as the Directors required.

#### **COMMITTEES**

11. The Board may delegate any of its powers to committees of the Board consisting of such persons (whether or not being Directors) as the Board may resolve from time to time.

#### **SECRETARY**

- 12.1 Subject to the provisions of the Act, the Secretary shall be appointed by the Directors for such term and (subject to the Memorandum of Association of the Company) at such remuneration and upon such conditions as the Directors may think fit; and the Secretary may be removed by the Directors.
- 12.2 A provision of the Act or of the Articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as a Director and as the Secretary.

#### **SEAL**

13. The Company shall not have a seal.

## **ACCOUNTS**

- 14.1 The Directors shall cause accounting records to be kept by the Company in accordance with Section 221 of the Act.
- 14.2 The Directors shall, if they see fit, appoint a Treasurer of the Company at such remuneration and upon such conditions as the Directors may think fit; and the Treasurer may be removed by the Directors. The Treasurer may be the same person as the Secretary.
- 14.3 The accounting records shall be kept at the registered office of the Company or, subject to Section 222 of the Act, at such other place or places as the Directors may think fit, and shall always be open to the inspection of any Director.
- 14.4 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of the members of the Company not being Directors, and no member of the Company shall have any right of inspecting any account or book or document of the Company except as conferred by statute, agreed by the members of the Company unanimously in writing or authorised by the Company in General Meeting.
- 14.5 The Directors shall from time to time in accordance with the Act cause to be prepared and to be laid before the Company in General Meeting an income and expenditure account, a balance sheet and report of the Directors and a report of the Company's Auditors on such account and balance sheet. The Auditors' report shall be read before the General Meeting as required by the Act.
- 14.6 A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in General Meeting, together with a copy of the Auditors' report and a copy of the report of the Directors, shall, not less than 21 clear days before the date of the Meeting, be sent to all persons entitled to receive notice of General Meetings of the Company; provided that this Regulation shall not require a copy of those documents to be sent to any person of whose address the Company is not aware.

## **AUDITORS**

15. Auditors of the Company shall be appointed and their duties regulated in accordance with the Act.

## NOTICES

- 16.1 A notice may be served by the Company upon any member of the Company either personally or by sending the notice through the post in a pre-paid letter, properly addressed to such member at such member's registered address as appearing in the Company's register of members, or by electronic delivery by email or otherwise to such address as the member of the Company shall notify to the Company from time to time.
- 16.2 Any person described in the Company's register of members by an address not within the United Kingdom, who shall from time to time give to the Company an address within the United Kingdom at which notices may be served upon that person, shall be entitled to have notices served upon that person at such address; save as aforesaid, only members of the Company described in the Company's register of members by an address within the United Kingdom shall be entitled to receive any notice from the Company.
- 16.3 Where a notice is sent by post, service of the notice shall be deemed to be effected:-
- (a) in the case of a notice of a meeting, at the expiration of 48 hours after the notice was posted; and
  - (b) in any other case, at the time when the notice would be delivered in the ordinary course of post.
- 16.4 Where a notice is sent by electronic means, service of notice shall be deemed to be effected on receipt of a delivery receipt or similar acknowledgement being received by the sender which shall be conclusive evidence that the notice was given.
- 16.5 Notice of every General Meeting of the Company shall be given in any manner hereinbefore authorised to:-
- (a) every member of the Company (except any member of the Company whose registered address in the register of members of the Company is not within the United Kingdom and who has not supplied to the Company an address within the United Kingdom for the giving of notices to that member);
  - (b) every Director; and

(c) the Auditors for the time being of the Company.

No other person shall be entitled to receive notice of any General Meeting of the Company.

16.6 A member of the Company present, either in person or by proxy or by a representative appointed in accordance with Regulation 7.1 above, at any General Meeting of the Company shall be deemed to have received notice of that General Meeting and, where requisite, of the purposes for which that General Meeting was called.

16.7 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.

### **INDEMNITY**

17. Subject to the provisions of the Companies Acts (as defined in section 744 of the Companies Act 1985), but without prejudice to any indemnity to which the person concerned may otherwise be entitled, every director or other officer of the Company (other than any person (whether an officer or not) engaged by the Company as auditor) shall be indemnified out of the assets of the Company against any liability incurred by him for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company, provided that this Regulation 17 shall be deemed not to provide for, or entitle any such person to, indemnification to the extent that it would cause this Regulation 17, or any element of it, to be treated as void under the Companies Acts.

### **DISSOLUTION**

18. The provisions of Clause VII of the Memorandum of Association relating to the winding-up and dissolution of the Company shall have effect and be observed as if the same were repeated in the Articles.

Name and Address of Subscriber agreeing to become  
a Member of the Company

Name: Scottish Water  
Address: Castle House  
6 Castle Drive  
Carnegie Campus

Dunfermline  
KY11 8GG

.....  
Authorised signatory

.....  
Authorised signatory / Witness

.....  
Date

Details of witness (if relevant):

Name:

Address:

Name:           The Water Industry Commission for Scotland  
Address:        Ochil House  
Springkerse Business Park  
Stirling  
                  FK7 7XE

.....  
Authorised signatory

.....  
Authorised signatory / Witness

.....  
Date

Details of witness (if relevant):

Name:

Address:

**Part 3****Reserved Matters**

The following matters shall be reserved to the Board and shall not be delegated to the CEO or otherwise:-

1. the taking of steps to wind up or dissolve any CMA entity;
2. the incurring by CMA of any borrowing or any other indebtedness or liability in the nature of borrowing;
3. the creation of any Encumbrance, whether fixed or floating, over any present or future property, assets or undertaking of CMA;
4. the entering into by CMA of any agreement or arrangement in the nature of partnership, consortium, joint venture or profit sharing or the amalgamation with any other person;
5. the amendment, suspension or waiver by CMA (or the giving of its agreement or permission to do so) of any of its rights under any of the Market Code;
6. the instigation or settlement of any litigation or arbitration proceedings by CMA other than in respect of routine debt collection by CMA;
7. the entering into, variation or termination by CMA of any agreement or contract with any Director or Member of CMA;
8. the making or permitting any material alteration (including cessation) to the general nature of the business of CMA;
9. entering into any contract or arrangement which is outside the ordinary course of business of CMA or which is otherwise than at arms length;
10. the sale, transfer, lease or any form of disposal by CMA of all or a material part of its business or assets, including shares in any subsidiary whether by a single transaction or a series of transactions, related or not;
11. entering into any agreement or other arrangement for the sale, licensing, assignment, or disposal howsoever to any third party of any trade mark, trade name, copyright, publishing and distribution rights or goodwill, confidential information or other intangible asset of CMA or the taking of any step to change the trading name or style of CMA;
12. the making of any loans;

13. the removal of the auditors of CMA or the appointment of any new auditors, making any change to the year end of CMA or making any material change to any accounting policy or principle adopted for the preparation of the audited or management accounts of CMA; and
14. the entry into by CMA of any negotiations concerning, or completion of (i) a sale, listing or other exit or (ii) the refinancing of CMA; or the making of any approach or application or the submission of any business plan by CMA to any potential investor or financier with a view to attracting additional or substitute finance for CMA.

**SCHEDULE 4**  
**ACCESSION AGREEMENTS**

**Part 1**

**Market Code Accession Agreement**

**THIS ACCESSION AGREEMENT** is made

**BETWEEN:**

- (1) CMA on its own behalf and on behalf of all the other parties to the Market Code Framework Agreement (the "**Authorised Person**"); and
- (2) [*Insert name of person wishing to be admitted to the Market Code*] (the "**Applicant**") whose principal office is at [*insert address*].

**WHEREAS:**

- (A) By the Market Code 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 Code; and
- (B) The Applicant wishes to be admitted as a Party to the Market 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 ("Accession Date").
3. The Applicant hereby accepts its admission as a Party 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 Framework Agreement as a Party as from the Accession Date.

4. It shall be a suspensive condition of the commencement of this Agreement that the Licence granted to an Applicant has not been the subject of any successful appeal notified within fourteen (14) days of the date of the Licence grant.
5. For all purposes in connection with the Framework Agreement the Applicant shall as from the Accession Date be treated as if it has been a signatory of the Framework Agreement from the Accession Date, 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.
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 Agreement being or becoming void, illegal or unenforceable in any respect under the law of any jurisdiction in which this 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 Agreement shall not be in any way affected or impaired thereby.
8. This Accession Agreement shall be governed by and construed in accordance with the laws of Scotland. Each of the parties hereby submits to the exclusive jurisdiction of the Courts of Scotland.

**IN WITNESS WHEREOF** this Agreement consisting of this and the preceding page, is executed as follows:

Subscribed for and on behalf of Central Market Agency Limited

by .....

a Director/the Secretary/Authorised Signatory at .....

.....

on the .....day of ..... Director/Secretary/Authorised Signatory

200[ ]

in the presence of the following witness:-

Witness.....

Full Name.....

Address.....

.....

Subscribed 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

200[     ]

in the presence of the following witness:-

Witness..... ..

Full Name.....

Address.....

.....

**Part 2****Market Code Framework Agreement**

**THIS FRAMEWORK AGREEMENT** is made 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 6 of the Water Services Etc. (Scotland) Act 2005 (the "**Act**"), SWBS and any other holder of each such licence is required to be a party to the Market Code Framework Agreement (being an agreement, in the form approved by the Commission, by which the Market Code is made binding between the parties to that agreement) and to comply with the Market Code;
- (B) Pursuant to a condition of the directions issued to Scottish Water under Section 11(2) of the Act, Scottish Water is required to be a party to the Market Code Framework Agreement and to comply with the Market Code; and
- (C) The Parties are entering into this Agreement for the purpose of giving effect to and binding themselves by the Market Code.

**NOW IT IS AGREED** as follows:-

**1. Interpretation**

1.1 In this 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 Agreement, and CMA;

**"Agreement"** means this Agreement including the recitals and schedule annexed hereto;

**"Applicant"** has the meaning provided for in the Accession Agreement;

<b>"Authorised Person"</b>	means a person authorised by all of the Parties to sign on behalf of each such Party any Accession Agreement whereby an Applicant is admitted as a new Party;
<b>"Board"</b>	means the board specified in Part 8 (Governance) of the Market Code;
<b>"CMA"</b>	means any body established by or under any directions made by the Commission relating inter alia to the central market agency to exercise certain central market functions in relation to the participation of the Parties in the provision of Water Services and Sewage Services, the first such body being the Central Market Agency Limited, a company limited by guarantee with registered number SC328635 and having its registered office at Ochil House, Springkerse Business Park, Stirling, FK7 7XE;
<b>"Commission"</b>	means the Water Industry Commission for Scotland as established by the Water Industry (Scotland) Act 2002;
<b>"Discontinuance Date"</b>	means the date when a Discontinuing Party will cease to be a Party to this Agreement determined in accordance with the Market Code;
<b>"Discontinuing Party"</b>	means a Party to this Agreement who will cease to be a Party to this Agreement with effect from the Discontinuance Date;
<b>"Effective Date"</b>	means:- <ul style="list-style-type: none"> <li>(i) with respect to each of the Original Parties, the date of this Agreement; and</li> <li>(ii) with respect to any Applicant who is</li> </ul>

admitted as a new Party and (as respects such Applicant) the other Parties, the date of the relevant Accession Agreement;

<b>"Licence"</b>	Means a Water Services Licence and/or the Sewerage Services Licence granted pursuant to section 6(1) and 6(3) respectively of the Act, as modified from time to time;
<b>"Market Code"</b>	means the code to be adhered to by Scottish Water in terms of the Water Services (Central Market Agency, Codes and Services) Direction 2007 (or any other direction which amends, replaces or supplements, or is made in respect of substantially the same subject matter as that direction), and to be adhered to by licensees in accordance with the standard conditions of their Licence;
<b>"Original Parties"</b>	means the persons whose names are set out in the Schedule hereto and the term "Original Party" shall be construed accordingly;
<b>"Party"</b>	means, subject as provided in paragraph 3, the Original Parties and each new party which enters into an Accession Agreement;
<b>"Scottish Water"</b>	means the body established under Part 3 of the Water Industry (Scotland) Act 2002; and
<b>"SWBS"</b>	means Scottish Water Business Stream Limited, a limited liability company with registered number SC294924 and having its registered office at Castle House, 6 Castle Drive, Dunfermline, KY11 8GG.

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

**2. Commencement**

It shall be a suspensive condition of the commencement of this Agreement in respect of a Party that the Licence granted to a Party has not been the subject of any successful appeal notified within fourteen (14) days of the date of the Licence grant.

**3. New Parties**

- 3.1 An Applicant may be admitted as a new Party to the Market Code by execution and delivery of an Accession Agreement signed by such Applicant and an Authorised Person.
- 3.2 Upon execution and delivery of an Accession Agreement in accordance with paragraph 2.1, the Applicant shall become a Party.
- 3.3 CMA shall be the "Authorised Person" for the purposes of and as defined in this Agreement.

**4. 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 Code as to the continuance in force of any of its provisions as respects, or any rights, obligations and liabilities of, any such Party or (as respects such Party) any other Party.

**5. Market Code**

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

**6. Severance**

In the event of any provision (or part of any provision) of this Agreement being or becoming void, illegal or unenforceable in any respect under the law of any jurisdiction in which this 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 Agreement shall not be in any way affected or impaired thereby.

**7. Governing Law**

7.1 This Agreement shall be governed by and construed in accordance with the laws of Scotland.

7.2 Each of the Parties hereby submits to the exclusive jurisdiction of the Courts of Scotland.

**IN WITNESS WHEREOF** this Agreement consisting of this and the preceding four pages, together with the Schedule annexed hereto, is executed as follows:

Subscribed for and on behalf of **Central Market Agency Limited**

by .....

a Director/the Secretary/Authorised

Signatory at ..... ..

on the .....day of ..... Director/Secretary/Authorised Signatory

200[ ]

in the presence of the following witness:-

Witness..... ..

Full Name..... ..

Address..... ..

..... ..

Subscribed 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

200[ ]

in the presence of the following witness:-

Witness..... ..

Full Name..... ..

Address..... ..

..... ..

**Schedule**

**This is the schedule referred to in the  
foregoing agreement between the Original Parties**

**Central Market Agency Limited  
Ochil House, Springkerse Business Park, Stirling, FK7 7XE**

**Scottish Water  
[insert Scottish Water address]**

**Licensed Providers:-**

**SWBS  
[insert SWBS address]**

**Others  
[Insert]**

## **SCHEDULE 5**

### **TRANSITIONAL DUTIES**

1. The provisions of this Schedule 5 shall apply from the Effective Date until the Go-Live Date.
2. Each Code Party agrees to co-operate with the other Code Parties in carrying out such tasks and providing all data and information as are required to enable the registration of Supply Points and the provision of Settlement Reports by the CMA in relation to the period from and after the Go Live Date.
3. The Code Parties agree that the CMA shall notify the Trading Parties from time to time of any information it requires from them together with any tasks to be carried out by them and the timescales for undertaking such tasks and the Trading Parties shall use all reasonable endeavours to meet the requirements of the CMA under this paragraph 3.
4. Without prejudice to the generality of paragraphs 2 and 3 above, the Code Parties agree as set out below.

#### **4.1.1 Scottish Water Requirements**

- (i) Scottish Water shall provide contact details to the CMA of a primary point of contact at Scottish Water for all matters related to Transition. The primary point of contact must be sufficiently senior to ensure that they can progress queries and exceptions or escalations with any relevant department within Scottish Water.
- (ii) Scottish Water shall provide such datasets as are requested by the CMA from time to time for the Permanent Market Design. Scottish Water will provide timely updates to those datasets as relevant for the period of their validity (i.e. until superseded by a subsequent dataset). Without prejudice to that generality, Scottish Water shall provide all datasets and updates of those datasets in a manner which minimises any disruption to Transition.
- (iii) Scottish Water shall support such Market Tests (including Central Systems testing and any industry interface testing) as may be required by the CMA and carry out such Market Tests and other activities as the CMA reasonably requires. Scottish Water shall cooperate with the CMA in relation to any testing requirements for the Market Entry of Licensed Providers.

#### 4.1.2 **Licensed Provider Requirements**

- (i) Each Licensed Provider shall provide contact details to the CMA of a primary point of contact for all matters related to Transition. The primary point of contact must be sufficiently senior to ensure that they can progress all queries and issues arising.
- (ii) Scottish Water Business Stream shall provide such datasets as are requested by the CMA from time to time for the Permanent Market Design. Scottish Water Business Stream will provide timely updates to those datasets as relevant for the period of their validity (i.e. until superseded by a subsequent dataset). Without prejudice to that generality, Scottish Water Business Stream shall provide all datasets and updates of those datasets in a manner which minimises any disruption to Transition.
- (iii) Scottish Water Business Stream shall support such Market Tests (including Central Systems testing and any industry interface testing) as may be required by the CMA and carry out such Market Tests and other activities as the CMA reasonably requires. Each other Licensed Provider shall carry out such Market Tests as are required by the CMA.

#### 4.1.3 **CMA Requirements**

- (i) The CMA will provide contact details for the CMA including an email address, telephone enquiry number and escalations point of contact to Scottish Water and to each Licensed Provider.
- (ii) The CMA shall load the datasets received by it into its systems for testing purposes and in order to carry out the first Settlement Run under the Market Code.
- (iii) The CMA shall co-operate in specifying and carrying out such Market Tests as are required for the purposes of Transition.
- (iv) The CMA shall provide regular reports to each Licensed Provider confirming the data (including any SPID Data) held by the CMA for that Licensed Provider.
- (v) The CMA will provide such reports and other information as the Commission may require in relation to Transition.

**SCHEDULE 6**

**CSD 0001 (MARKET ENTRY & ASSURANCE)**

**SCHEDULE 7**

**CSD 0002 (PERFORMANCE STANDARDS)**

**SCHEDULE 8**

**CSD 0003 (PROVIDER OF LAST RESORT)**

**SCHEDULE 9**

**CSD 0101 (REGISTRATION: NEW CONNECTIONS & NEW SUPPLY POINTS)**

**SCHEDULE 10**

**CSD 0102 (REGISTRATION: TRANSFERS)**

**SCHEDULE 11**

**CSD 0103 (REGISTRATION: CANCELLATIONS)**

**SCHEDULE 12**

**CSD 0104 (MAINTAIN SPID DATA)**

**SCHEDULE 13**

**CSD 0105 (ERROR RECTIFICATION & RETROSPECTIVE AMENDMENTS)**

**SCHEDULE 14**

**CSD 0201 (SETTLEMENT TIMETABLE & REPORTING)**

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**SCHEDULE 15**

**CSD 0202 (METER READ SUBMISSION: PROCESS)**

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**SCHEDULE 16**

**CSD 0203 (METER READ SUBMISSION: VALIDATION)**

**SCHEDULE 17**

**CSD 0204 (VOLUME PROCESSING & ESTIMATION)**

**SECTION 18**

**CSD 0205 (CHARGE CALCULATION, ALLOCATION & AGGREGATION)**

**SCHEDULE 19**

**CSD 0206 (TRADE EFFLUENT PROCESSES)**

**SCHEDULE 20**

**CSD 0301 (DATA TRANSACTION CATALOGUE)**