



**Dated**

**2003**

**The Parties as named herein**

**- and -**

**SPAA Limited**

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**Supply Point Administration Agreement**

**Version 1.0**

**Release date 3<sup>rd</sup> March 2003**

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# SUPPLY POINT ADMINISTRATION AGREEMENT

## VERSION CONTROL – DRAFT DOCUMENT ONLY

Incorporating the changes set out in the following table:

Version	Date of Release	Change Proposal Number	Change Proposal Title	Affected Clauses/Schedules	Effective Date
D0.1	Feb		Taken from the draft document, sections removed and some added, pending policy decisions		N/A
D0.2	March		Some sections changed by GIGG CG		N/A
D0.3	9 April 02		Angela and Afroze's comments added	Most	N/A
D0.4	24 April 02		Kirsten clears section 4, Afroze changes to section 5, David changes to section 8, Itret changes, Paul and Matt changes to sections 9, Henry changes to Schedule X on Spaa Ltd	"	N/A
D 0.5	1 <sup>st</sup> May 02		Changes from Paul to section 7, Angela's comments on Ofgem, Nigels on mandatory, comments from the minutes and DT on costs, added paper from Nigel on costs	"	N/A
D 0.6	22 <sup>nd</sup> May 02		Changes from Ruth's', Afroze', Steve's, and David's lawyers; and re-numbered throughout by BGT	"	N/A
D 0.7	27 <sup>th</sup> May 02		Renumbered, all clauses referenced, Ofgem's changes added	All	N/A
D 0.8	23 <sup>rd</sup> August 02		Herbert Smith redraft following consultation with SPAA Team and GIGG Members	All substantively except Clause 9 and incidental definitions	N/A
D 0.9	13 <sup>th</sup> September 02		Herbert Smith redraft following consultation with SPAA Team and GIGG Members	Incidental and Clause 9	N/A
D 1.0	17 <sup>th</sup> January		Herbert Smith redraft of clause 9 and incidental	Primarily Clause 9	N/A

<b>Version</b>	<b>Date of Release</b>	<b>Change Proposal Number</b>	<b>Change Proposal Title</b>	<b>Affected Clauses/Schedules</b>	<b>Effective Date</b>
	03		clauses following consultation with SPAA Team.		
D.1.1	3 <sup>rd</sup> March 2003		Herbert Smith redraft in accordance with GIGG and Ofgem comments	Clause 5.2, 5.19, 6.9, 9.15, 9.16 and 9.20.	

**THIS AGREEMENT** is made on                      day of                      2003

**BETWEEN:**

- (1) **THE PERSONS** whose names, registered numbers and registered or principal offices are set out in Part 1 of Schedule 1; and
- (2) **SPAA LIMITED** a company incorporated in England and Wales (registered number 04365599) whose registered office is at 63 Duke Street, London W1K 5NS ("**SPAA Ltd**").

**WHEREAS:**

- (A) Condition [X] of the Gas Supply Licence provides that each Supplier is required to be a Party to and comply with the provisions of this Agreement;
- (B) Each Supplier has accordingly agreed to enter into this Agreement on the basis of the terms and conditions set out below.

## **PART I: PRELIMINARY**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions in this Agreement:**

<b>"Act"</b>	means the Gas Act 1986 as amended by the Gas Act 1995 and the Utilities Act 2000;
<b>"Accession Agreement"</b>	means an agreement in the form set out in Schedule 2;
<b>"Affected Party"</b>	has the meaning given to that term in Clause 12.1;
<b>"Affiliate"</b>	in relation to any Party, means any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985;
<b>"Agreement"</b>	means this Supply Point Administration Agreement the Schedules, Annexes and Appendices thereto;
<b>"Application for Derogation"</b>	has the meaning given in Clause 14.2;
<b>"Authority"</b>	means the Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000;
<b>"Change Control Administrator"</b>	means the person appointed by SPAA EC pursuant to Clause 9.3;
<b>"Change Proposal"</b>	means a notice in writing from any Party or Parties in accordance with Clause proposing an amendment to this Agreement or to any of the SPAA Products;
<b>"Change Report"</b>	has the meaning given to it in Clause 9.11;
<b>"Change Voting Date"</b>	means those dates set or amended by SPAA EC in each Financial Year when relevant interested Parties may vote upon Change Proposals which are designated by SPAA EC to be voted on upon those dates pursuant to Clause 9;
<b>"Competent Authority"</b>	means the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official, or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;
<b>"Confidential Information"</b>	means, in relation to a Party, all data or other information supplied to that Party by another Party under or pursuant to the provisions of this Agreement;
<b>"Contract Manager"</b>	means a person appointed by each Party pursuant to Clause 15.1;

<b>"Customer"</b>	means any person supplied or requiring to be supplied with Gas at any Premises by a Supplier;
<b>"Data Protection Act"</b>	means the Data Protection Act 1998;
<b>"Defaulting Party"</b>	has the meaning given in Clause 10.1;
<b>"Designated Agreements"</b>	means: <ul style="list-style-type: none"> <li>(i) this Agreement;</li> <li>(ii) the Network Codes and any agreements entered into by a Party pursuant to the Network Codes;</li> <li>(iii) any other agreement specified as a Designated Agreement from time to time by SPAA EC; and</li> <li>(iv) any agreement which the Authority from time to time approves as a Designated Agreement;</li> </ul>
<b>"Directive"</b>	includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;
<b>"Disclose"</b>	means disclose, reveal, report, publish or transfer and <b>"Disclosure"</b> shall be construed accordingly;
<b>"Dispute"</b>	has the meaning given to that term in Clause 13.1;
<b>"Disputing Party"</b>	has the meaning given to that term in Clause 13.2;
<b>"Domestic Supplier"</b>	means a Party who is entitled to make Domestic Supplies and who is described in Part 2 of Schedule 1;
<b>"Domestic Supply"</b>	means a supply of Gas to a Customer which is taken wholly or mainly for domestic purposes (as such term is used in the Gas Suppliers Standard Licence Conditions issued pursuant to the Utilities Act 2000);
<b>"Effective Date"</b>	means the date of this Agreement;
<b>"Elective Register"</b>	has the meaning given to that term in Clause 5.8;
<b>"Elective"</b>	means a Clause(s) of and/or a Schedule(s) to (or any part(s) thereof) this Agreement which a Domestic Supplier, an Industrial and Commercial Supplier or a Supplier, may elect to comply with pursuant to and in accordance with Clauses 5.6 to 5.14 (inclusive);



<b>"Elective Schedule"</b>	has the meaning given to that term in Clause 5.5;
<b>"energywatch"</b>	means the Gas and Electricity Consumer Council established by section 2 of the Utilities Act 2000;
<b>"Event of Default"</b>	has the meaning given to that term in Clause 10.1;
<b>"Extra Votes"</b>	has the meaning given to that term in Clauses 6.9 and 6.11;
<b>"Financial Year"</b>	means the period from 1st April to 31st March each year provided that the First Financial Year shall begin on the date of this Agreement and end on the next following 31 <sup>st</sup> March and the final Financial Year shall, in the event of termination of this Agreement otherwise than on the anniversary of the last day of the Financial Year, be such shorter period as shall end on the date of termination;
<b>"Force Majeure"</b>	means any event or circumstance which is beyond the reasonable control of any Party acting as a Reasonable and Prudent Operator and which results in or causes the failure of that Party to perform any of its obligations under this Agreement, provided that lack of funds shall not be interpreted as a cause beyond that Party's reasonable control;
<b>"Forum Chairman"</b>	has the meaning given to that term in Clause 7.16;
<b>"Gas"</b>	has the meaning given in Section 48(1) of the Act;
<b>"Gas Supply Licence"</b>	means a licence to supply Gas granted by the Authority pursuant to section 7A(1) or 7A(4) of the Act or treated as so granted by virtue of a scheme made under Schedule 5 to the Gas Act 1995;
<b>"Gas Transportation Database"</b>	means the database of information (including on MPRNs) held by each holder of a Gas Transportation Licence;
<b>"Gas Transportation Licence"</b>	means a licence to transport Gas granted by the Authority pursuant to section 7 or 7(4) of the Act;
<b>"Group of Domestic Suppliers"</b>	means a group of Domestic Suppliers and their Affiliates who are also Parties and Domestic Suppliers;
<b>"Group of Industrial and Commercial Suppliers"</b>	means a group of Industrial and Commercial Suppliers and their Affiliates who are also Parties and Industrial and Commercial Suppliers;
<b>"Group of Parties"</b>	means a group of Suppliers and their Affiliates who are also Parties provided that any Affiliates who are not Suppliers shall be excluded and for the avoidance of doubt where the phrase Group of Parties in a category of Party is used only those Affiliates who

	are in the same category of Party shall be included in the group;
<b>"I&amp;C Member"</b>	has the meaning given to that term in Clause 6.1;
<b>"I&amp;C Supply"</b>	means a supply of Gas to a Customer taken wholly or mainly for non-domestic purposes (as such term is used in the Gas Suppliers Standard Licence Conditions issued pursuant to the Utilities Act 2000);
<b>"Industrial and Commercial Supplier"</b>	means a Party who is entitled to make I&C Supplies and who is described in Part 3 of Schedule 1;
<b>"Intellectual Property"</b>	means patents, registered design rights, unregistered design rights, copyrights, rights in trade marks whether registered or not, goodwill and rights in confidential information and know-how and any associated or similar rights (including, in all cases, applications and rights to apply therefor);
<b>"Large Domestic Member"</b>	has the meaning given to that term in Clause 6.3.2;
<b>"Large Domestic Supplier"</b>	means a Domestic Supplier who has one (1) million or more MPRNs for Domestic Supplies Registered on all Gas Transportation Databases;
<b>"Mandatory"</b>	means a Clause(s) of and/or a Schedule(s) to (or any part(s) thereof) this Agreement which a Domestic Supplier, an Industrial and Commercial Supplier, or a Supplier is obliged to comply with pursuant to Clauses 5.3 and 5.4;
<b>"Mandatory Schedule"</b>	has the meaning given to that term in Clause 5.2;
<b>"MPRN"</b>	means a unique reference number that identifies each point on a pipeline system, the conveyance of Gas through which is authorised by a Gas Transportation Licence, at which Gas may, in accordance with a Network Code, be offtaken from such pipeline system for the purpose of supply directly to a Premises;
<b>"Network Code"</b>	means the document prepared by the holder of a Gas Transportation Licence, pursuant to Condition 9(2) of a Gas Transportation Licence, that forms the basis of arrangements between the holder of a Gas Transportation Licence and the shippers whose Gas it transports, such as the Transco Network Code;
<b>"New Party"</b>	has the meaning given to that term in Clause 4.1;
<b>"Operational Issue"</b>	means an issue or problem perceived by one or more Parties arising out of the operation of the arrangements designed to facilitate supply competition in the Gas industry, which, for the avoidance of doubt, shall not be limited to issues or

problems arising out of or impacting upon this Agreement;

**"Party"**

means a party to this Agreement and **"Parties"** shall be construed accordingly provided that (a) nothing shall preclude a Party from being a Domestic Supplier and an Industrial and Commercial Supplier and (b) unless expressly stated otherwise SPAA Ltd shall only be a Party for the purposes of Schedule 4 (and in such case as expressly specified);

**"Party Change Administrator"**

means the person appointed by each Party under Clause 9.4;

**"Party Liable"**

has the meaning given to that term in Clause 10.14;

**"Premises"**

means any land, building or structure;

**"Quarter"**

means the period of three calendar months ending on a Quarter Day;

**"Quarter Day"**

means each or as the context may require any or a particular one of 31st March, 30th June, 30th September and 31st December or where the Quarter Day is not a Working Day, the next Working Day thereafter;

**"Reasonable and Prudent Operator"**

means a person exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

**"Registered"**

means the recording on the Gas Transportation Database of a Supplier as being responsible for a MPRN from a particular date and **"Registration"** shall be construed accordingly;

**"Related Undertakings"**

means in relation to any Party an undertaking in which that Party has a participating interest as defined by section 260 of the Companies Act 1985;

**"Report"**

has the meaning given in Clause 21.2;

**"Secretariat"**

has the meaning given to that term in Clause 6.54;

**"Secretary"**

means the person appointed as secretary of the SPAA EC pursuant to Clause 6.26;

**"Secretary of State"**

has the meaning given to that term in the Interpretation Act 1978;

**"Shadow SPAA EC"**

means the Shadow SPAA EC Members, acting as SPAA EC in a shadow capacity, before the execution of this Agreement;

<b>"Shadow SPAA EC Member"</b>	means those persons whose names are set out in Clause 6.17 acting in a shadow capacity as SPAA EC Members before the execution of this Agreement;
<b>"Small Domestic Member"</b>	has the meaning given to that term in Clause 6.3.3;
<b>"Small Domestic Supplier"</b>	means a Domestic Supplier who has less than one (1) million MPRNs Registered on all Gas Transportation Databases;
<b>"SPAA EC"</b>	means the executive committee of SPAA Ltd constituted pursuant to Clause 6.3 consisting of the SPAA EC Members;
<b>"SPAA EC Chairman"</b>	means the person appointed as chairman of the SPAA EC pursuant to Clause 6.22;
<b>"SPAA EC Member"</b>	has the meaning given to that term in Clause 6.3;
<b>"SPAA Forum"</b>	means the body constituted pursuant to the terms of Clause 7;
<b>"SPAA Products"</b>	means those items listed in Schedule 6;
<b>"Supplier"</b>	means an Industrial and Commercial Supplier and/or a Domestic Supplier and <b>"Suppliers"</b> shall be construed accordingly provided that nothing shall preclude a person from being a Party as a Domestic Supplier and an Industrial and Commercial Supplier;
<b>"Total Weighted Vote"</b>	has the meaning given to that term in Clause 6.9;
<b>"VAT"</b>	has the meaning given to that term in the Value Added Tax Act 1994 and any tax of a similar nature which may be substituted for or levied in addition to it;
<b>"Voluntary"</b>	means a Clause(s) of and/or a Schedule(s) to (or part(s) thereof) this Agreement with which a Domestic Supplier, an Industrial and Commercial Supplier, or a Supplier is not obliged to comply;
<b>"Voluntary Schedule"</b>	has the meaning given to that term in Clause 5.15;
<b>"Weighted Votes"</b>	has the meaning given to that term in Clause 6.8; and
<b>"Working Day"</b>	means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

1.2 In this Agreement, unless the context requires otherwise, any reference to:

1.2.1 a "person" includes a reference to an individual, body corporate, association or partnership;

1.2.2 the singular shall include the plural and vice versa;

- 1.2.3 this "Agreement" shall mean this agreement, the Schedules, Annexes and Appendices thereto;
  - 1.2.4 a Clause, Schedule or Part is a reference to a clause of or schedule to or part of this Agreement;
  - 1.2.5 writing includes all methods of reproducing words in a legible and non-transitory form;
  - 1.2.6 any statute or any other subordinate legislation, any other agreement or instrument shall be construed as a reference to that statute, subordinate legislation, other agreement or instrument as amended, or re-enacted or consolidated from time to time;
  - 1.2.7 the masculine gender include the feminine gender.
- 1.3 The headings in this Agreement are for the ease of reference only and shall not affect its interpretation.
- 1.4 In this Agreement, references to "include" or "including" are to be construed without limitation to the generality of the preceding words.

## **2. CONDITIONS PRECEDENT**

- 2.1 The rights and obligations of a Supplier in a category of Party (which does not hold a Gas Supply Licence) pursuant to a Mandatory Schedule, and the right of such Supplier to make an election in respect of an Elective Schedule, shall be subject to such Supplier holding a Gas Supply Licence in that capacity and SPAA EC notifying the Parties that it has received evidence of such licence pursuant to Clause 4.
- 2.2 A Supplier shall not be obliged to give a Party which does not hold a Gas Supply Licence the benefit of any provision in a Mandatory Schedule which relates to such category of Party and shall not be under any obligation in relation thereto unless and until such Party holds a Gas Supply Licence in that capacity, and SPAA EC has notified the Parties pursuant to Clause 4.
- 2.3 From the date of SPAA EC's notice in Clause 4.8, a Supplier in a category of Party shall be entitled to receive the benefit of, exercise rights and be subject to obligations under, a Mandatory Schedule and shall be entitled to make an election in respect of Elective Schedule, in each case relating to such category of Party.

## **3. DURATION**

- 3.1 This Agreement shall take effect on the Effective Date save for any rights or obligations of a Party, which are expressed in Clause 2 to be conditional.
- 3.2 Subject to Clauses 10.12 and 10.13, this Agreement shall remain in effect in respect of a Party until such Party ceases to be a party to this Agreement in accordance with Clause 10 and Clause 20.
- 3.3 Subject to Clauses 10.12 and 10.13, this Agreement shall remain in effect until:
- 3.3.1 all the Parties cease to be Parties in accordance with Clause 10; or;
  - 3.3.2 there remains just one (1) Supplier as a Party.
- 3.4 This Clause is without prejudice to Clause 5 and Clause 14.

#### 4. ADDITIONAL PARTIES

- 4.1 Subject to the following provisions of this Clause 4, the Parties shall admit as an additional party to this Agreement any person (a "**New Party**") who is not at that time already a Party, who applies to be admitted in the capacity requested by the New Party subject to the New Party holding a Gas Supply Licence in that capacity or being in the process of application for a Gas Supply Licence in that capacity.
- 4.2 Subject to Clause 4.3, a New Party wishing to be admitted as an additional Party shall apply to SPAA EC for admission on a form of application issued by SPAA EC from time to time and shall deliver such form to SPAA EC together with any other documents referred to in the form. A New Party shall self certify in the form set out in Schedule 3 that its system design is such that on becoming Party it will be able to fully comply with all the Mandatory Schedules and Elective Schedules that it has elected or intends to elect to comply with in accordance with this Agreement. Within 30 Working Days of receipt of the application, SPAA EC shall notify the New Party and the Authority that either the New Party shall be admitted as a Party or that it requires from the New Party the information and/or documents referred to in the application form.
- 4.3 Where SPAA EC notifies the New Party that it requires the information specified in Clause 4.2, the New Party shall within 20 Working Days of receiving SPAA EC's notice provide such information, failing which the New Party's application shall lapse and be of no effect and the New Party shall not be, and shall not be entitled to be, admitted as a New Party consequent upon such application without prejudice to any new application for admission it may make thereafter.
- 4.4 SPAA EC may determine not to admit a New Party if such New Party does not provide the evidence requested in its application within the time period referred to in Clause 4.3. Where SPAA EC determines not to admit a New Party it shall provide such New Party with the reasons for its decision. Where SPAA EC determines not to admit a New Party as a Party or fails to notify the New Party within 30 Working Days of receipt of the New Party's application, the New Party may refer the matter to the Authority for its determination. The determination of the Authority shall be final and binding for all purposes.
- 4.5 Where:
- 4.5.1 SPAA EC notifies the New Party and the Authority in accordance with Clause 4.2 that the New Party is to be admitted as a Party; or
  - 4.5.2 following a request for information pursuant to Clause 4.2 the New Party provides sufficient information satisfactory to SPAA EC within the time period specified in Clause 4.3; or
  - 4.5.3 the Authority determines that the New Party shall become a Party pursuant to Clause 4.4,
- SPAA EC shall, within 5 Working Days, prepare an Accession Agreement, which shall be executed by a delegate authorised by SPAA EC on behalf of all Parties other than the New Party. Each Party hereby authorises and instructs any delegate authorised by SPAA EC to sign any such Accession Agreement on its behalf and undertakes not to withdraw, qualify or revoke any such authority or instruction at any time. Upon execution of the Accession Agreement, the New Party shall become a Party for all purposes of this Agreement from the date specified in such Accession Agreement.
- 4.6 SPAA EC shall promptly notify all Parties and the Authority of the execution and delivery of the Accession Agreement.

- 4.7 Where a New Party accedes to this Agreement and does not hold a Gas Supply Licence but is in the process of applying therefor:
- 4.7.1 it shall not be entitled to exercise any voting rights pursuant to Clauses 6 to 9 (inclusive) until Clause 4.8 applies;
- 4.7.2 it shall forthwith inform SPAA EC following:
- (A) the grant of a Gas Supply Licence to it (and in such a case shall send a copy of its Gas Supply Licence (or other evidence thereof) to SPAA EC); or
  - (B) the refusal to grant a Gas Supply Licence to it.
- 4.8 If Clause 4.7.2(A) applies, SPAA EC shall within 10 Working Days of receipt of such information, notify the New Party, the Authority and the Parties that as from the date of SPAA EC's notice the voting restrictions on the New Party will cease to apply and Clause 2.3 shall apply.

## **5. MANDATORY, ELECTIVE AND VOLUNTARY SCHEDULES**

- 5.1 Subject to Clause 3 and Clauses 5.3, 5.4, 5.9, 5.10, 5.12 and 5.16, this Agreement shall be binding on all Parties.

### **Mandatory Schedules**

- 5.2 A Clause(s) of and/or a Schedule(s) to (or part(s) thereof) this Agreement may be designated as Mandatory for a Supplier, a Domestic Supplier or an Industrial and Commercial Supplier as part of a Change Proposal (a "**Mandatory Schedule**").
- 5.3 A Domestic Supplier shall be obliged to comply with a Mandatory Schedule designated as Mandatory for Domestic Suppliers and/or Suppliers but shall not be obliged to comply with a Mandatory Schedule designated as Mandatory for Industrial and Commercial Suppliers only.
- 5.4 An Industrial and Commercial Supplier shall be obliged to comply with a Mandatory Schedule designated as Mandatory for Industrial and Commercial Suppliers and/or Suppliers but shall not be obliged to comply with a Mandatory Schedule designated as Mandatory for Domestic Suppliers only.

### **Elective Schedules**

- 5.5 A Clause(s) of and/or a Schedule(s) to (or part(s) thereof) this Agreement may be designated as Elective for a Supplier, a Domestic Supplier or an Industrial and Commercial Supplier as part of a Change Proposal (an "**Elective Schedule**").
- 5.6 A Domestic Supplier may elect to comply with an Elective Schedule designated as Elective for Domestic Suppliers and/or Suppliers by notice in writing to SPAA EC.
- 5.7 An Industrial and Commercial Supplier may elect to comply with an Elective Schedule designated as Elective for Industrial and Commercial Suppliers and/or Suppliers by notice in writing to SPAA EC.
- 5.8 The SPAA EC shall maintain and send to the Parties and the Authority each month a list of Suppliers ("**Elective Register**") who at such time have elected, pursuant to Clauses 5.6 or 5.7, to comply with Elective Schedules (and the parts of any Elective Schedule with which they have elected to comply) and are continuing to so comply.
- 5.9 Once a Supplier has informed SPAA EC of its written election to adhere to an Elective Schedule and SPAA EC has entered such Supplier on the Elective Register in respect of such

Schedule such Supplier shall be obliged to comply with the Elective Schedules for so long as it remains on the Elective Register in respect of such Elective Schedule.

- 5.10 Where a Supplier has elected to comply with an Elective Schedule it may give notice in writing to SPAA EC notifying SPAA EC that from a date not earlier than one (1) month after the date of its notice it no longer wishes to comply with such Elective Schedule. SPAA EC shall remove such Supplier from the Elective Register in respect of such Elective Schedule at the end of the time period specified in the Supplier's notice and, from such date, the Supplier shall not be obliged to comply with such Elective Schedule.

5.11

5.11.1 Any Supplier who is registered on the Elective Register may report ("**Reporting Supplier**") any suspected non-compliance with an Elective Schedule by another Supplier ("**Non Compliant Supplier**") to SPAA EC describing the non-compliance and requesting that such Supplier be removed from the Elective Register.

5.11.2 On receipt of such report SPAA EC shall notify the Non Compliant Supplier and shall invite such Supplier to submit a report to SPAA EC within 10 Working Days of receipt of such notice setting out any reasons why it may dispute the non-compliance.

5.11.3 If the Supplier does not submit a report within the period referred to in Clause 5.11.2, SPAA EC shall remove such Supplier from the Elective Register at the end of such period.

5.11.4 If the Non Compliant Supplier submits a report within the period referred to in Clause 5.11.2:

- (A) SPAA EC shall hear representations from the Suppliers concerned;
- (B) following consideration of the Suppliers' reports and representations it shall resolve whether the Non Compliant Supplier should be retained on or removed from the Elective Register;
- (C) SPAA EC shall notify the Reporting Supplier and the Non Compliant Supplier of its decision pursuant to Clause 6.41;
- (D) if the SPAA EC resolves that the Non Compliant Supplier has not complied with an Elective Schedule, it shall remove such Supplier from the Elective Register in respect of such Elective Schedule 10 Working Days (or such longer period as the SPAA EC may decide, in relation to that resolution) after notification of the minutes of the relevant SPAA EC decision pursuant to Clause 6.41 unless before the expiry of such period the Non Compliant Supplier appeals to the SPAA Forum for its determination (and provides evidence thereof to SPAA EC within such period); and
- (E) if the SPAA EC resolves that the Non Compliant Supplier has complied with the Elective Schedule it shall not remove such Supplier from the Elective Register provided that the Reporting Supplier may appeal SPAA EC's determination to the SPAA Forum for its determination within 10 Working Days (or such longer period as the SPAA EC may decide in relation to that resolution) of receiving the minutes of the relevant SPAA EC decision pursuant to Clause 6.41.

5.11.5 A SPAA EC Member shall be disqualified from acting, and shall not act in his capacity as a SPAA EC Member, in relation to a resolution pursuant to this Clause



and his alternate shall act in his place (unless the provisions of Clause 5.11.5(A) and (B) apply to him as well) in relation to a resolution where:

- (A) his employer is the Non Compliant Party or an Affiliate of the Non Compliant Party; or
- (B) his employer is the Reporting Party or an Affiliate of the Reporting Party.

- 5.12 If the SPAA Forum dismisses any appeal made by the Non Compliant Supplier or allows any appeal made by the Reporting Supplier, SPAA EC shall remove the Non Compliant Supplier from the Elective Register within 5 Working Days of receipt by SPAA EC of the SPAA Forum decision. If the SPAA Forum allows any appeal of the Non Compliant Supplier or dismisses any appeal of the Reporting Supplier, SPAA EC shall not remove the Non Compliant Supplier from the Elective Register in respect of the non-compliance reported.
- 5.13 A Supplier may apply to SPAA EC to be reinstated on the Elective Register if it considers that it is at that time capable of complying with the Elective Schedule. SPAA EC may reinstate the Supplier to the Elective Register in respect of such Elective Schedule, after having considered any report or representations from such Supplier. Such Supplier may appeal any such decision of SPAA EC to the SPAA Forum for its determination within 10 Working Days (or such longer period as the SPAA EC may decide in relation to that resolution) of receiving the minutes of the relevant SPAA EC decision pursuant to Clause 6.41. If the SPAA Forum allows such Supplier's appeal, SPAA EC shall reinstate such Supplier onto the Elective Register within 5 Working Days of receipt of the SPAA Forum determination.
- 5.14 The right for a Supplier who is registered on the Elective Register to request removal of another Supplier from the Elective Register pursuant to Clause 5.11 is the sole and exclusive remedy available to any Party for non-compliance with an Elective Schedule and Clause 10.1.1 shall not apply to breach of any part of an Elective Schedule.

### **Voluntary Schedules**

- 5.15 A Clause(s) of and/or Schedule(s) to (or parts thereof) this Agreement may be designated as Voluntary for a Supplier, a Domestic Supplier or an Industrial and Commercial Supplier as part of the Change Proposal (a "**Voluntary Schedules**").
- 5.16 A Voluntary Schedule shall contain statements of best practice and guidelines that a Supplier may chose to follow. A Voluntary Schedule is not intended to be legally binding nor have any legal effect whatsoever as between the Parties. For the avoidance of doubt Clause 10.1.1 shall not apply to breach of any part of a Voluntary Schedule.

### **Changes to status**

- 5.17 The status of a Mandatory Schedule, an Elective Schedule and/or a Voluntary Schedule may change as part of a Change Proposal.

### **Appeals**

- 5.18 If a Non Compliant Supplier or Reporting Supplier appeals to the SPAA Forum pursuant to Clauses 5.11.4(D), 5.11.4(E) or 5.13, the SPAA Forum's determination shall be final and binding in the absence of fraud or manifest error.

## **PART II: GOVERNANCE**

### **6. CONSTITUTION OF SPAA EC**

- 6.1 The Parties hereby delegate to SPAA EC all powers necessary to fulfil the objects contained in Clause 6.2.

#### **Objects**

- 6.2 SPAA EC shall, subject to and in accordance with the other provisions of this Agreement, have the powers to:
- 6.2.1 consider and co-ordinate communications relating to, the voting on, and implementation of, Change Proposals, (including any appeal to the Authority), set and amend Change Voting Dates and, where the written consent of the Authority is required to any Change Proposals, recommend such Change Proposal to the Authority on behalf of the Parties;
  - 6.2.2 consider and approve and co-ordinate any applications from potential New Parties to become a Party;
  - 6.2.3 develop budgets in accordance with Clause 8;
  - 6.2.4 hire any professional advisers, including accountants to audit its costs;
  - 6.2.5 appoint and remove and make arrangements for the appointment and removal of a Secretariat including a Change Control Administrator;
  - 6.2.6 check and notify Parties that they are Defaulting Parties in accordance with the provisions of Clause 10;
  - 6.2.7 consider and grant derogations in accordance with Clause 14;
  - 6.2.8 consider Operational Issues and make recommendations in relation thereto to the Parties;
  - 6.2.9 consider, approve and authorise the licensing, sub-licensing or otherwise dealing with Intellectual Property belonging to SPAA Ltd, for any use which does not hinder, delay or frustrate, in any way whatsoever, supply competition in the Gas industry in Great Britain;
  - 6.2.10 maintain and distribute the Elective Register and consider and approve applications for removal from, retention on and/or reinstatement to the Elective Register;
  - 6.2.11 consider, approve and authorise the entering into by SPAA Ltd of any contract or arrangement whereby SPAA Ltd procures the performance by a third party of any activities which might otherwise be carried out by the Secretary and/or the Secretariat under this Agreement, and/or the transfer assignment, leasing, licensing or other dealing by SPAA Ltd of any property and/or rights and liabilities of SPAA Ltd relating to the performance of such activities before the commencement of such contract or arrangement of any third party, as SPAA EC considers necessary or desirable;
  - 6.2.12 consider and resolve disputes on the categorisation of items on the agenda for SPAA Forum meetings pursuant to Clause 7.13;
  - 6.2.13 consider the future development issues as set out for consideration in Schedule 5 and make proposals to the Parties concerning such issues; and

6.2.14 constitute sub-committees to deal with any of the above matters.

### **SPAA EC Membership**

- 6.3 The SPAA EC shall consist of the following persons ("**SPAA EC Members**"):
- 6.3.1 two SPAA EC Members (the "**I&C Members**") appointed pursuant to Clause 6.7 by the Industrial and Commercial Suppliers;
  - 6.3.2 two SPAA EC Members (the "**Large Domestic Members**") appointed pursuant to Clause 6.7 by Large Domestic Suppliers
  - 6.3.3 one SPAA EC Member (the "**Small Domestic Member**") appointed pursuant to Clause 6.7 by Small Domestic Suppliers.
- 6.4 Subject to Clause 6.5, a SPAA EC Member proposed pursuant to Clause 6.7 shall be an employee of a Party or any Affiliate of a Party provided such Party is within the category of Party that is entitled to propose the relevant SPAA EC Member. No person may simultaneously be proposed pursuant to Clause 6.7 for appointment to the post of more than one SPAA EC Member (or alternates thereof).
- 6.5 Notwithstanding Clause 6.3, no Group of Parties may propose more than one candidate for appointment as an SPAA EC Member pursuant to Clause 6.7.
- 6.6 All SPAA EC Members shall be elected in accordance with the election procedures set out in Clause 6.7.
- 6.7 Subject to Clause 6.5, no later than 40 Working Days before 1<sup>st</sup> November in each year:
- 6.7.1 each Industrial and Commercial Supplier may propose to the Secretary one (1) candidate for election as an I&C Member;
  - 6.7.2 each Domestic Supplier who has (on the date of such proposal) one (1) million or more MPRNs for Domestic Suppliers Registered on all Gas Transportation Databases may propose to the Secretary one (1) candidate for election as a Large Domestic Member;
  - 6.7.3 each Domestic Supplier who has (on the date of such proposal) less than one (1) million MPRNs for Domestic Suppliers Registered on all Gas Transportation Databases may propose to the Secretary one (1) candidate for election as a Small Domestic Member.
- and the Secretary shall no later than 30 Working Days before the 1st November in each year notify the list of candidates to each Party. Where the number of candidates proposed in Clause 6.7 in a particular category exceed number of persons allowed to constitute SPAA EC Members in such category pursuant to Clause 6.3, the Secretary shall invite (and may do so by e-mail) the Parties, from the relevant category, to cast votes (and they may do this by e-mail) for their favoured candidate to the Secretary within 10 Working Days of receipt of such list of candidates. Each category of Party entitled to vote for a Large Domestic Member, a Small Domestic Member or an I&C Member shall have the number of votes calculated in accordance with Clause 6.8. For the avoidance of doubt, only Large Domestic Suppliers shall be entitled to vote for a Large Domestic Member, only Small Domestic Suppliers shall be entitled to vote for a Small Domestic Member and only Industrial and Commercial Suppliers shall be entitled to vote for an I&C Member.
- 6.8 Subject to Clauses 6.9, 6.10, and 6.11 the percentage of the vote to which each Supplier in a category of Party shall be entitled in respect of any election pursuant to Clause 6.7 ("**Weighted Votes**") shall be calculated in accordance with the following formula:

$$V = \frac{N}{SN + X} \times 100$$

Where:

"V" means the percentage of the vote to which a Supplier in that category of Party shall be entitled, calculated to two decimal places;

"N" means either:

- (i) the number of MPRNs for which a Supplier in that category of Party was Registered on all Gas Transportation Databases in the month preceding the election which shall be determined from the Report submitted by that Supplier in respect of that month pursuant to Clause 20.2; or
- (ii) one,

whichever is the greater.

"SN" means the total number of MPRNs for which all Suppliers in that category of Party were Registered on all Gas Transportation Databases in the month preceding the election which shall be determined from the Report submitted in respect of that month by each such Supplier pursuant to Clause 20.2;

"X" means the number of Suppliers in that category of Party for whom no MPRNs were Registered on any Gas Transportation Database in the month preceding the election which shall be determined from the Report submitted in respect of that month by such Suppliers pursuant to Clause 20.2.

6.9 If, pursuant to the formula set out in Clause 6.8, any Supplier (not being in a Group of Parties) and Group of Parties in a category of Party has in excess of 20% of the total percentage of the vote to which all the Suppliers in its category are entitled ("**Total Weighted Vote**");

6.9.1 subject to Clause 6.9.2, the percentage of the vote to which such Supplier and such Group of Parties is entitled shall be reduced by such percentage of the vote ("**Extra Votes**") as will give each such Supplier and each such Group of Parties 20% of the Total Weighted Vote, such Extra Votes to be reallocated to the remaining Suppliers in its category taking part in that election in accordance with Clause 6.10 and added to each such Suppliers' Weighted Vote calculated in accordance with Clause 6.8. For a Group of Parties, the remaining Weighted Votes shall be allocated equally between Suppliers in the Group of Parties; or

6.9.2 where there are five or less Suppliers (not being in a Group of Parties) and Groups of Parties in a category of Party, each such Supplier and Group of Party shall be deemed to be entitled to 20% of the Total Weighted Vote in respect of any election pursuant to Clause 6.7 and Clause 6.8 and the foregoing provisions of Clause 6.9.1 shall not apply. Where this Clause 6.9.2 applies, each such Supplier and Group of Party shall only be entitled to cast up to half of its Weighted Vote determined pursuant to this Clause 6.9.2 (i.e. 10%) for any one candidate proposed for election to the SPAA EC pursuant to Clause 6.7 and must therefore cast its remaining Weighted Votes for another candidate.

6.10 Where Clause 6.9.1 applies, any Extra Votes shall be reallocated to each of the other Suppliers in the same category of Party (provided that they are not part of a Group of Parties which together holds in excess of 20% of the Total Weighted Vote) to which the Extra Votes relate who have less than 20% of the Total Weighted Vote in accordance with the following formula:

$$EXV = EV \times \frac{N}{XN + X}$$

where:

"EXV" means the additional percentage of the vote which are to be added to the percentage of vote held by a Supplier in that category of Party holding less than 20% of the Total Weighted Vote;

"EV" means the aggregate percentage of Extra Votes available for reallocation in accordance with Clause 6.9.1;

"N" means either:

- (i) the number of MPRNs for which the Supplier in that category of Party was Registered on all Gas Transportation Databases in the month preceding the election which shall be determined from the Report submitted in respect of such month by that Supplier pursuant to Clause 20.2; or
- (ii) one,

whichever is the greater.

"XN" means the total number of MPRNs on all Gas Transportation Databases in the month preceding the election which shall be determined by summing the total number of MPRNs for each Supplier in that category of Party whose vote has not been reduced in accordance with Clause 6.9.1 and shall be determined from the Reports submitted in respect of that month by each such Supplier pursuant to Clause 20.2;

"X" means the number of Suppliers in that category of Party for whom no MPRNs were Registered on any Gas Transportation Database in the month preceding the election which shall be determined from the Report submitted in respect of that month by each such Supplier pursuant to Clause 20.2.

- 6.11 Where, as a result of the reallocation of Extra Votes in accordance with Clause 6.10, any Supplier in a category of Party or Group of Parties in a category of Party has in excess of 20% of the Total Weighted Vote ("Extra Votes"), the Extra Votes shall be reallocated in accordance with Clauses 6.8 to 6.9.1 (inclusive) and Clause 6.10, *mutatis mutandis*. If more than one Supplier in a category of Party or Group of Parties in a category of Party has more than 20% of the Total Weighted Vote, this Clause 6.11 shall be applied for each Supplier or Group of Parties in that category of Party with more than 20% of the Total Weighted Vote.
- 6.12 The two I&C Members that receive the most percentage of the vote, or, where any two candidates are proposed, those candidates, shall be appointed as the I&C Members from 1<sup>st</sup> November in that year. The two Large Domestic Members that receive the most percentage of the vote, or, where only two candidates are proposed, those candidates, shall be appointed as the Large Domestic Members from 1<sup>st</sup> November in that year. The Small Domestic Member that receives the most percentage of the vote, or, where only one candidate, is proposed, that candidate shall be appointed as the Small Domestic Member from 1<sup>st</sup> November in that year.
- 6.13 All SPAA EC Members shall retire on 1 November next following their appointment as SPAA EC Members, but each retiree may be a candidate for reappointment in respect of the following year in accordance with Clause 6.7.
- 6.14 Each category of Party entitled to appoint a SPAA EC Member pursuant to Clause 6.7 to Clause 6.11 (inclusive) may where those Parties, in that category of Party holding Weighted

Votes in aggregate totalling more than 50% of the Total Weighted Vote of the category of Party that appointed such SPAA EC Member, agree at any time, remove the SPAA EC Member from office and elect or appoint another individual to be a SPAA EC Member in his place. A category of Party will only have the right to remove from office a SPAA EC Member which it or they have elected or appointed, and will have no right to remove from office any SPAA EC Member elected or appointed by another category of Party. Any appointment to replace a SPAA EC Member removed from office pursuant to this Clause 6.14 shall be made in accordance with the procedure set out in Clause 6.7 to Clause 6.11 (inclusive), but on such timescale as the Secretary shall reasonably direct. Only Parties who are Parties at the point in time when the existing SPAA EC Member is removed pursuant to this Clause shall be entitled to nominate candidates and to vote.

- 6.15 If, at any time, a vacancy arises in any category of SPAA EC Member otherwise than as a result of retirement in accordance with Clause 6.13 or removal in accordance with Clause 6.14, those Parties in the category of Party represented by the outgoing SPAA EC Member who are Parties at the point in time when the vacancy arises and entitled to appoint such SPAA EC Member may elect a replacement. Any election to replace a SPAA EC Member pursuant to this Clause shall be conducted in accordance with the procedure set out in Clause 6.7 to Clause 6.11 (inclusive), but on such timescale as the Secretary shall reasonably direct.
- 6.16 If at any time any category of Party fails to provide a SPAA EC Member, the Secretary shall request the Authority to make the appointment and the Authority shall have the power, until the category of Party has decided upon an appointment and notified the Authority accordingly, to appoint a SPAA EC Member on behalf of that category of Party or to remove any such person so appointed by the Authority.
- 6.17 From the Effective Date until 1<sup>st</sup> November 2003, SPAA EC Members shall be [ ] as the I&C Members, [ ] as the Large Domestic Members and [ ] as the Small Domestic Member.

#### **Alternates**

- 6.18 Each SPAA EC Member shall have the power to appoint any individual who is either an employee of a Party or its Affiliates, from the category of Party that has appointed him, to be his alternate provided that no SPAA EC Member may appoint an alternate who is an employee of any Party or its Affiliate which already has one of its employees acting as a SPAA EC Member or alternate. Each SPAA EC Member may, at his discretion, remove an alternate so appointed and shall remove that alternate, in circumstance as described in Clause 6.45 as if the alternate were himself a SPAA EC Member. Any appointment or removal of an alternate shall be effected by notice in writing executed by the appointor and, delivered to the Secretary or tendered at a meeting of the SPAA EC. If his appointor so requests, an alternate shall be entitled to receive notice of all meetings of the SPAA EC which take place while his appointor is a SPAA EC Member. An alternate shall also be entitled to attend and vote as the SPAA EC Member at any such meeting at which the SPAA EC Member appointing him is not personally present and at the meeting to exercise and discharge all the functions, powers and duties of his appointor as a SPAA EC Member and for the purpose of the proceedings at the meeting the provisions of this Clause 6 shall apply as if he were a SPAA EC Member.
- 6.19 Every person acting as an alternate shall exercise the voting rights of his appointor. Execution by an alternate of any resolution in writing of SPAA EC shall, unless the notice of his appointment provides to the contrary, be as effective as execution by his appointor.
- 6.20 When a SPAA EC Member that has appointed an alternate pursuant to Clause 6.18, ceases to be a SPAA EC Member for any reason, provided that the alternate's employer is still a Supplier and has not had its Gas Supply Licence revoked, the alternate shall discharge all the

functions, powers and duties of his appointor until a replacement SPAA EC Member is appointed pursuant to Clause 6.7.

- 6.21 References in this Clause 6 to a SPAA EC Member shall, unless the context otherwise requires, include his duly appointed alternate.

#### **The SPAA EC Chairman**

- 6.22 The SPAA EC Chairman shall be a SPAA EC Member and shall be appointed by a simple majority of the SPAA EC Members.
- 6.23 The SPAA EC Chairman may at any time be removed from office by a simple majority of SPAA EC Members.
- 6.24 The SPAA EC Chairman shall preside at every meeting of SPAA EC at which he is present. If the SPAA EC Chairman is unable to be present at a meeting, he may nominate another SPAA EC Member (or any alternate appointed pursuant to Clause 6.18) to act as SPAA EC Chairman. If neither the SPAA EC Chairman nor his alternate is present within half an hour after the time appointed for holding the meeting, the SPAA EC Members present may appoint by simple majority any of their number to be the SPAA EC Chairman of that meeting.
- 6.25 The SPAA EC Chairman, or the person appointed to act as the SPAA EC Chairman in accordance with Clause 6.24, shall be entitled to vote in his capacity as a SPAA EC Member. The SPAA EC Chairman shall in no circumstances be entitled to an extra or casting vote.

#### **The Secretary**

- 6.26 The Secretary shall be appointed to or removed from office by a resolution of SPAA EC Members. In no event shall a Secretary be an employee of any Party or any of its Affiliates. The Secretary shall be entitled to speak but not to vote on any issue at a SPAA EC meeting or SPAA Forum meeting.
- 6.27 The Secretary's duties shall be to facilitate the SPAA EC and any industry body approved by SPAA EC and in particular to:
- 6.27.1 attend to the requisition of meetings and to serve requisite notices;
  - 6.27.2 maintain a register of names and addresses of SPAA EC Members and alternates as appointed from time to time;
  - 6.27.3 keep minutes of all meetings;
  - 6.27.4 circulate all relevant notices, papers and minutes; and
  - 6.27.5 manage the process for the appointment of SPAA EC Members pursuant to Clauses 6.3 to 6.16.

#### **Meetings**

- 6.28 The SPAA EC shall hold meetings at such times as it may decide but in any event shall meet at least once every three months. The venue for meetings shall be determined by the SPAA EC Members from time to time.
- 6.29 Any SPAA EC Member may, by giving notice in writing to the Secretary, request the Secretary to requisition further meetings. The notice given to the Secretary shall contain a list of matters to be included in the agenda of the meeting to be convened pursuant to this paragraph. The Secretary shall proceed to convene meetings of SPAA EC within 10 Working

Days of such a notice and shall circulate a copy of the agenda which shall contain such items as are contained in the notice of meeting.

6.30 A quorum will be one (1) I&C Member, one (1) Large Domestic Member and one (1) Small Domestic Member.

6.31 Nothing in the above shall preclude a meeting being held by telephone or other technological means, subject to all the criteria regarding notice and minutes being kept.

#### **Notice of Meetings**

6.32 All meetings of the SPAA EC shall be convened by the Secretary on at least 10 Working Days' notice. Notice may be given by e-mail.

6.33 The notice of each SPAA EC meeting shall contain the time, venue and confirmation of date of the meeting and an agenda and any available supporting papers which shall be given to each SPAA EC Member and to all Parties.

6.34 By notice to the Secretary, any SPAA EC Member may request matters to be considered at an SPAA EC meeting and provided that such notice is given at least 5 Working Days before the date of the meeting, those matters will be included in the agenda for the meeting. Any such request may be given by e-mail. If necessary, the Secretary shall circulate a revised agenda to each SPAA EC Member and all Suppliers as soon as practicable.

6.35 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a SPAA EC meeting by, a person entitled to receive notice shall not invalidate the proceedings of that meeting.

#### **Proceedings of Meetings**

6.36 SPAA EC may meet for the transaction of business, and adjourn and otherwise regulate its meetings as it thinks fit, but shall at all times act reasonably and in compliance with the other provisions of this Clause 6.

#### **Representation and Voting**

6.37 Each SPAA EC Member shall be entitled to attend, speak and vote, at every meeting of SPAA EC. The Authority shall be entitled to send a representative to any meeting who shall be entitled to speak but not vote at the meeting. Any Party shall be entitled to send a representative to attend a SPAA EC meeting provided it gives the Secretary 2 Working Days' written notice in advance of such meeting. A representative of Party attending a SPAA EC meeting shall only be admitted as an observer and shall not be entitled to speak or vote at the meeting. The Chairman may, in his sole discretion, exclude a representative of a Party from a meeting (or any part thereof) where matters being discussed are confidential.

6.38 All decisions of the SPAA EC shall be by resolution. A resolution put to the vote of any meeting of SPAA EC to be passed, it shall require the unanimous support of all SPAA EC Members present at the meeting entitled to vote in relation to that resolution.

6.39 A resolution in writing signed by or on behalf of all the SPAA EC Members entitled to vote in relation to that resolution shall be as valid and effective as if the same had been passed at a meeting of SPAA EC duly convened and held, and may consist of several instruments in like form executed by or on behalf of one or more SPAA EC Members.

6.40 Any resolution passed by SPAA EC shall have no effect until the expiry of any period in which a Supplier is entitled to appeal that decision pursuant to Clause 6.44, or such later date as the terms of such resolution may provide, as the case may be.



## **Minutes**

- 6.41 The Secretary shall circulate copies of the minutes of each meeting of the SPAA EC or any sub-committees of SPAA EC to each SPAA EC Member, all Parties and the Authority as soon as practicable (and in any event within 5 Working Days) after the relevant meeting has been held. If any SPAA EC Member disagrees with any item of the minutes, he shall, within 5 Working Days of receipt of the minutes, notify the Secretary of those items with which he disagrees, and the Secretary shall incorporate those items upon which there is disagreement into the agenda for the next following meeting of SPAA EC, as the first item for resolution.
- 6.42 The Secretary shall maintain a record of all resolutions voted on by SPAA EC, indicating how each SPAA EC Member voted on each resolution and shall make such record available on request to any Party.

## **Appeals**

- 6.43 Where any resolution put to the vote at any meeting of SPAA EC is not passed, SPAA EC shall, if requested by any SPAA EC Member who voted in favour of such resolution, within 10 Working Days after receipt of the minutes of the SPAA EC meeting setting out such resolution pursuant to Clause 6.41 appeal the SPAA EC decision to the SPAA Forum for its determination.
- 6.44 Where pursuant to Clause 5.11.4(E) or where a Supplier reasonably believes that a resolution passed by SPAA EC, or SPAA EC's failure to pass any resolution put to the vote at any meeting of SPAA EC, will or is likely to prejudice unfairly the interests of that Supplier or will cause that Party to be in breach of this Agreement, of its Gas Supply Licence, the Act or any other legal requirement, it may within 10 Working Days, or such longer period as SPAA EC may decide in relation to that resolution, of receiving the minutes of the relevant SPAA EC meeting pursuant to Clause 6.41 appeal the SPAA EC decision to the SPAA Forum for its determination. Pending the outcome of any such appeal, the relevant decision shall have no effect.

## **Vacation of Office**

- 6.45 The office of a SPAA EC Member shall be vacated forthwith if:
- 6.45.1 he resigns his office by notice in writing delivered to the Secretary;
- 6.45.2 he fails, in person or by alternate, to attend 3 consecutive meetings of SPAA EC that have been duly convened but have not been held as a result of a lack of quorum due to his (or his alternate's) non-attendance;
- 6.45.3 a Party ceases to be a Party and the SPAA EC Member is employed by either:
- (i) that Party; or
  - (ii) an Affiliate of that Party; and
  - (iii) such Party is in the category of Party that has appointed him under Clause 6.31;
- 6.45.4 he ceases to be in the employment of one of the Parties, or an Affiliate of one of the Parties, and such Party is in the category of Party that has appointed him under Clause 6.3; or
- 6.45.5 a Party has its Gas Supply Licence (or relevant section thereof) revoked and the SPAA EC Member is employed by either:

- (i) that Party; or
- (ii) an Affiliate of that Party; and
- (iii) such Party is in the category of Party that has appointed him under Clause 6.3;

#### **SPAA EC Member Responsibilities and Protections**

- 6.46 In the exercise of his powers and the performance of his duties and responsibilities as a SPAA EC Member, each of the members shall represent the interests of the category of Party by whom they are for the time being appointed. Each SPAA EC Member shall exercise reasonable skill and care to the standard reasonably expected of a director of a limited company in the performance of his duties and responsibilities as a SPAA EC Member.
- 6.47 The SPAA EC Members shall use their reasonable endeavours to consult as many of the Parties that they represent as possible before voting on a matter, and shall demonstrate this on request.
- 6.48 SPAA EC Members will vote according to the consultations that they have made and may be called to account for those decisions. Where a consultation of the relevant Parties shows that Parties have varying opinions, the SPAA EC Member must act in the best interests of the majority, whilst representing the minority view. Where a majority is not significant, the SPAA EC Member should consider whether abstention from the vote best represents the interests of her/ his constituents.
- 6.49 All Parties shall jointly and severally indemnify and keep indemnified:
- 6.49.1 each SPAA EC Member and his alternate (including in his capacity as a director or alternate director of SPAA Ltd);
  - 6.49.2 the Secretary;
  - 6.49.3 the Company Secretary of SPAA Ltd;
  - 6.49.4 each person who serves on a sub-committee established by SPAA EC or the board of directors of SPAA Ltd;
  - 6.49.5 each member of the Secretariat who is employed by a Party; and
  - 6.49.6 each Party, or Affiliate of that Party, which is the employer of any person referred to in paragraphs 6.49.1 to 6.49.5 above,

as between each such Party rateably in accordance with the proportions set out in Clauses 8.8 and 8.9 from and against all and any costs (including legal costs), charges, expenses, damages or other liabilities properly incurred or suffered by the person or Party in relation to such function or the due exercise of the person's powers, duties or responsibilities under this Agreement (in the case of the Secretariat, as assigned or vested in it by SPAA EC pursuant to Clause 6.54) including in relation to negligence and all claims, demands or proceedings arising out of or in connection with the same except for any costs and expenses which are recovered in accordance with the procedures set out in Clause 8 and any such costs, charges, expenses, damages or other liabilities which are recovered under any policy of insurance in favour of any or all of the persons and Parties referred to in paragraphs 6.49.1 to 6.49.5 or suffered or incurred or occasioned by the wilful default or bad faith of, or breach of contract by, the relevant person.

- 6.50 The Parties hereby ratify and confirm the decisions of the Shadow SPAA EC taken prior to the Effective Date and those Parties providing the indemnity under Clause 6.49 confirm such indemnity shall extend fully to all costs, charges, expenses, damages and other liabilities suffered or incurred by Shadow SPAA EC Members and their alternates before or after the date of this Agreement in relation to activities of the Shadow SPAA EC.

#### **Sub-Committees**

- 6.51 SPAA EC may establish such sub-committees from time to time and consisting of such persons as it considers desirable. Each sub-committee shall be subject to such written terms of reference and such procedures as SPAA EC may determine.
- 6.52 The Authority shall be entitled to send a representative to any meeting of any sub-committee, who shall be entitled to speak but not to vote on any issue.
- 6.53 Resolutions of sub-committees shall not have binding effect unless SPAA EC has formally delegated the decision-making powers to the sub-committee or has ratified the resolution in question.

#### **Secretariat**

- 6.54 SPAA EC may from time to time appoint and remove, or make arrangements for the appointment and removal of, any such person as SPAA EC requires to assist it or any sub-committee of it, the SPAA EC Chairman or Secretary in the proper performance of its or their duties and responsibilities in each such case upon such terms and conditions as SPAA EC sees fit (any such person or persons to be known as the "**Secretariat**"). In no event shall the Secretariat be a Party or any of its Affiliates, or an employee of a Party or any of its Affiliates.
- 6.55 Any person referred to in Clause 6.54 shall undertake such administrative duties and responsibilities and exercise such powers as SPAA EC may from time to time assign to or vest in any such person.
- 6.56 SPAA EC may make arrangements for the remuneration of any such person as is referred to in Clause 6.54 and the payment of any such person's costs and expenses and the same shall be recovered in accordance with Clause 8.

#### **Confidentiality**

- 6.57 Prior to the appointment of any person as a SPAA EC Member, Secretary, Secretariat or to a member of a SPAA EC sub-committee, such person shall execute a confidentiality undertaking on the same terms as those contained in Clauses 11.1 to 11.7 as if in each such Clause there was substituted for the name of the Party the name of the person providing the undertaking under this Clause 6.57.

### **7. CONSTITUTION OF THE SPAA FORUM**

#### **Objects**

- 7.1 The purpose of the SPAA Forum is to act as a forum for representing the views of the Parties and for informing the Parties generally regarding the operation of this Agreement and to determine any matters from time to time referred to it by SPAA EC.
- 7.2 Nothing in this section shall preclude a meeting being held by telephone or other technological means, subject to all the criteria regarding notice and minutes being kept.

#### **Membership**

- 7.3 Each Supplier shall be entitled to send one duly authorised representative to attend any meeting of the SPAA Forum on its behalf to represent it.
- 7.4 Subject to Clause 7.22, each representative appointed pursuant to Clauses 7.3 shall have the right to speak and to vote at such meetings.

### Proxies

- 7.5 Any representative of a Party entitled to attend and vote at any SPAA Forum meeting shall be entitled to appoint another person as its proxy to attend, speak and vote in its place.
- 7.6 The instrument appointing a proxy shall be in writing (hard copy or e-mail) from a duly authorised representative of the Party.
- 7.7 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority:
- 7.7.1 shall be deposited at the office of the Secretary or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting of the SPAA Forum, not less than 24 hours before the time appointed for the taking of the vote and in default the instrument of proxy shall not be treated as valid; or
- 7.7.2 if sent by e-mail, shall be produced in a scanned image file (.PDF format) sent to [insert e-mail address] or such other e-mail address as is specified for that purpose in the notice convening the meeting of the SPAA Forum, not less than 24 hours before the time appointed for the taking of the vote and in default the instrument of proxy shall not be treated as valid. In order for the instrument appointing proxy to be deemed valid, the e-mail that sends such instrument shall be required to quote the code or identifier assigned to that Supplier by the Secretary.
- 7.8 An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

We, \_\_\_\_\_, being a Party to the above mentioned Agreement, hereby appoint the Chairman of the Meeting (see Note 1); or \_\_\_\_\_ of \_\_\_\_\_ or, \_\_\_\_\_ failing \_\_\_\_\_ him, of \_\_\_\_\_, as our proxy to vote for us on our behalf at the SPAA Forum meeting to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and at any adjournment thereof.

	FOR	AGAINST
Resolution 1	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 2	<input type="checkbox"/>	<input type="checkbox"/>

(see Note 2)

Signed \_\_\_\_\_ (name \_\_\_\_\_)

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notes

1. A Party may appoint a proxy of its own choice. If such an appointment is made, delete the words 'Chairman of the Meeting' and insert the name of the person appointed as proxy in the space provided
2. If this form is returned without any indication as to how the person appointed as proxy should vote, he may exercise his discretion as to how he votes or whether he abstains from voting."

7.9 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous revocation of the proxy or of the authority under which the proxy was executed, provided that no notice in writing of such revocation shall have been received by the Secretary (including by e-mail provided such e-mail quotes the code or identifier assigned by the Secretary to the Supplier seeking to revoke the proxy) at his office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### **Meetings**

7.10 Subject to Clauses 7.12 to 7.14 meetings of the SPAA Forum shall be convened:

7.10.1 by the Secretary on the instructions of SPAA EC pursuant to Clauses 8.3 or upon receipt of notice of an appeal pursuant to Clauses 6.43 or 6.44 or Clauses 5.11.4 or 5.13 or Clauses 9.16, 9.17, or 9.18;

7.10.2 by a Party if the Secretary fails to convene a meeting of the SPAA Forum to hear an appeal of that Party pursuant to Clauses 6.43 or 6.44 or if it makes an appeal pursuant to Clauses 5.11.4 or 5.13 or Clauses 9.16, 9.17 or 9.18;

7.10.3 by SPAA EC, forthwith upon receipt of a requisition by 4 Suppliers; or

7.10.4 by the Secretary in any event, at least once every 12 months if no meeting has been convened pursuant to Clauses 7.10.1 to 7.10.3.

7.11 Any requisition by Suppliers as referred to in Clause 7.10.3 shall state the objects of the meeting and must be signed by or on behalf of each of the requisitioners and deposited with the Secretary, and may consist of several documents in like form each signed by one or more requisitioners. If SPAA EC does not within 5 Working Days from the date of the deposit of the requisition proceed to convene a meeting of the SPAA Forum for a date not later than 15 Working Days after the date of deposit, the requisitioners may themselves convene a meeting provided that such meeting is held within a further 20 Working Days. Any meeting convened in accordance with this Clause shall be convened in the same manner, as nearly as possible, as that in which meetings of the SPAA Forum are convened by the Secretary.

### **Notice of Meetings**

7.12 All meetings of the SPAA Forum shall be convened by the Secretary on at least 10 Working Days' notice (or such other period of notice as SPAA EC may determine) to those entitled to attend pursuant to Clauses 7.2 and 7.3. Notice may be given by e-mail.

7.13 The notice shall specify the date, time and venue of the meeting, an agenda setting out the business to be transacted together with a categorisation of each item on the agenda as being relevant to, the Domestic Suppliers, the Industrial and Commercial Suppliers or to all Suppliers. Any item on the agenda concerning approval of a draft budget revision to a budget and/or any limits to be granted to the SPAA EC in respect of budget revisions, and/or any item contained in an appeal in respect of a Change Proposal in respect of any provision in Parts I to XI of this Agreement and/or Schedules 2, 3, or 4 or 5 shall be deemed to concern all Suppliers. Notice shall be given to all Suppliers, all SPAA EC Members, the Authority and energywatch. If any Supplier wishes to dispute the categorisation of an item on the agenda of

business to be transacted at a meeting of the SPAA Forum, it may do so by sending its grounds for dispute to the SPAA EC at least 8 Working Days before the meeting of the SPAA Forum. Any such notice may be sent by e-mail. The SPAA EC shall consider the disputed categorisation and shall inform all the Suppliers if the disputed categorisation is upheld at least 5 Working Days prior to the meeting of the SPAA Forum. This notice may be sent by e-mail and/or posted on the Gas Forum website.

- 7.14 The accidental omission to give notice of a meeting to, or the non-receipt of notice by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

#### **Proceedings at Meetings**

- 7.15 All business of the SPAA Forum shall be transacted at meetings of the SPAA Forum.
- 7.16 At the first meeting of the SPAA Forum held after 1 April in each year, the SPAA Forum shall elect from its number, by simple majority of those representatives present (including by proxy), a person to act as Forum Chairman ("**Forum Chairman**") for the following twelve months. The Forum Chairman shall preside at each meeting of the SPAA Forum at which he is present. If the Forum Chairman is unable to be present at a meeting of the SPAA Forum, the Suppliers who are represented at the meeting shall elect one of their number to act as Forum Chairman of that meeting. The Forum Chairman of any meeting of the SPAA Forum shall not be entitled to any casting vote in his capacity as such.

- 7.17 A quorum at meetings of the SPAA Forum shall be:

7.17.1 persons representing (including by proxy) Domestic Suppliers together holding Weighted Votes totalling 50% or more of the Total Weighted Votes of Domestic Suppliers;

7.17.2 persons representing (including by proxy) Industrial and Commercial Suppliers together holding Weighted Votes totalling 50% or more of the Total Weighted Votes of Industrial and Commercial Suppliers,

and in each case, the Weighted Vote of each Supplier in Clauses 7.17.1 and 7.17.2 shall be determined by the Secretary from the Report submitted by each Supplier in respect of the previous month pursuant to Clause 20.2.

- 7.18 If within half an hour from the time appointed for holding any meeting of the SPAA Forum a quorum is not present or during the course of a meeting the meeting becomes inquorate, the meeting shall be adjourned to a time and place reasonably determined by the Forum Chairman and, where the meeting is adjourned until later the same day, communicated to those present at the meeting. Where the meeting is adjourned to another date, notice of the adjourned meeting shall be given to all Suppliers, as if it were a new meeting. If, where the meeting is adjourned to another date, at the adjourned meeting a quorum is not present within half an hour from the time appointed, those Suppliers represented at the adjourned meeting shall constitute a quorum.
- 7.19 The Forum Chairman at a meeting of the SPAA Forum at which a quorum is present may, with the consent of the meeting (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, provided that no business shall be transacted at any adjourned meeting other than the business left unfinished at the previous meeting. When a meeting is adjourned to another date, notice of the adjourned meeting shall be given as if it were a new meeting, but it shall otherwise not be necessary to give notice of an adjourned meeting.

## Resolutions and Voting

- 7.20 At any meeting of the SPAA Forum, a resolution put to the vote of the meeting shall be taken in such manner as the Forum Chairman of the meeting directs and the result of the vote shall be deemed to be the resolution of the meeting and recorded in the minutes.
- 7.21 A declaration by the Forum Chairman of the meeting that a resolution has on a vote been carried or lost and an entry to that effect in the book containing minutes of the proceedings of meetings of the SPAA Forum shall be conclusive evidence of the fact.
- 7.22 A resolution of the SPAA Forum will be carried where:
- 7.22.1 subject to Clause 7.22.4, for a matter relating to the Domestic Suppliers only, Domestic Suppliers' representatives together casting Weighted Votes totalling 65% or more of the Total Weighted Vote of Domestic Suppliers in each case present or represented (including by proxy) at the meeting; or
  - 7.22.2 subject to Clause 7.22.4, for a matter relating to the Industrial and Commercial Suppliers only, Industrial and Commercial Suppliers' representatives together casting Weighted Votes totalling 65% or more of the Total Weighted Vote of Industrial and Commercial Suppliers in each case present or represented (including by proxy) at the meeting; or
  - 7.22.3 subject to clause 7.22.4, for a matter relating to both Domestic Suppliers and Industrial and Commercial Suppliers, Domestic Suppliers' representatives together casting Weighted Votes totalling 65% or more of the Total Weighted Vote of Domestic Suppliers, and Industrial and Commercial Suppliers' representatives casting Weighted Votes totalling 65% of the Total Weighted Vote of Industrial Commercial Suppliers, in each case present or represented (including by proxy) at the meeting;
  - 7.22.4 for a matter relating to a Mandatory Schedule, or any change of a Voluntary Schedule and/or Elective Schedule to a Mandatory Schedule, or the introduction of a new Mandatory Schedule:
    - (A) Domestic Suppliers' representatives together casting Weighted Votes totalling 65% of the Total Weighted Vote and Industrial and Commercial Suppliers' representatives together casting Weighted Votes totalling 65% of the Total Weighted Vote (provided in each case the category of Supplier has an interest in the resolution); and
    - (B) 65% or more by number of representatives of Domestic Suppliers (not being in a Group of Domestic Suppliers) and Groups of Domestic Suppliers' representatives and 65% or more by number of representatives of Industrial and Commercial Suppliers (not being in a Group of Industrial and Commercial Suppliers) and Groups of Industrial and Commercial Suppliers' representatives (provided in each case the category of Supplier has an interest in the resolution),in each case present or represented (including by proxy) at the meeting.
- 7.23 On a vote, each Suppliers' representative shall be entitled to Weighted Votes of the Supplier whom it is representing, calculated in accordance with Clauses 6.8 to 6.11 (inclusive). A Supplier shall be entitled to vote on matters in which they have an interest as determined pursuant to Clause 7.13 or on matters affecting all Suppliers.
- 7.24 The Authority shall be entitled to send a representative to any meeting who shall be entitled to speak but shall not be entitled to vote. energywatch shall be entitled to send a representative

to any SPAA Forum meeting as an observer who shall not be entitled to vote but shall be entitled to speak.

### **Minutes**

- 7.25 The Secretary shall prepare minutes of all meetings of the SPAA Forum and shall circulate copies of such minutes to all Suppliers, each SPAA EC Member and the Authority as soon as practicable (and in any event within 10 Working Days) after the meeting has been held. If any representative of the Suppliers or any SPAA EC Member disapproves of the minutes, he shall, within 10 Working Days of receipt of those minutes, notify the Secretary of those aspects with which he disagrees and the Secretary shall incorporate those aspects of the minutes upon which there is disagreement into the agenda for the next following meeting of the SPAA EC and shall be copied to all Suppliers.

### **Appeals**

- 7.26 Where a Supplier reasonably believes that a resolution passed by the SPAA Forum pursuant to Clause 7.22 or the SPAA Forum's failure to pass any resolution put to the vote at any meeting of the SPAA Forum, and where such resolution related to provisions of this Agreement which have been designated to be Mandatory, or the introduction of a Mandatory Schedule, or the designation of any part of this Agreement as Voluntary, Elective or Mandatory and (i) will or is likely to prejudice unfairly the interests of that Supplier, or (ii) will cause that Supplier to be in breach of this Agreement or (iii) will cause that Supplier to be in breach of its Gas Supply Licence or (iv) the Act, such Supplier may within 10 Working Days of receiving notice of the decision pursuant to Clause 7.25 appeal the matter to the Authority. The Authority will then consider the Supplier's grounds for appeal and determine whether to overturn or uphold the SPAA Forum's decision. The Authority's decision shall be final and binding. Pending the outcome of any such appeal, the resolution shall have no effect.

### **SPAA Ltd**

- 7.27 The Parties agree that Schedule 4 shall apply with regard to the regulation of their rights and obligations as shareholders in SPAA Ltd.

## **8. COSTS**

- 8.1 SPAA EC shall be entitled to recover, in accordance with the procedures set out in this Clause 8, all its reasonable costs and expenses properly incurred, which may include:
- 8.1.1 any general administration costs associated with SPAA EC, the SPAA Forum and the Secretariat including any costs incurred in holding any meetings; and
  - 8.1.2 any costs and expenses of any consultant or adviser retained by SPAA EC in the proper performance of its or his duties and responsibilities.

### **Preparation and Approval of Budgets**

- 8.2 Not earlier than 60 nor later than 40 Working Days before the commencement of each Financial Year except for the Financial Year starting on the Effective Date, SPAA EC shall circulate to all representatives on the SPAA Forum a draft budget for that Financial Year, which shall set out SPAA EC's good faith estimate of the costs that are anticipated to be incurred pursuant to Clause 8.1 over that Financial Year. The draft budget for the Financial Year commencing on the Effective Date and ending on the 31<sup>st</sup> March of the year next following the Effective Date shall be prepared by the Shadow SPAA EC. Such budget shall be presented for approval pursuant to Clause 8.3 to a meeting of the SPAA Forum convened on the date of execution of this Agreement. In no event shall such draft initial budget exceed



£200,000. The Parties hereby waive the requirements of Clauses 7.12 and 7.13 in respect of such SPAA Forum meeting.

### **Approval of budgets**

- 8.3 The draft budget shall be presented to the SPAA Forum for approval by resolution. The SPAA Forum may, by resolution, approve the draft budget, or amend the draft budget and approve it as amended. In the event of such SPAA Forum resolution not being carried the provisions of Clause 8.4 shall apply. Where the resolution to approve the budget is carried by the SPAA Forum such budget shall be the approved budget for that Financial Year and the funding for the Secretariat in accordance with that budget shall be approved.
- 8.4 In the event of a failure of the SPAA Forum to approve the form or content of any draft budget, the following provisions shall have effect:
- 8.4.1 pending the approval of a draft budget, SPAA EC shall not be entitled to carry out any activities which are the subject of dispute, except insofar as necessary in order to comply with legally binding obligations which it has previously incurred in accordance with this Agreement or insofar as the carrying out of such activities falls within the terms of any previous approved budget; and
- 8.4.2 the matter shall be referred forthwith to the Authority whose decision as to the contents of the budget shall be final and binding.

### **Amendments to budgets**

- 8.5 During the course of any Financial Year SPAA EC may request any changes to be made to the approved budget. SPAA EC may approve revisions to the approved budget within limits defined from time to time by the SPAA Forum each Financial Year. The procedure for the approval of changes greater than those limits shall be the same as that set out in Clauses 8.3 and 8.4 for the approval of a draft budget.

### **Payment of Costs Incurred**

- 8.6 SPAA EC or a named person approved by them, shall approve all costs incurred under Clause 8.1 which have been included in the approved budget for the relevant Financial Year in advance of submitting the same to the Secretariat for payment.
- 8.7 Upon receipt of an invoice or other statement relating to costs which have been approved by or on behalf of SPAA EC in accordance with Clause 8.6, the Secretariat shall pay the amount stated in such invoice or other statement (together with Value Added Tax thereon, if applicable) to such person or persons as SPAA EC shall direct. SPAA EC shall specify in advance the authority levels of the Secretariat as appropriate.

### **Recovery of Costs**

- 8.8 For the purposes of Clause 8.10, the amount which each Supplier shall be obliged to pay towards the costs to be incurred in accordance with the most recent approved budget in respect of any Quarter shall be calculated as follows:

$$SP = \frac{A \times C}{T}$$

Where:

SP = the amount due from each Supplier;

- A= the average number of MPRNs of the Supplier whose SP is being calculated contained on all Gas Transportation Databases across the last three (3) months for which Reports have been submitted pursuant to Clause 20.2, which shall be determined by summing the number contained in those three Reports over all Gas Transportation Databases and dividing that figure by three (3);
- C = estimated costs for the Quarter included in the most recent budget approved pursuant to Clause 8.3 or 8.4; and
- T = the average number of MPRNs for all Suppliers held on all Gas Transportation Databases across the last three (3) months for which Reports have been submitted pursuant to Clause 20.2, which shall be determined by summing the total number of MPRNs contained in those Reports and dividing that figure by three (3).

- 8.9 The Secretariat, on behalf of the SPAA EC, shall arrange for collection from Suppliers of their respective proportionate share of the costs to be incurred in accordance with the most recent approved budget in any Quarter, calculated in accordance with Clause 8.8, as appropriate, (together with Value Added Tax thereon, if applicable) in accordance with such procedures as may be agreed by SPAA EC from time to time (which may include collection in advance) and the Suppliers shall comply with such collection procedures and, in particular, shall pay the amounts which that Supplier is obliged to pay within the time period prescribed by such procedures, following the receipt of an invoice or other statement issued by the Secretariat.
- 8.10 Within 20 Working Days of the 1 April in each Financial Year the Secretariat shall calculate each Suppliers' proportionate share, in accordance with the proportions set out in Clause 8.8, of the actual costs incurred during the previous Financial Year and shall reconcile them against amounts paid by each Supplier in respect of estimated costs pursuant to Clause 8.9. Where the aggregate amount paid by the Suppliers in accordance with Clause 8.9 in respect of the previous Financial Year is greater than the aggregate amount as calculated in accordance with this Clause 8.10 in respect of that Supplier, the Secretariat shall reimburse that Supplier (as appropriate) with the difference by means of a credit against the invoice to be raised pursuant to Clause 8.9 in respect of the second quarter of the current Financial Year.

#### **Audit**

- 8.11 SPAA EC shall arrange for the costs incurred pursuant to Clause 8.1 to be audited by a firm of chartered accountants on an annual basis. SPAA EC shall copy the auditor's report to all Suppliers within 15 Working Days of receipt. The auditors shall be appointed in accordance with a guideline that SPAA EC will circulate amongst the Suppliers within one month of the beginning of each Financial Year.

#### **Review of Cost Recovery mechanism**

- 8.12 Each Supplier acknowledges that the cost recovery SPAA EC mechanism included in this Clause 8 has been agreed to on the basis that the scope of this Agreement is limited to those activities that are described in this Agreement. Each Supplier agrees to review the cost recovery SPAA EC mechanism included in this Clause 8 if the scope of this Agreement (as so described and provided for) is materially amended.

## **PART III      CHANGE CONTROL**

### **9.      CHANGE CONTROL**

9.1      The Parties acknowledge and agree that, notwithstanding any other provision of this Agreement, a Change of Proposal which has been passed which amends or varies any of the matters dealt with in any of the following provisions of this Agreement shall not take effect until the written consent of the Authority has been obtained:

9.1.1      Clause 4.4, Clause 5.12, Clause 5.13, Clauses 6.1 to Clause 6.17 (inclusive), Clause 6.30, Clause 6.37, Clause 6.38, Clause 6.40, Clause 6.43, Clause 6.44, Clause 6.48 to Clause 6.50 (inclusive), Clause 6.52, Clause 7.1 to 7.4 (inclusive), Clause 7.13, Clause 7.22 to Clause 7.26 (inclusive), Clause 8, Clause 9.1, Clause 9.2 and Clause 10.

9.1.2      any change to any definition in Clause 1.1 which materially affect the provisions in the Clauses set out in Clause 9.1.1;

9.1.3      any provision of this Agreement which requires or permits any matter to be referred to the Authority for approval, consent, direction or decision or confers any rights or benefits upon the Authority.

9.1.4      any change to the SPAA Products;

9.1.5      any change:

- (i)      to a Voluntary Schedule or Elective Schedule, that makes it Mandatory;
- (ii)      a change to an existing Mandatory Schedule; or
- (iii)      the introduction of a new Mandatory Schedule.

9.2      SPAA EC shall:

9.2.1      give due and prompt consideration to any matter referred to it in writing by the Authority;

9.2.2      if reasonably requested by the Authority, give the Authority in writing reasons for such decision or action; and

9.2.3      if reasonably requested by the Authority (having regard, in particular, to the resources available to SPAA EC), in relation to any proposal for a change to any provision of this Agreement provide or procure the provision of advice and assistance to the Authority as soon as reasonably practicable as to the implications of the change and the actions necessary to implement it (including any relevant impact assessment),

provided that none of the foregoing shall in any way oblige the SPAA EC to propose a Change Proposal and shall confer no right on the Authority to raise a Change Proposal.

#### **Change Proposals**

9.3      SPAA EC may from time to time appoint and remove on such conditions it thinks fit any such person as SPAA EC requires to assist it or any sub-committee of it in connection with communications relating to, co-ordination and voting on, and implementation of, a Change Proposal (“**Change Control Administrator**”) which person shall be part of the Secretariat (if appointed) and the SPAA EC shall inform the Parties of the identity of the Change Control Administrator.

- 9.4 Each Party shall appoint an appropriate person to co-ordinate all communications from and to such Party and/or undertake all procedures in respect of a Party relating to the change control process pursuant to this Clause 9 (each “**Party Change Administrator**” and together the “**Party Change Administrators**”) and shall notify the Change Control Administrator of the identity of such Party Change Administrator from time to time. A Party Change Administrator shall be fully authorised to carry out all acts or obligations of the Party that appointed it in relation to the change control process pursuant to this Clause 9. The Change Control Administrator and/or SPAA EC shall be entitled to assume that a Party Change Administrator shall be authorised to perform all acts or obligations in relation to the change control process in respect of the Party that appointed it. If a Party fails to notify a Party Change Administrator to the Change Control Administrator such party’s Contract Manager shall be deemed to be its Party Change Administrator until such time as a Party Change Administrator is notified to the Change Control Administrator.
- 9.5 Any Party may propose a Change Proposal to the Change Control Administrator on the form issued by SPAA EC from time to time and shall deliver such form to the Change Control Administrator together with any other documents referred to in the form. Within a reasonable time of receipt of the Change Proposal, the Change Control Administrator shall notify the relevant Party that the Change Proposal has been accepted for logging as a Change Proposal or rejected as a Change Proposal.
- 9.6 The Change Control Administrator may reject a Change Proposal in its absolute discretion if it considers that the Change Proposal:
- 9.6.1 is not sufficiently specific;
  - 9.6.2 is not authorised or not properly authorised;
  - 9.6.3 is ambiguous or incomplete; and/or
  - 9.6.4 is not materially different from a Change Proposal that has already been submitted to it and not yet been voted upon pursuant to Clause 9.9.
- When rejecting a Change Proposal, the Change Control Administrator may recommend any amendment and/or additional information that ought to have been provided.
- 9.7 The SPAA EC shall set out dates during each Financial Year on which Change Proposals raised during that Financial Year will be voted upon (“**Change Voting Dates**”) and shall notify the Parties of the Change Voting Dates. The SPAA EC may change such Change Voting Dates from time to time and if it does so shall inform the Parties of such changed dates.
- 9.8 The Change Control Administrator shall, no later than 10 Working Days before the Change Voting Date, send each Change Proposal(s) that has not been rejected by it before such time to each Party and SPAA EC indicating, where appropriate, the proposed amendment date, proposed product release date, proposed implementation date and any product technique. The Change Control Administrator shall invite each Party to consider if it is legitimately interested or impacted by each such Change Proposal and if so, to identify any technical, business and/or implementation impact of the Change Proposal(s) on their organisation and to respond and vote by the Change Voting Date as to whether each such interested or impacted Party approves or rejects the Change Proposal(s).
- 9.9 Each Party that considers it is legitimately interested in or impacted by a Change Proposal shall before the Change Voting Date submit to the Change Control Administrator, by e-mail, its vote as to whether a Change Proposal(s) should be approved or not, together with any comments it may have on that Change Proposal(s), on the form issued by SPAA EC from time to time. Each such Party which in accordance with this Clause 9.9 considers itself

entitled to vote shall be entitled to Weighted Votes calculated in accordance with Clauses 6.8 to 6.11 (inclusive). Following the Change Voting Date, the Change Control Administrator shall determine, in accordance with Clause 7.22, *mutatis mutandis*, from the Weighted Votes cast by the relevant Parties whether a Change Proposal shall be approved or rejected and collate comments made by Parties. The Change Control Administrator shall notify SPAA EC as to the outcome of the vote on each Change Proposal.

- 9.10 Where a Change Proposal has been approved pursuant to Clause 9.9, the Change Control Administrator shall notify the Authority that it has been so approved and where Clause 9.1 applies shall request the Authority to consent to the Change Proposal. Pending the grant of the Authority's consent, SPAA EC shall take no steps to update the SPAA Products or amend this Agreement pursuant to Clause 9.12.
- 9.11 The Change Control Administrator shall prepare a report after the vote on a Change Proposal is determined pursuant to Clause 9.9. The report, will set out details of the Weighted Votes cast, any comments submitted by Parties pursuant to Clause 9.9, and, where Clause 9.1 applies, state that implementation of the Change Proposal is subject to Authority approval and shall be sent to the Parties and SPAA EC ("**Change Report**").
- 9.12 Where a Change Proposal has been approved pursuant to Clause 9.9 and (if Clause 9.1 applies) Clause 9.10 and/or where a Change Proposal has been rejected pursuant to Clause 9.9 but the SPAA Forum or the Authority has allowed an appeal pursuant to Clauses 9.15 to 9.19 (inclusive) the SPAA EC shall decide the appropriate process for implementing the Change Proposal, which shall be in accordance with any procedures for implementation set out in the Change Proposal, or if such Change Proposal is absent recommendations on implementation procedures, as agreed by SPAA EC from time to time, which in any event shall include parameters for:
- 9.12.1 timing of the process and the timing of the implementation; and
- 9.12.2 SPAA EC resolutions that are to be passed to update the SPAA Products and/or amend this Agreement in accordance with the Change Proposal.

Once the final form of the Change Proposal has been agreed or determined, this Agreement shall be amended and the SPAA Products shall be updated (as the case may be) in accordance with a resolution of SPAA EC.

- 9.13 Nothing in this Clause 9 shall entitle any Party, or its Party Change Administrator, to make changes to a Change Proposal other than the Party, or Party Change Administrator, that proposed it.
- 9.14 SPAA EC shall agree and issue appropriate procedures in relation to Change Proposals submitted pursuant to this Clause 9 (which shall be subordinate to and shall not be inconsistent with the procedures set out in this Clause 9) and the Parties agree to comply with those procedures as issued from time to time.

### **Appeals**

- 9.15 If a Change Proposal is rejected in accordance with Clause 9.9, any Party that is legitimately interested or impacted by the Change Proposal in question may appeal such decision, within 10 Working Days of receipt of the Change Report, to the SPAA Forum for its determination. None of the foregoing shall entitle any other Party to appeal a vote to reject a Change Proposal to the SPAA Forum.
- 9.16 If a Change Proposal is approved in accordance with Clause 9.9, any Party that is legitimately interested or impacted by the Change Proposal in question may appeal such decision, within 10 Working Days of receipt of the Change Report, to the SPAA Forum for its determination.

- 9.17 Within 10 Working Days of receipt of the Change Report, any Party may appeal to the SPAA Forum against a Change Proposal which has been approved or rejected, if it considers that a Party has voted on a Change Proposal in which it had no legitimate interest or by which it would not be impacted.
- 9.18 If a Party appeals to the SPAA Forum pursuant to Clauses 9.15 to 9.17 (inclusive), it shall provide the SPAA EC with notice of such appeal and provide the SPAA EC with copies of its appeal and any other documentation submitted to the SPAA Forum in support of such appeal. Pending determination of any appeal against the approval of a Change Proposal to the SPAA Forum and the Authority if applicable, SPAA EC shall take no steps to update SPAA Products and/or amend this Agreement pursuant to Clause 9.14.

#### **Emergencies**

- 9.19 Where any change is proposed to this Agreement pursuant to the terms of this Clause 9 which SPAA EC decides is of an urgent nature and is a change which should be decided upon promptly, SPAA EC may decide to reduce the timescales set out in this Clause 9 accordingly.

## **PART IV: EVENTS OF DEFAULT CONSEQUENCES OF DEFAULT AND LIMITATION OF LIABILITY**

### **10. EVENTS OF DEFAULT CONSEQUENCES OF DEFAULT AND LIMITATION OF LIABILITY**

10.1 It shall be an Event of Default if:

- 10.1.1 a Party (the "**Defaulting Party**") is in breach of any of the material terms or conditions of this Agreement and/or in persistent breach of any of the terms or conditions of this Agreement and, if the breach is or was capable of remedy, it fails to remedy the breach within 20 Working Days of receipt of a notice from SPAA EC giving full details of the breach, requiring the Party to remedy the breach and stating that a failure to remedy the breach may give rise to consequences set out in this Clause 10;
- 10.1.2 a Party passes a resolution for its winding-up, or a court of competent jurisdiction makes an order for the winding-up or dissolution of the Party;
- 10.1.3 a Party has an administration order is made in respect of it or a receiver is appointed over, or an encumbrancer takes possession of or sells, any substantial part or parts of the Party's assets, rights, or revenues;
- 10.1.4 a Party makes an arrangement or composition with its creditors generally or makes an application to a court for protection from its creditors generally;
- 10.1.5 a Party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that Section the sum of £10,000 was substituted for the sum of £750;
- 10.1.6 without prejudice to Clause 12, a circumstance of Force Majeure which affects the performance by a Party of substantially all of its obligations under this Agreement continues for more than 180 days;
- 10.1.7 a Supplier has its Gas Supply Licence revoked or, the Authority provides for Section C or Section D of a Supplier's Gas Supply Licence to cease to have effect, or a Supplier, having acceded to this Agreement pending the grant of a Gas Supply Licence, notifies SPAA EC that its application for Gas Supply Licence has been refused.

10.2 Any Party may report any suspected Event of Default to SPAA EC and upon receiving such report, SPAA EC shall notify the Party to whom the suspected Event of Default report relates.

10.3 In the event of a Party being in default pursuant to Clause 10.1.1 in respect of obligations owed by a category of Party that Party shall not be entitled to receive the benefit of any Mandatory Schedule relating to such category of Party and SPAA EC may decide that those provisions will be suspended as regards such Party with immediate effect or from a specified future date.

10.4 Where SPAA EC is notified by another Party pursuant to Clause 10.2 or otherwise discovers any of the circumstances referred to in this Clause 10 and such breach if capable of remedy is not remedied within any timeframe indicated in the aforementioned, SPAA EC may decide that the relevant Defaulting Party should not exercise any voting rights pursuant to Clauses 6 to 9 (inclusive) and/or exercise any rights under or benefit from any provisions in a Mandatory Schedule relating to the category of Party in default from a date to be determined by SPAA EC until SPAA EC determines otherwise.

- 10.5 A SPAA EC Member shall be disqualified from acting, and shall not act in his capacity as a SPAA EC Member in relation to a resolution pursuant to this Clause 10 and his alternate shall act in his place (unless the provisions of Clauses 10.5.1 and 10.5.2 apply to him as well) in relation to a resolution where:
- 10.5.1 his employer is the Defaulting Party or an Affiliate of the Defaulting Party; or
- 10.5.2 his employer is the Party reporting the suspected Event of Default, or an Affiliate of the Party reporting the suspected Event of Default.
- 10.6 If both a SPAA EC Member and his alternate are disqualified from acting in relation to a particular resolution as a result of Clause 10.5, that SPAA EC Member shall appoint a further alternate who is employed by a Party or an Affiliate from the category of Party that appointed him, and who is not disqualified pursuant to Clause 10, to act as his alternate in relation to that particular resolution.
- 10.7 Where SPAA EC makes a decision pursuant to Clause 10.4 it shall:
- 10.7.1 notify the relevant Party of its decision;
- 10.7.2 notify the Authority of its decision;
- 10.7.3 notify the other Parties that the relevant Party is in a category of Party and is a Defaulting Party and that such Parties may decide not to give such Party the benefit of any Mandatory Schedule in respect of such category of Party from a date determined by SPAA EC until SPAA EC determines otherwise.
- 10.8 On receipt of notification from SPAA EC pursuant to Clause 10.7.3, a Party shall be entitled to decline to give a Defaulting Party the benefit of any part of a Mandatory Schedule relating to a category of Party in accordance with such notification, until it is notified by SPAA EC that SPAA EC has determined otherwise.
- 10.9 Any Party that is a Defaulting Party pursuant to the terms of Clause 10.4 may apply to SPAA EC to have the restrictions referred to in Clause 10 removed. SPAA EC shall consider such application and may levy a fee on the relevant Defaulting Party to remove the relevant restrictions.
- 10.10 A Supplier shall cease to be a Party to this Agreement upon giving SPAA EC 30 Working Days' notice of its intention to cease to be a Party to this Agreement, where:
- 10.10.1 it is no longer Registered for any MPRNs on any Gas Transportation Database; or
- 10.10.2 it does not hold a Gas Supply Licence; and
- 10.10.3 it has paid all charges and/or met all funding requirements for which it is or will become liable under the terms of this Agreement.
- 10.11 A Party shall cease to be a party to this Agreement with immediate effect if such Supplier's Gas Supply Licence is revoked or is not granted. A Party shall cease to be a party to this Agreement as a Domestic Supplier on and from the date that Section C of such Supplier's Gas Supply Licence ceases to have effect if the Authority provides that Section C of such Supplier's Gas Supply Licence shall cease to have effect. A Party shall cease to be a Party to this Agreement as an Industrial and Commercial Supplier on and from the date that Section D of such Supplier's Gas Supply Licence ceases to have effect if the Authority provides that Section D of such Supplier's Gas Supply Licence shall cease to have effect.



- 10.12 A Party ceasing to be a party to this Agreement shall be without prejudice to the accrued rights and liabilities of that Party prior to the date of it ceasing to be a Party and shall not affect any continuing obligations of that Party under this Agreement.
- 10.13 Where a Party ceases to be a party to this Agreement, Clauses 10, 11, 12, 13, 15 to 26 (inclusive), 20.1, 21 and 22 shall remain in full force and effect as regards it.
- 10.14 Subject to Clause 10.16 and 10.18 and save as provided in this Clause 10.14 and Clause 10.15 no Party (the **“Party Liable”**) nor any of its officers, employees or agents shall be liable to any other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
- 10.14.1 physical damage to the property of that other Party, its officers, employees or agents; and/or
- 10.14.2 the liability of such other Party to any other person for loss in respect of physical damage to the property of any person,
- provided that the liability of any Party in respect of claims for such loss arising from any incident or series of related incidents shall in no circumstances exceed £1 million.
- 10.15 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified any other Party, its officers, employees or agents, from and against all such liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.
- 10.16 Subject to Clause 10.18 no Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to any other Party for:
- 10.16.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- 10.16.2 any indirect or consequential loss; or
- 10.16.3 loss resulting from the liability of such other party to any other person howsoever and wheresoever arising save as provided in Clauses 10.14 and 10.15.
- 10.17 The rights and remedies provided by this Agreement to the parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights any Party may possess in tort for delict which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable, 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 this Agreement and undertakes not to enforce any of the same except as expressly provided herein.
- 10.18 Save as otherwise expressly provided in this Agreement, this Clause 10 insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this Clause 10 shall exclude or restrict or otherwise prejudice or affect any of:
- 10.18.1 the rights, powers, duties and obligations of any Party which are conferred or created by the Act, any licence granted pursuant to the Act or any subordinate legislation made under the Act; or

- 10.18.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence or otherwise howsoever.
- 10.19 Each of the sub-clauses of this Clause 10 shall:
- 10.19.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such Clauses shall remain in full force and effect and shall continue to bind the parties; and
- 10.19.2 survive termination of this Agreement.
- 10.20 Each Party hereby acknowledges and agrees that each of the other Parties holds the benefit of Clauses 10.14, 10.15 and 10.16 for itself and as trustee and agent for its officers, employees and agents.
- 10.21 Each Party hereby acknowledges and agrees that the provisions of this Clause 10 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.
- 10.22 For the avoidance of doubt, nothing in this Clause 10 shall prevent or restrict any Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

## **PART IV: CONFIDENTIALITY**

### **11. CONFIDENTIALITY**

#### **General**

- 11.1 Each Party hereby undertakes with each other Party that it shall preserve the confidentiality of and shall not directly or indirectly Disclose or use for its own purposes Confidential Information. The exceptions to this obligation are set out in Clause 11.2.

#### **11.2 Exceptions to Confidentiality Obligation**

A Party shall be entitled to Disclose or use Confidential Information if and to the extent that one or more of the following apply:

- 11.2.1 the Party is required or permitted to Disclose Confidential Information pursuant to the terms of a Designated Agreement, to the extent of such requirement or permission; or
- 11.2.2 the Party believes, on reasonable grounds, that market arrangements set out or contemplated by this Agreement require or permit it to Disclose Confidential Information to another person or to use Confidential Information to the extent of such requirement or permission and it has given the other Parties prior written notice of such intended Disclosure; or
- 11.2.3 the person to whose affairs the Confidential Information relates gives its prior written consent to the Disclosure or use, to the extent of such consent; or
- 11.2.4 the Confidential Information, before it is furnished to the relevant Party is in the public domain; or
- 11.2.5 the Confidential Information, after it is furnished to the party:
- (A) is acquired by the Party in circumstances in which this Clause does not apply;
  - (B) is acquired by a Party in circumstances in which this Clause does apply and thereafter ceases to be subject to the restrictions imposed by this Clause; or
  - (C) enters the public domain,
- and in any such case otherwise than as a result of (i) a breach by the Party of its obligations in this Clause or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation and the Party is aware of such breach; or
- 11.2.6 the Party is required or permitted to Disclose Confidential Information to any person:
- (A) in compliance with any provisions of any Relevant Instrument; or
  - (B) in compliance with any other requirement of law or of a Competent Authority; or
  - (C) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-Overs and Mergers; or
  - (D) pursuant to any judicial or arbitral process or tribunal having jurisdiction relation to the Party; or

11.2.7 the Party, Discloses Confidential Information to its Affiliates or Related Undertakings, its or its Affiliates' or Related Undertakings' employees, directors, agents, consultants and professional advisers; or

11.2.8 the Party Discloses Confidential Information to the Authority.

11.3 Confidential Information which a Party is permitted or obliged to Disclose or use pursuant to Clause 11.2 shall not cease to be regarded as Confidential Information in all other circumstances by virtue of such Disclosure or use.

#### **Internal Procedures**

11.4 With effect from the date of this Agreement each Party shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under Clause 11.1. These procedures are:

11.4.1 the Confidential Information will be disseminated within the Party only on a "need to know" basis;

11.4.2 employees, directors, agents, consultants and professional advisers of the Party in receipt of Confidential Information will be made fully aware of the party's obligations of confidence in relation thereto; and

11.4.3 any copies of the Confidential Information, whether in hard copy or computerised form, will clearly identify the Confidential Information as confidential.

11.5 Each Party shall take all reasonable steps to ensure that any person referred to in Clause 11.2.6 to whom the Party Discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it is provided and does not Disclose that Confidential Information otherwise than in accordance with this Clause 11.

#### **Affiliate or Related Undertaking**

11.6 Each Party shall procure that each of its Affiliates and Related Undertakings observes the restrictions in Clauses 11.1 to 11.5 as if in each Clause there was substituted for the name of the Party the name of the Affiliate or Related Undertaking.

#### **Data Protection Act**

11.7 Each Party warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain all such notifications as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. Each Party undertakes to comply with the Data Protection Act in the performance of this Agreement.

11.8 Each Party undertakes that, in any case where information to be disclosed by it under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consents so as to enable it, to promptly to perform its obligations under this Agreement.

11.9 The Parties acknowledge that, for each of SPAA EC, and each of its sub-committees, to properly to carry out its duties and responsibilities under this Agreement, it may decide or be obliged to keep confidential to it (and may instruct its sub-committees to keep confidential) matters, reports, data and other information produced by or for, or made available to or held by it and in any such case, it shall neither disclose the same to the Parties nor be required by such Parties so to disclose. Each of the Parties agrees to respect the position of SPAA EC, its sub-committees, and the SPAA EC accordingly.

- 11.10 Each of the Parties agrees, subject to any relevant confidentiality provision binding on it, to provide SPAA EC, the Secretary and the Secretariat with all data and other information reasonably requested by and necessary for SPAA EC, the Secretary and/or the Secretariat properly to carry out their duties and responsibilities under this Agreement.

## **PART V: FORCE MAJEURE**

### **12. FORCE MAJEURE**

12.1 If any Party (the "**Affected Party**") shall be unable to carry out any of its obligations under this Agreement (for the avoidance of doubt including any obligation under a Mandatory Schedule or, to the extent an election has been made pursuant to Clause 5, an Elective Schedule) due to a circumstance of Force Majeure this Agreement shall remain in effect but:

12.1.1 the Affected Party's obligations;

12.1.2 the obligations of each of the other Parties owed to the Affected Party under this Agreement; and

12.1.3 any other obligations of such other Parties under this Agreement owed between themselves which the relevant Party is unable to carry out directly as a result of the suspension of the Affected Party's obligations,

shall be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

- (i) the Affected Party gives the other Parties prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and where reasonably practicable continues to furnish regular reports with respect thereto during the period of Force Majeure; and
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure; and
- (iii) no obligations of any Party that arose before the circumstance of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and
- (iv) the Affected Party uses all reasonable efforts to mitigate the impact of the circumstance of Force Majeure and to remedy its inability to perform as quickly as possible; and
- (v) immediately after the end of the circumstance of Force Majeure the Affected Party notifies the other Parties in writing of the same and resumes performance of its obligations under this Agreement.

## **PART VI: DISPUTES**

### **13. DISPUTES**

- 13.1 Save where expressly stated in this Agreement to the contrary, and subject to any contrary provision of the Act, any Gas Supply Licence issued pursuant to the Act or the rights, powers, duties and obligations of the Authority or Secretary of State under the Act, any such Gas Supply Licence or otherwise howsoever arising, any dispute or difference of whatever nature and howsoever arising under, out of or in connection with this Agreement (a "**Dispute**") shall be resolved according to the provisions of this Clause 13.

#### **Contract Management**

- 13.2 Any Party shall refer a Dispute to the Contract Managers, by notice in writing to all other Parties to the Agreement who are Party to the Dispute (the Party referring the Dispute and the other Parties to the Dispute each being a "**Disputing Party**"). The Contract Managers of the Disputing Parties shall endeavour to resolve the Dispute between them. The Contract Managers of the Disputing Parties shall have authority to negotiate in relation to and to resolve the Dispute including authority to bind the Party nominating them. The joint and unanimous decision of the Contract Managers of the Disputing Parties shall be binding upon the Parties to the Dispute.

#### **Arbitration**

- 13.3 If the Contract Managers of the Disputing Parties are not able to resolve the Dispute within 10 Working Days of the reference of a Dispute to them, then any Disputing Party may, within 20 Working Days of such reference, refer the Dispute to arbitration before an arbitral tribunal composed of a single arbitrator pursuant to the rules of the London Court of International Arbitration.
- 13.4 Whatever the nationality residence or domicile of any Disputing Party and wherever the Dispute or any part thereof arose the laws of England and Wales shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be London and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.
- 13.5 Notwithstanding the provision of the rest of this Clause 13, any Party may apply at any time to any court of competent jurisdiction for any emergency interim interlocutory relief as may be necessary.

## PART VII: MISCELLANEOUS

### 14. DEROGATIONS

- 14.1 SPAA EC may resolve to grant a derogation to any Party or Parties in relation to any obligation contained in any Mandatory Schedule to or of this Agreement, which may be subject to conditions and shall specify the term, scope and application of such derogation, and may amend or retract any such derogation, or any such conditions relating thereto, from time to time as it sees fit.
- 14.2 A Party may, by notice in writing to the Secretary, apply to SPAA EC for a derogation pursuant to Clause 14.1 ("**Application for Derogation**").
- 14.3 Where the Secretary receives an Application for Derogation from a Party pursuant to Clause 14.2, it shall ensure that the Application for Derogation is added to the agenda for the next SPAA EC meeting, and shall give notice to all Parties and the Authority, at least 10 Working Days prior to the SPAA EC meeting at which the application is to be considered, stating:
- 14.3.1 that the Application for Derogation has been made, setting out the terms of the derogation sought, and the identity of the Party making the Application for Derogation; and
- 14.3.2 the time (not being less than 10 Working Days from the date on which notice is provided) within which Parties and the Authority may make representations or objections with respect to the derogation which has been applied for.
- 14.4 If pursuant to Clause 14.3.2 any Parties make representations or objections with respect to the derogation that has been applied for to the Secretary, the Secretary shall as soon as reasonably practicable and in any event before the SPAA EC meeting at which the Application for Derogation is to be considered, publish such representations and objections on the SPAA Forum Website [www.spaa.co.uk](http://www.spaa.co.uk) unless such representations or objections have been marked as confidential.
- 14.5 Where a Party is granted a derogation by SPAA EC in accordance with this Clause 14, that Party shall be excused from complying with the obligations specified in the terms of that derogation, and shall be deemed not to be in breach of this Agreement for failing to comply with the relevant obligations for the term of the derogation, but shall be required to comply with any modified obligations which are specified as a condition of the derogation.



## **15. CONTRACT MANAGEMENT**

- 15.1 Each Party shall appoint an appropriate person (each a **"Contract Manager"** and together the **"Contract Managers"**) to manage all matters arising under or in connection with this Agreement and to monitor the general operation of this Agreement.
- 15.2 Each Contract Manager appointed by a Party shall ensure that procedures are in place in respect of that Party to ensure that there is adequate support for operations provided under this Agreement and timely resolution of problems that may occur including a point of contact to process and resolve such problems.
- 15.3 At times determined by SPAA EC a meeting of Contract Managers shall be convened to discuss operational issues, with particular regard to inter-operability issues and performance of third parties.
- 15.4 Each Party shall notify the other Parties, SPAA EC, the Secretariat and the Change Control Administrator of the name and contact details of the Contract Manager appointed by it for the purposes of this Agreement from time to time.

## **16. ENTIRE AGREEMENT**

- 16.1 This Agreement and any document referred to herein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and without prejudice to the generality of the foregoing excludes any warranty, condition or other undertaking implied at law or by custom.
- 16.2 Each Party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, no Party has relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to herein.

## **17. SEVERABILITY**

- 17.1 If any provision of this Agreement shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or any authority (including the Authority) whose decisions shall be binding on the Parties, the same shall be deemed to be severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

## **18. WAIVERS**

- 18.1 The failure by any Party to exercise, or the delay by any Party in exercising, any right, power, privilege or remedy provided by this Agreement or by law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy.

## **19. ASSIGNMENT AND SUB-CONTRACTING**

- 19.1 Subject to Clauses 19.2 and 19.3, and except as provided elsewhere in this Agreement, no Party shall assign any of its rights under this Agreement without the prior written consent of all other Parties such consent not to be unreasonably withheld or delayed.

- 19.2 Subject to Clauses 10.12 and 10.13, any Party may transfer its rights and obligations under this Agreement to any successor holder of its Gas Supply Licence (or part thereof) provided that:
- 19.2.1 the Authority has approved the transfer of such Gas Supply Licence pursuant to the Act; and
- 19.2.2 the successor holder executes an Accession Agreement with SPAA EC.
- 19.3 If Clause 19.2.2 applies, each Party hereby authorises and instructs any delegate appointed by SPAA EC to sign any Accession Agreement on its behalf and undertakes not to withdraw, qualify or revoke any such authority or instruction at any time. Upon execution of the Accession Agreement, the successor holder shall become a Party for all purposes of this Agreement from the date specified in the Accession Agreement.
- 19.4 Any Party may sub-contract or delegate the performance of all or any of its obligations under this Agreement to any appropriately qualified and experienced third party, but shall at all times remain liable to any other Parties in relation to all sub-contracted or delegated obligations.
- 19.5 Each Party shall notify other Parties, on request, of any subcontractors appointed by it for the purposes of this Agreement.

## **20. NOTICES**

- 20.1 Any notice, request, claim form or other communication to be made by a Party to another Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by fax or by first class post, or (provided this Agreement expressly so provides) sent by e-mail, to that Party's address as included in Parts 2 and 3 of Schedule 1 as may be varied from time to time by notice from a Party to all other Parties (marked for the attention of the Contract Managers) and notified to the SPAA EC in accordance with the terms of this Clause.
- 20.2 Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with Clause 19.1 shall be deemed received:
- 20.2.1 if delivered by hand, when left at the address referred to above;
- 20.2.2 if sent by post, 2 Working Days after the date of posting;
- 20.2.3 if sent by fax, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error;
- 20.2.4 if sent by e-mail upon receipt by the sender of a delivery receipt e-mail message which states that the e-mail has been successfully delivered to the recipient.
- 20.3 Without any prejudice to Clause 20.2, notice, request or communication sent by e-mail shall also be sent by hand by post or by fax.
- 20.4 This Clause 20 shall apply mutatis mutandis to SPAA EC, the Secretary, the Secretariat and the Change Control Administrator save that their address and details shall be as set out below or varied from time to time by notice from such persons to the other Parties in accordance with the terms of this Clause 20.

### **SPAA EC**

Address:

Fax:

e-mail:

## **SECRETARY**

Address:

Fax:

e-mail:

## **SECRETARIAT**

Address:

Fax:

e-mail:

## **CHANGE CONTROL ADMINISTRATOR**

Address

Fax

e-mail

## **21. AUDIT AND RECORDS**

- 20.1 On request by SPAA EC each Supplier shall ensure that any auditor appointed by SPAA EC has access at reasonable times and on reasonable notice to:
- 21.1.1 any records maintained by that Supplier in relation to any MPRN for which it is or has been Registered in the [28] months prior to that date;
  - 21.1.2 any records maintained by it in relation to any MPRN comprised in its Gas Supply Licence in the [28] months prior to that date;
  - 21.1.3 any software, hardware, data or information held by the Supplier or its agents where reasonably required by the auditor; and
  - 21.1.4 the Supplier's premises.
- 21.2 Each [Supplier] shall provide the [Secretary] [Secretariat] with a report detailing the number of MPRNs in respect of which that Supplier was Registered on the [15<sup>th</sup>]day of each calendar month, taking into account all (if any) resolutions of objections which may change the number of such MPRNs in respect of which a Supplier was Registered on that [15<sup>th</sup>]day (the "**Report**"). The report shall be provided by the last day of the following calendar month.

*[Note: Still need to ascertain day of the month to which the Report relates.]*

- 21.3 The [Secretary] confirms that in accordance with Clause 6.57, it shall not disclose details of any Report delivered to it pursuant to Clause 20.2 to the SPAA EC, SPAA Forum, the Secretariat or any other Party.

## **22. COUNTERPARTS**

- 22.1 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute the same document.

## **23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## **24. GOVERNING LAW**

- 24.1 This Agreement is governed by, and shall be construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.
- 24.2 Each Party agrees that without preventing any other mode of service, any document in an action including any writ of summons or other originating process or any third party or other Party notice) may be served on any Party by being delivered to or left for that Party at its address for service of notices and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other Party in advance of any change from time to time of the details of such address in the manner prescribed in Clause 19.

## **SCHEDULE 1**

### **Part 1**

#### **PARTIES**

### **Part 2**

#### **DOMESTIC SUPPLIERS**

Address:

Fax:

e-mail:

### **Part 3**

#### **INDUSTRIAL AND COMMERCIAL SUPPLIERS**

Address:

Fax:

e-mail:

## SCHEDULE 2

### Accession Agreement

**THIS AGREEMENT** is made on [ ] between:

- (1) [ ], a company incorporated under the laws of [ ] [( number [ ] )]  
[ ] and having its [Registered] [principal] office at [ ] (the "**New Party**"); and
- (2) [SPAA EC] (the "**Nominee**") on behalf of all the parties to the Supply Point Administration Agreement referred to below.

#### **WHEREAS:**

- (A) The Parties named therein (1), and SPAA Limited (2) have entered into an agreement, (the "**Supply Point Administration Agreement**") on [ ].
- (B) The New Party has requested that it be admitted as a Party in the capacity of [Industrial and Commercial Supplier] and/or [Domestic Supplier] pursuant to Clause 4 of the **Supply Point Administration Agreement** and each of the parties hereby agrees to such admission.

#### **NOW IT IS HEREBY AGREED** as follows:

1. Unless the context otherwise requires, words and expressions defined in the **Supply Point Administration Agreement** shall bear the same meanings respectively when used herein.
2. The Nominee (acting on behalf of each of the Parties) hereby admits the New Party as an additional Party under the **Supply Point Administration Agreement** on the terms and conditions hereof and with effect from [insert effective date of admission].
3. The New Party hereby accepts its admission as a Party and undertakes with the Nominee (acting on behalf of each of the Parties) to perform and to be bound by the terms and conditions of the **Supply Point Administration Agreement** as a Party as from the [insert effective date of admission].
4. For all purposes in connection with the **Supply Point Administration Agreement** the New Party shall as from the [insert effective date of admission] be treated as if it had been a signatory of the **Supply Point Administration Agreement** as a [Industrial and Commercial Supplier] and/or [Domestic Supplier] and as if this Agreement were part of the **Supply Point Administration Agreement**, and the rights and obligations of the Parties shall be construed accordingly.
5. The New Party's name and contact details shall be inserted into [Part 2] and/or [Part 3] of Schedule 1 as a [Domestic Supplier] and/or [Industrial and Commercial Supplier].
6. This Agreement and the **Supply Point Administration Agreement** shall be read and construed as one document and references in the Supply Point Administration Agreement to the **Supply Point Administration Agreement** (howsoever expressed) shall be read and construed as references to Supply Point Administration Agreement and this Agreement.
7. This Agreement shall be governed by and construed in all respects in accordance with English law and the provisions of Clause 24 of the Supply Point Administration Agreement shall apply hereto *mutatis mutandis*.

8. No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first above written.

[New Party]

By:

**Notice details** (Clause 19 of the **Supply Point Administration Agreement**) for insertion into Schedule 1

Address:

Facsimile Number:

Attention:

[Nominee]

(for and on behalf of each of the parties to the **Supply Point Administration Agreement**)

By:

\* Delete/complete as appropriate.

**SCHEDULE 3**  
**Self-Certification Form**



## **SCHEDULE 4**

### **SPAA Limited**

#### **1. BACKGROUND**

- 1.1 *Establishment of joint venture:* The Parties have agreed to establish a joint venture company to carry on the Business.
- 1.2 *SPAA Ltd:* SPAA Ltd was incorporated in England on 1<sup>st</sup> February 2002 and at the date of this Agreement has an authorised share capital of £1,000,000 divided into 1,000,000 ordinary shares of £1 each of which two shares have been issued.
- 1.3 *Shareholders of SPAA Ltd:* It is intended that the shareholders of SPAA Ltd shall be limited to the Parties to the SPAA for the time being and from time to time, each of whom shall hold a single share, and any nominee as referred to in paragraph 3.2.1 of this Schedule.
- 1.4 *Regulation or rights:* The Shareholders have agreed that their respective rights as shareholders in SPAA Ltd shall be regulated by the provisions of this Schedule (which, for the avoidance of doubt, shall include the provisions of the Annexes hereto) and SPAA Ltd has agreed with the Shareholders to comply with such of the matters contained in this Schedule as relate to SPAA Ltd.

#### **2. ADDITIONAL DEFINITIONS AND INTERPRETATION**

- 1.1 Definitions: In this Schedule, except where the context otherwise requires:

"Articles"	means the Articles of Association of SPAA Ltd set out in Annex 3 to this Schedule, as the same may be amended from time to time;
"Board"	means the board of directors of SPAA Ltd;
"Business"	means acting as a corporate vehicle in relation to the SPAA pursuant to (i) a resolution of SPAA EC (or any sub-committee of it) passed pursuant to Clause 5 of this Agreement and effective by virtue of the provisions of that Clause or (ii) a decision of the Secretariat acting within the scope of its authority which (in each case) it is necessary or desirable to implement by means of a binding contract on an arms-length basis;
"Chairman"	means the chairman of the Board for the time being and from time to time;
"Company Secretary"	means the company secretary of SPAA Ltd for the time being and from time to time;
"Directors"	means the directors of SPAA Ltd for the time being and from time to time;
"Intellectual Property"	means patents, registered design rights, unregistered design rights, copyrights, rights in trade marks whether registered

or not, goodwill and rights in confidential information and know-how and any associated or similar rights (including in all cases, applications and rights to apply therefor);

"Shareholders"	means the persons for the time being and from time to time registered as holders of Shares; and
"Shares"	means ordinary shares of £1 each in the ordinary share capital of SPAA Ltd and any shares issued in exchange therefor by way of conversion or reclassification and any shares representing or deriving from such shares as a result of any increase in or reorganisation or variation of the ordinary share capital of SPAA Ltd;
"SPAA Ltd"	means SPAA Limited (registered number 04365599; and
"SPAA Completion Date"	means the date falling [ ] Working Days after the date on which this Schedule takes effect or such later date as shall be agreed by SPAA EC.

1.2 *Interpretation:* The Parties and SPAA Ltd acknowledge and agree that, notwithstanding any other provision of this Agreement:

- 1.2.1 SPAA Ltd is a Party to this Agreement solely for the purposes of this Schedule and is bound only to the extent of those obligations on its part which are expressly set out or referred to in this Schedule and not by any other provision of this Agreement;
- 1.2.2 SPAA Ltd shall have only such rights under or in respect of this Agreement as are expressly set out or referred to in this Schedule;
- 1.2.3 the consent or agreement of SPAA Ltd shall not be required to any modification, abrogation, amendment or suspension of any provision of this Agreement which is not expressly set out in this Schedule and SPAA Ltd hereby irrevocably waives any rights which it might be considered or held to have to consent or agree to any such modification, abrogation, amendment or suspension;
- 1.2.4 within this Agreement the rights of the parties as Shareholders are set out exclusively in this Schedule and no other provision of this Agreement shall apply in the regulation of the rights and obligations of Shareholders inter se in their capacity as Shareholders or as between the Shareholders (or any of them) and SPAA Ltd; and
- 1.2.5 SPAA Ltd shall take no action (and the Shareholders shall not take any step which could cause SPAA Ltd to take any such action) which could prejudice in any way the rights or interests of any Party under this Agreement.

### **3. ESTABLISHMENT OF SPAA LTD AND NEW PARTIES**

- 3.1 *Completion:* On the SPAA Completion Date, each of the Parties, the Shareholders and SPAA Ltd shall perform its obligations set out in, and comply with the provisions of, Annex 1 to this Schedule and procure that the subscribers and the first directors of SPAA Ltd shall comply with the provisions of the same Annex 1.
- 3.2 *New Parties:* Upon the accession of a New Party to the SPAA pursuant to an Accession Agreement the Directors shall either:

- 3.1.1 transfer to such New Party one Share held by a nominee in accordance with the provisions of paragraphs 10.3 or 10.4 of this Schedule; or
- 3.1.2 allot to such New Party one unissued Share (and the Shareholders agree that where no Shares are otherwise available for issue that they will exercise the voting rights attaching to their Shares to procure that all necessary steps are taken to create and/or authorise the issue of further Shares).

#### **4. SPAA LTD'S BUSINESS**

- 4.1 Compliance: Each Shareholder agrees with the other Shareholders to exercise its rights under this Schedule and as a Shareholder in SPAA Ltd so as to ensure that:
  - 4.1.1 SPAA Ltd performs and complies with all its obligations under this Schedule and complies with the restrictions (if any) imposed upon it by the Articles; and
  - 4.1.2 the Business is conducted in accordance with sound and good business practice with the intention of breaking even.
- 4.2 Sole business of SPAA Ltd: The Shareholders and SPAA Ltd acknowledge and agree that, unless and until the Shareholders give their explicit written consent, the business of SPAA Ltd shall be confined to the Business.
- 4.3 Independence of operations: Each Shareholder acknowledges and agrees with the other Shareholders and SPAA Ltd that SPAA Ltd will have complete independence in its operations and undertakes not to take any action which obstructs or interferes with, or seeks to obstruct or interfere with, the Business provided that this paragraph 4.3 shall not affect the manner in which any Shareholder may exercise its rights in respect of Shares held by it.

#### **5. THE MANAGEMENT OF SPAA LTD**

- 5.1 Directors:
  - 5.1.1 The Shareholders shall procure that the Directors shall be all the SPAA EC Members for the time being and from time to time and each Director shall have as his alternate for the purposes of this Schedule the alternate appointed by him pursuant to Clause 6.18 of this Agreement.
  - 5.1.2 The Parties shall indemnify SPAA Ltd as set out in paragraphs 5.1.2.1 to 5.1.2.3 of this Schedule against all claims, demands, liabilities, losses, costs and expenses which SPAA Ltd may suffer or incur by reason of any claim by any Director in connection with his removal from office as a Director and the liability to indemnify shall be met:
    - 5.1.2.1 in the case of the removal of either of the Directors who are the I&C Members, severally and rateably in accordance with Clause 8.8 by the Suppliers entitled to appoint the I&C Member;
    - 5.1.2.2 in the case of the removal either of the Directors who are the Large Domestic Members, severally and rateably in accordance with Clause 8.8 by the Suppliers entitled to appoint the Large Domestic Members;
    - 5.1.2.3 in the case of the removal of the Director who is the Small Domestic Member, severally and rateably in accordance with Clause 8.8 by the Suppliers entitled to appoint the Small Domestic Member.

- 5.2 **Chairman:** The Chairman shall be the SPAA EC Chairman for the time being and from time to time. If the Chairman is unable to be present at a meeting, he may nominate another Director (or any Director's alternate) to act as Chairman. If neither the Chairman nor his nominee is present within half an hour after the time appointed for holding the meeting, the Directors present may appoint any of their number to be Chairman of that meeting.
- 5.3 **Committees:** The Directors may delegate any of their powers to committees of the Board consisting of such persons as the Directors may resolve. Any such committee shall exercise only powers expressly delegated to it and shall comply with any regulations imposed on it by the Board.
- 5.4 **Company Secretary:** The Company Secretary shall be the Secretary for the time being and from time to time.
- 5.5 **Proceedings at Board Meetings:**
- 5.5.1 **Voting Rights:** Each Director shall have one vote. The Chairman shall have no vote in his capacity as Chairman.
- 5.5.2 **Frequency:** The Board shall meet at intervals of not less than once in any period of three months unless otherwise agreed by the Directors and insofar as reasonably practicable meetings of the Board shall follow on immediately from meetings of SPAA EC. A meeting of the Board may be convened at any reasonable time at the request of any Director by written notice to the Company Secretary.
- 5.5.3 **Meetings:** Meetings of the Board may be held by conference telephone call provided that participants acknowledge that they can speak to and hear each other.
- 5.5.4 **Notice:** Each of the Directors shall be given notice by the Company Secretary of each meeting of the Board setting out details of the time, date and place of meeting at least 5 Working Days prior to the date of such meeting, provided that such period of notice may be shortened for particular meetings by unanimous written consent of all Directors entitled to attend and vote thereat.
- 5.5.5 **Quorum:** The quorum for meetings of the Board shall be constituted by the attendance of one (1) I&C Member one (1) Large Domestic Member and one (1) Small Domestic Member (or their alternates): in person or participating by conference telephone call throughout such meeting.
- 5.5.6 **Resolutions:** All resolutions of the Board shall be made by unanimous vote of the Directors present or participating by conference telephone call.
- 5.5.7 **Written resolutions:** A written resolution signed by all Directors shall be as valid and effective as a resolution passed unanimously by a meeting of the Board properly convened and constituted in accordance with the terms of this Schedule and the Articles.
- 5.5.8 **Minutes:** No later than 5 Working Days after each Board meeting, the Company Secretary shall circulate minutes of that meeting to each of the Directors.
- 5.6 ***Exercise of Shareholders' Rights:*** the Shareholders shall exercise the rights attaching to their Shares in the manner best calculated to secure the implementation of decisions taken by the SPAA EC or SPAA Forum (or, on appeal, by the Authority)

pursuant to this Agreement, and shall not exercise their rights in a manner which is inconsistent with any such decision.

## **6. RESERVED MATTERS**

- 6.1 The Shareholders shall exercise the rights attaching to their shares to procure, so far as they are able, that SPAA Ltd shall not take any action and no resolution relating to such action shall be passed by SPAA Ltd in respect of the matters set out in Annex 2 to this Schedule, except pursuant to a decision of SPAA EC or the SPAA Forum (as appropriate) or, on appeal, of the Authority, taken in accordance with this Agreement.
- 6.2 For the avoidance of doubt, to the extent that SPAA Ltd takes any action in respect of any matter set out in Annex 2 to this Schedule which is pursuant to a decision of SPAA EC or the SPAA Forum (as appropriate) or, on appeal, of the Authority, taken in accordance with this Agreement, no resolution of the Shareholders shall be required to ratify such action.

## **7. SPAA LTD EXPENDITURE**

- 7.1 *Inclusion of expenditure in budgets:* Anticipated expenditure of SPAA Ltd shall be included in any budget prepared pursuant to Clause 8 of this Agreement, and shall be subject to approval in accordance with that clause.
- 7.2 *SPAA Ltd obligations:* The Shareholders shall exercise the rights attaching to their shares to procure that SPAA Ltd shall not incur costs unless authorised by a budget approved pursuant to Clause 8 of this Agreement, except insofar as necessary in order to comply with legally binding obligations to which it is subject or insofar as such costs fall within the terms of any previous approved budget.
- 7.3 *Authorisation and reimbursement:* Expenditure by SPAA Ltd shall be authorised by SPAA EC, submitted to the Secretariat for payment, and reimbursed by the Parties in accordance with the provisions of Clause 8 of this Agreement

## **8. ACCOUNTS**

- 8.1 *Annual Accounts:* At the end of each of SPAA Ltd's financial years, or as soon as reasonably practicable thereafter, SPAA Ltd shall procure that an account shall be taken of all the assets and liabilities of SPAA Ltd and of all dealings and transactions of SPAA Ltd during such financial year and that the Board shall prepare a report and accounts in accordance with the Companies Act 1985 (as amended) to be audited within three months after the end of each financial year.
- 8.2 *Audit:* Any Party shall have the right at any time to require SPAA Ltd to instruct the auditors of SPAA Ltd to conduct a review in respect of the financial affairs of SPAA Ltd. The cost of such review shall be borne by the Party requesting such review, unless such review is approved by the Directors in which case it shall be borne by SPAA Ltd. If any such review is requested, SPAA Ltd shall procure that SPAA Ltd's auditors are given all reasonable assistance to complete the review within a reasonable period of time.

## **9. DISTRIBUTION POLICY**

The Shareholders shall take such action as may be necessary to procure that:

- 9.1 *Annual General Meeting:* SPAA Ltd's annual general meeting at which audited accounts in respect of the preceding financial year are laid before the Shareholders is held not later than the date falling six months after the end of that financial year;

- 9.2 **Auditors' Report:** SPAA Ltd's auditors shall at the expense of SPAA Ltd be instructed to report as to the amount of the profits available for distribution by SPAA Ltd for each accounting reference period at the same time as they sign their report on SPAA Ltd's audited accounts for the accounting reference period in question;
- 9.3 **Distribution of Profits:** SPAA Ltd distributes to and among the Shareholders within 30 days of approval of the audited accounts 100 per cent. of its profits available in each year, subject to the appropriation of such reasonable and proper reserves for working capital or otherwise as the Board may consider appropriate; and
- 9.4 **Shareholder guarantees:** If any indemnity, guarantee or other assurance against loss is given by a Shareholder for any obligation or liability of SPAA Ltd at the request of SPAA Ltd, all the other Shareholders shall indemnify such Shareholder in respect of any liability arising out of such indemnity, guarantee or other assurance against loss severally and rateably in accordance with Clause 8.8 of this Agreement.

## 10. TRANSFER OF SHARES

- 10.1 **Restriction on transfer:** Otherwise than in accordance with the following provisions of this paragraph 10 no Shareholder shall:
- 10.1.1 pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its Shares; or
  - 10.1.2 sell, transfer or otherwise dispose of any of such Shares (or any legal or beneficial interest therein); or
  - 10.1.3 enter into any agreement in respect of the votes attached to Shares; or
  - 10.1.4 agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.
- 10.2 **Permitted transfers:** A Shareholder may transfer its Share to a successor holder of such Shareholder's Gas Supply Licence in circumstances where such person becomes a Party at the same time as such Shareholder ceases to be a Party.
- 10.3 **Retiring Shareholders:** If any Shareholder ceases to be a Party for any reason (the "**Retiring Shareholder**"), then upon written notice to the Retiring Shareholder by any other Shareholder, the Retiring Shareholder shall transfer at par to a nominee for all the Shareholders (other than the Retiring Shareholder) selected by the Directors the Share held by the Retiring Shareholder. All costs and expenses of such transfer shall be for the account of the Retiring Shareholder.
- 10.4 **Enforced transfer:** If a Retiring Shareholder shall fail or refuse to transfer any Shares in accordance with its obligations under paragraph 10.3, the Directors may authorise SPAA Ltd to execute and deliver a transfer from the Retiring Shareholder to a nominee on behalf of the Retiring Shareholder. SPAA Ltd may accept the consideration for the transfer and hold it on trust for the Retiring Shareholder, which acceptance shall be a good discharge to the nominee and may set off such amount against the costs and expenses of the transfer. The Directors shall cause the transferee to be registered as the holder of such Share and following the registration of the transfer the validity of the proceedings shall not be questioned by any person.
- 10.5 **Nominee's holding:** The nominee referred to in paragraphs 10.3 and 10.4 shall hold Shares transferred to it until such time as it is directed by the Directors to transfer them (or some of them) to one or more Parties. For the avoidance of doubt, wherever

in this Schedule a percentage figure of the number of Shares in issue is referred to, this figure shall be calculated as if all Shares held by the nominee were not in issue.

## **11. DURATION AND TERMINATION**

This Schedule shall continue in full force and effect until the first to occur of the following events:

- 11.1 the termination of this Agreement pursuant to Clause 3.3;
- 11.2 all the Shareholders agree in writing to terminate the arrangements set out in this Schedule;
- 11.3 an effective resolution is passed or a binding order is made for the winding up of SPAA Ltd,

provided, however, that this Schedule shall cease to have effect as regards any Party who, having been entitled under the terms of this Schedule to hold Shares, ceases to hold any Shares.

## **12. SHAREHOLDERS GENERALLY**

The Shareholders shall procure that:

- 12.1 save for any nominee referred to in paragraph 10.3, only the Parties shall acquire Shares (whether by transfer or allotment) and that no Party shall be a Shareholder unless and until it has agreed to be bound by this Schedule in the capacity of a Shareholder (which a Party shall be taken to have done by being a signatory to this Agreement or executing an Accession Agreement); and
- 12.2 the Directors shall neither transfer nor allot any Share or Shares other than as set out in paragraphs 3.2, 10.4 or 10.5 of this Schedule and that, save in the case of a nominee as referred to in paragraphs 10.3 and 10.4, no Party shall at any point hold more than one Share.

## **13. INTELLECTUAL PROPERTY**

If and to the extent that any Shareholder discloses any of its Intellectual Property to SPAA Ltd for use in connection with the Business, unless it is unable to do so it shall grant, and shall be deemed to have granted from the date of such disclosure, licences of such Intellectual Property to SPAA Ltd for use in connection with the Business and for no other purpose whatsoever. Any such licence shall be irrevocable, non-exclusive, perpetual and royalty-free. Such licences may only be assigned, sub-let or otherwise dealt with on such terms as may be agreed by resolution of SPAA EC passed pursuant to Clause 6 of this Agreement.

## **14. CONFLICT WITH THE ARTICLES**

In the event of any ambiguity created by or discrepancy between the provisions of this Schedule and the Articles, then it is the intention that the provisions of this Schedule shall prevail and accordingly the Shareholders shall exercise all voting and other rights and powers available to them so as to give effect to the provisions of this Schedule and shall further, if necessary, procure any required amendment to the Articles.

## **15. FURTHER ASSURANCE**

Each Shareholder shall co-operate with the other Shareholders and execute and deliver to the other Shareholders such other instruments and documents and take such other actions as may

be reasonably requested from time to time in order to carry out, evidence and confirm their rights under, and the intended purpose of, this Schedule.



## ANNEX 1 TO SCHEDULE 4

### Completion

1. *Meeting of the Directors:* On the SPAA Completion Date the Parties shall procure the holding of a meeting of the Board and the passing thereof of resolutions:
  - (A) appointing the SPAA EC Members as Directors;
  - (B) accepting the resignation as Directors of those persons (if any) who are not SPAA EC Members;
  - (C) appointing a bank nominated by SPAA EC as SPAA Ltd bankers and passing such resolutions relating to such appointment as the bank may require;
  - (D) approving the transfer of the two subscriber shares each to a Party other than or SPAA Ltd;
  - (E) convening an Extraordinary General Meeting of the Company immediately following the conclusion of the meeting of the Directors for the purposes referred to in paragraph 2;
  - (F) accepting the resignation as Company Secretary of that person who is not the Secretary;
  - (G) appointing the Secretary as Company Secretary;
  - (H) approving the change of registered address of SPAA Limited to [ ];
  - (I) approving the appointment of [ ] as auditors of SPAA Limited.
2. *Extraordinary General Meeting:* Upon the calling of the Extraordinary General Meeting referred to in paragraph 1(E), the Shareholders shall procure the giving of consents to short notice in respect of such Extraordinary General Meeting and shall vote thereat in favour of resolutions:
  - (A) authorising the directors to issue and allot at par one Share to each Party other than the SPAA Ltd and the two parties to whom the two subscriber shares in SPAA Ltd have been transferred;
  - (B) amending Clause 3 of the Memorandum of Association of SPAA Ltd by insertion of the new sub-clause set out in Annex 3 to this Schedule as sub-clause 3(1) and renumbering the remaining sub-clauses accordingly; and
  - (C) adopting the regulations in the form set out in Annex 4 to this Schedule as the Articles of Association of SPAA Ltd.
3. *Initial Subscription for Shares:* Forthwith upon the passing of the resolution of SPAA Ltd pursuant to paragraph 2 each party, save for and those two parties to whom transfers are approved under paragraph 1(D) above, shall complete, sign and deliver to SPAA Ltd an application for the allotment to that party of one share in consideration of the payment by cash of £1 on allotment in respect of each such share.
4. *Board Meeting:* SPAA Ltd shall procure the holding of a further meeting of the Board and the passing thereof of resolutions:
  - (A) approving the application of each party other than and the two parties to whom the two subscriber shares in SPAA Ltd have been transferred for a Share; and

- (B) authorising the name of each party other than SPAA Ltd to be entered in the Register of Members of SPAA Ltd as holder of one Share and directing the sealing of a certificate in respect thereof.
- 5. *Allotment:* Upon receipt of the relevant consideration moneys referred to in paragraph 3, SPAA Ltd shall allot and issue one Share to each party whose application has been approved pursuant to paragraph 4 and shall register each such party as the holder of that share and shall prepare, seal and deliver to each party a share certificate in respect thereof in its name.

## **ANNEX 2 TO SCHEDULE 4**

### **Limitations on Dealings**

- (i) The acquisition or disposal by SPAA Ltd of any share capital or other securities of any person.
- (ii) The reduction of SPAA Ltd's share capital, any variation of the rights attaching to any class of shares in its capital or any redemption, purchase or other acquisition by SPAA Ltd of any shares or other securities of SPAA Ltd.
- (iii) The making of decisions relating to material contracts or arrangements to which SPAA Ltd is a party.
- (iv) The making by SPAA Ltd of a material claim, disclaimer, surrender, election or consent for tax purposes.
- (v) The incurring of costs in respect of any period which are not envisaged by a budget drawn up and approved pursuant to Clause 8 of this Agreement.
- (vi) Entering into any contract or guarantee with a Shareholder or an Affiliate of a Shareholder.
- (vii) Entering into any contract of a material nature.
- (viii) The obtaining by SPAA Ltd of finance from a third party lender.
- (ix) The making of any change to SPAA Ltd's Memorandum of Association or the Articles.
- (x) The presentation of any petition for the winding-up of SPAA Ltd or the making of any application for an administration order in relation to SPAA Ltd or for the appointment of an administrator or receiver of SPAA Ltd.
- (xi) The commencement, settlement or defence of any litigation, arbitration or other proceedings brought by or against SPAA Ltd in an amount in excess of £25,000.
- (xii) The increase of the amount of debt with a maturity greater than 3 months owed by SPAA Ltd.
- (xiii) The entering into of an agreement of a type or length which is unusual in the context of the Business.

### **ANNEX 3 TO SCHEDULE 4**

#### **Amendment to Objects clause**

To carry on the business of acting as a corporate vehicle in relation to the Supply Point Administration Agreement dated [x] in accordance with the terms and conditions of that Agreement.

## ANNEX 4 TO SCHEDULE 4

### Form of New Articles

#### ARTICLES OF ASSOCIATION

#### THE COMPANIES ACT 1985-1989

#### ARTICLES OF ASSOCIATION

of

SPAA LIMITED (the "Company")

(Registered No. 04365599 )

(adopted by Special Resolution passed on x)

### 1. Adoption of Table A

In these articles "Table A" means Table A scheduled to the Companies (Tables A to F) Regulations 1985 as amended prior to the date of incorporation of the Company. The regulations contained in Table A shall, except where they are excluded or modified by these articles, apply to the Company and, together with these articles, shall constitute the articles of the Company. No other regulations set out in any statute concerning companies, or in any statutory instrument or other subordinate legislation made under any statute, shall apply as the regulations or articles of the Company.

### 2. Interpretation

2.1. Words and expressions which bear particular meanings in Table A shall bear the same meanings in these articles.

2.2. In these articles:

"**Affiliate**" means, in respect of any body corporate, a body corporate which is its subsidiary or holding company, or a company which is a subsidiary of that holding company, and each such company;

"**Authority** " means the Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000;

"**SPAA EC**" means the SPAA Executive Committee appointed pursuant to the SPAA ;

"**SPAA EC Members**" means the members of the SPAA EC appointed pursuant to the SPAA ;

"**SPAA** " means the Supply Point Administration Agreement dated x;

"**SPAA Forum**" means the body of that name appointed pursuant to the SPAA ;

"**parties**" means parties to the SPAA and "**party**" means a party to the SPAA ;

**"Retiring Shareholder"** has the meaning given to that expression in Article 10.4; and

**"shareholder"** means the holder of a share or shares in the Company.

- 2.3. References in these articles to writing include references to any method of representing or reproducing words in a legible and non-transitory form.
- 2.4. Headings are for convenience only and shall not affect construction.
- 2.5. If, and for so long as, the Company has only one member, these articles shall (in the absence of any express provision to the contrary) apply with such modification as may be necessary in relation to such a company.

### **3. Share Capital**

The authorised share capital of the Company at the date of adoption of this article is £1,000,000 divided in 1,000,000 shares of £1 each.

### **4. Restriction on Share Ownership**

Save with the prior written consent of the directors, no person other than a nominee as referred to in Articles 9.4 and 9.5 shall be the holder of more than one share of the Company at any time.

### **5. Rights Attaching to Shares**

- 5.1. The Shareholders shall exercise all rights attached to their shares to procure, so far as they are able, that no action shall be taken or resolution passed by the Company in respect of those matters set out in Article 5.2 except pursuant to a decision of SPAA EC or the SPAA Forum (as appropriate) or, on appeal, by the Authority, taken in accordance with the provisions of the SPAA. The right to vote on the matters set out in Article 5.2 shall constitute rights attaching to the Shares.
- 5.2. The matters referred to in Article 5.1 are:
  - 5.2.1. the acquisition or disposal by the Company of any share capital or other securities of any person;
  - 5.2.2. the reduction of the Company's share capital, any variation of the rights attaching to any class of shares in its capital or any redemption, purchase or other acquisition by the Company of any shares or other securities of the Company.
  - 5.2.3. the making of decisions relating to material contracts to which the Company is a Party;
  - 5.2.4. the making by the Company of a material claim, disclaimer, surrender, election or consent for tax purposes;
  - 5.2.5. the incurring of costs in respect of any period which are not envisaged by a budget drawn up and approved pursuant to Clause 8 of the SPAA;
  - 5.2.6. the making of any contract or guarantee with a member or an Affiliate of a shareholder;
  - 5.2.7. the making of any contract of a material nature;

- 5.2.8. the obtaining by the Company of finance from a third Party lender;
  - 5.2.9. the making of any change to the Company's Memorandum of Association or these articles;
  - 5.2.10. the presentation of any petition for the winding-up of the Company or the making of any application for an administration order in relation to the Company or for the appointment of an administrator or receiver of the Company;
  - 5.2.11. the commencement, settlement or defence of any litigation, arbitration or other proceedings brought by or against the Company in an amount in excess of £25,000;
  - 5.2.12. the increase of the amount of debt with a maturity greater than 3 months owed by the Company; and
  - 5.2.13. the entering into of an agreement of a type or length which is unusual in the context of the business of the Company.
- 5.3. Each shareholder shall be entitled to dividends in respect of its share calculated in the same proportions as are set out in Clauses 8.10 of the SPAA rather than in proportion to the amounts paid up on the shares. Regulation 104 of Table A shall be modified accordingly.
- 5.4. Subject to the provisions of the Act and to any rights conferred on the holders of any other shares, any share may be issued with or have attached to it such rights and restrictions as the Company may by ordinary resolution decide or, if no such resolution has been passed or so far as the resolution does not make specific provision, as the directors may decide. Regulation 2 of Table A shall not apply.

## **6. Unissued Shares**

Subject to the provisions of the Act and to these articles, any unissued shares of the company (whether forming part of the original or any increased capital) shall be at the disposal of the directors who may (subject to Article 4) offer, allot, grant options over or otherwise dispose of them to such persons at such times and for such consideration and upon such terms and conditions as they may determine.

## **7. Initial Authority to Issue Relevant Securities**

Subject to any direction to the contrary which may be given by the Company in general meeting and to Article 4, the directors are unconditionally authorised to exercise all powers of the Company to allot relevant securities. The maximum nominal amount of relevant securities that may be allotted under this authority shall be the nominal amount of the unissued share capital at the date of incorporation of the Company or such other amount as may from time to time be authorised by the Company in general meeting. The authority conferred on the directors by this article shall remain in force for a period of five years from the date of incorporation of the Company but may be revoked varied or renewed from time to time by the Company in general meeting in accordance with the Act.

## **8. Exclusion of Rights to Offers on a Pre-emptive Basis**

Section 89(1) of the Act shall not apply to the allotment by the Company of any equity security.

## 9. Transfer of Shares

- 9.1. The instrument of transfer of a subscriber's share which is not fully paid need not be executed by or on behalf of the transferee. Regulation 23 of Table A shall be modified accordingly.
- 9.2. Otherwise than in accordance with Articles 9.3 and 9.4 no shareholder shall:
  - 9.2.1. pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its shares; or
  - 9.2.2. sell, transfer or otherwise dispose of any of such shares (or any legal or beneficial interest therein); or
  - 9.3.3. enter into any agreement in respect of the votes attached to shares; or
  - 9.4.4. agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.
- 9.3. A member may transfer its shares to a successor holder of its Gas Supply Licence in circumstances where such Affiliate becomes a Party at the same time as such member ceases to be a party.
- 9.4. If any shareholder ceases to be a Party for any reason (the "**Retiring Shareholder**"), then upon written notice to the Retiring Shareholder by any other shareholder, the Retiring Shareholder shall transfer at par to a nominee for all the shareholders (other than the Retiring Shareholder) selected by the directors the Share held by the Retiring Shareholder. All costs and expenses of such transfer shall be for the account of the Retiring Shareholder.
- 9.5. If a Retiring Shareholder shall fail or refuse to transfer any Shares in accordance with its obligations under Article 9.4 the directors may authorise the Company to execute and deliver a transfer from the Retiring Shareholder to a nominee on behalf of the Retiring Shareholder. The Company may accept the consideration for the transfer and hold it on trust for the Retiring Shareholder, which acceptance shall be a good discharge to the nominee and may set off such amount against the costs and expenses of the transfer. The directors shall cause the transferee to be Registered as the holder of such shares and following the registration of the transfer the validity of the proceedings shall not be questioned by any person.
- 9.6. The nominee referred to in Articles 9.4 and 9.5 shall hold shares transferred to it until such time as it is directed by the directors to transfer them (or some of them) to one or more parties. For the avoidance of doubt, wherever in these Articles a percentage figure of the number of shares in issue is referred to, this figure shall be calculated as if all shares held by the nominee were not in issue.

## 10. Proceedings at General Meetings

- 10.1. The quorum at any general meeting shall consist of a majority in number of the Shareholders in person or by proxy. PROVIDED THAT one shareholder must be a representative of an Industrial and Commercial Supplier and two shareholders must be representatives of Domestic Suppliers. Regulation 40 of Table A shall be modified accordingly. (The terms Industrial and Commercial Suppliers and Domestic Suppliers shall have the same meaning as that provided in the most recent version of SPAA).



- 10.2. If, and for so long as, the company has only one member, that member or the proxy for that member or, where that member is a corporation, its duly authorised representative shall be a quorum at any general meeting of the company or of the holders of any class of shares. Regulation 40 of Table A shall be modified accordingly.
- 10.3. The chairman at any general meeting shall not be entitled to a second or casting vote. Regulation 50 of Table A shall not apply.
- 10.4. In the case of a corporation a resolution in writing may be signed on its behalf by a director or the secretary of the corporation or by its duly appointed attorney or duly authorised representative. Regulation 53 of Table A shall be extended accordingly.

## **11. Votes of Members**

At a general meeting, but subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a duly authorised representative and every proxy for any member (regardless of the number or the holdings of the members for whom he is a proxy) shall have one vote, and on a poll every member who is present in person or by proxy shall have one vote for every share of which he is the holder. Regulation 54 of Table A shall not apply.

## **12. Delivery of Proxies**

The instrument appointing a proxy shall be in writing (hard copy or e-mail) from a duly authorised representative of the member. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority:

- 12.1 shall be deposited at the registered office of the company or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting of the members, not less than 24 hours before the time appointed for the meeting or adjourned meeting at which the person named in the instrument proposes to act or in the case of a poll taken subsequently to the date of the meeting or the adjourned meeting, before the time appointed for taking of the poll and in default the instrument of proxy shall not be treated as valid; or
- 12.2 if sent by e-mail, shall be produced in a scanned image file (.PDF format) sent to **[insert e-mail address]** or such other e-mail address as is specified for that purpose in the notice convening the meeting of the members, not less than 24 hours before the time appointed for the meeting or adjourned meeting at which the person named in the instrument proposes to act or in the case of a poll taken subsequently to the date of the meeting or the adjourned meeting, before the time appointed for taking of the poll and in default the instrument of proxy shall not be treated as valid. In order for the instrument appointing proxy to be deemed valid, the e-mail that sends such instrument shall be required to quote the code or identifier assigned to that member by the Company Secretary.

Regulation 62 of Table A shall not apply.

**13. Alternate Directors**

Each director shall have as his alternate for the purposes of these Articles the alternate appointed by him pursuant to Clause 6.17 of the SPAA . Regulation 65 of Table A shall not apply.

**14. Delegation of Directors' Powers**

The Directors may delegate any of their powers (with power to sub-delegate) to committees consisting of such person or persons (whether directors or not) as they may resolve. Any such committee shall exercise only powers expressly delegated to it and shall comply with any regulations imposed on it by the directors. Regulation 72 of Table A shall be modified accordingly and references in Table A to a committee of Directors or to a Director as a member of such a committee shall include a committee established under this article or such person or persons.

**15. No Age Limit or Share Qualification**

No Director shall be required to retire or vacate his office, and no person shall be ineligible for appointment as a director, by reason of his having attained any particular age. No shareholding qualification for directors shall be required.

**16. Exclusion of Rotation Requirements and Other Provisions**

The Directors shall be the SPAA EC Members from time to time. Regulations 73 to 80 (inclusive) and the last sentence of regulation 84 of Table A shall not apply.

**17. Disqualification and Removal of Directors**

The office of a Director shall be vacated if he ceases to be a SPAA EC Member. Regulation 81 of Table A shall not apply.

**18. Directors' Gratuities and Pensions**

Regulation 87 of Table A shall not apply.

**19. Notice and Conduct of Board Meetings**

Notice of a meeting of the Directors shall be deemed to be properly given to a Director if it is given to him personally or sent in writing to him at his last known address or any other address given by him to the company for this purpose, or by any other means authorised in writing by the Director concerned. Notice shall be given in this manner to all Directors including any Director who is for the time being absent from the United Kingdom. A director may waive notice of any meeting either prospectively or retrospectively. All resolutions of the Board shall be made by unanimous vote of the Directors present or participating by conference telephone. In the case of an equality of votes, the chairman shall not have a second or casting vote. Regulation 88 of Table A shall be modified accordingly.

**20. Quorum for Board Meetings**

The quorum for meetings of the board shall be constituted by the attendance of the one I&C Member, one Large Domestic Member and one Small Domestic Member (each as defined in the SPAA) (or their alternates) in person or participating by conference telephone call throughout such meeting. Regulation 89 of Table A shall not apply.

**21. Participation in Board Meetings by Telephone**

All or any of the members of the board or any committee of the board may participate in a meeting of the board or that committee by means of a conference telephone call provided that participants acknowledge that they can speak to and hear each other. A person so participating shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is then situated.

**22. Resolution in Writing**

A resolution in writing executed by all the Directors or by all the members of a committee for the time being shall be as valid and effective as a resolution passed unanimously at a meeting of the board or, as the case may be, of the committee properly convened and constituted. The resolution may be contained in one document or in several documents in like form each executed by one or more of the Directors or members of the committee concerned. A resolution signed by an alternate Director need not also be signed by his appointor and, if it is signed by a Director who has appointed an alternate Director, it need not be signed by the alternate Director in that capacity. Regulation 93 of Table A shall not apply.

**23. Directors May Vote When Interested**

A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with the Act. Subject where applicable to such disclosure, a director shall be entitled to vote in respect of any contract or proposed contract in which he is interested and if he shall do so his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present. Regulations 94 and 95 of Table A shall not apply.

**24. Official Seal**

The company may exercise all the powers conferred by the Act with regard to having any official seal and such powers shall be vested in the Directors. Subject to the provisions of the Act, any instrument to which an official seal is affixed shall be signed by such persons, if any, as the directors may from time to time determine.

**25. Notices**

Any notice or other document may be served on or delivered to any member by the company either personally, or by sending it by post addressed to the member at his Registered address or by fax or telex to a number provided by the member for this purpose, or by leaving it at his Registered address addressed to the member, or by any other means authorised in writing by the member concerned. In the case of joint holders of a share, service or delivery of any notice or other document on or to one of the joint holders shall for all purposes be deemed a sufficient service on or delivery to all the joint holders. Regulation 112 of Table A shall not apply.

**26. Time of Service**

Any notice or other document, if sent by the Company by post, shall be deemed to have been served or delivered forty eight hours after posting and, in proving such service or delivery, it shall be sufficient to prove that the notice or document was properly addressed, stamped and put in the post. Any notice or other document left by the company at a Registered address otherwise than by post, or sent by fax or telex or

other instantaneous means of transmission, shall be deemed to have been served or delivered when it was so left or sent. Regulation 115 of Table A shall not apply.

## **SCHEDULE 5**

### **Possible Future Developments**

#### **1. Purpose of this Schedule**

The circumstances listed in this Schedule 5 have been identified by certain Parties as ones which may be capable of resolution by modification of this Agreement. The Parties, therefore, agree to investigate the following, and charge and request the SPAA EC to investigate these matters as a priority.

#### **2. Issues**

- 2.1 The incorporation of any part of the draft domestic code of practice into this Agreement.
- 2.2 The incorporation of any part of the draft industrial and commercial code of practice into this Agreement.
- 2.3 The incorporation of any part of the Review of the Gas Metering Arrangements project into this Agreement.
- 2.4 The issue of Gas transporters and other relevant parties who may hold a licence obligation to join the SPAA in the future, and to agree a working relationship with such parties.

**SCHEDULE 6**

**SPAA Products**

None.