

Gas Retail Governance

Decision Document

April 2004 94/04

Summary

In March 2004 Ofgem published its final proposals for a Supply Point Administration Agreement ("SPAA") aimed at improving upon the current governance arrangements of the gas retail market. Specifically, it is envisaged that the SPAA will provide governance for standard industry procedures, such as are contained within the RGMA Baseline documentation and the Domestic Code of Practice. This document summarises the views of respondents to the March 2004 final proposals and sets out Ofgem's conclusions.

Appended to this document are copies of the Section 23 Notices which have today been sent to gas supply and gas transportation licensees, consulting on the proposal to include a new standard condition within their respective licences, with the effect of requiring them to become parties to, and where appropriate comply with, the SPAA. The proposed modification to the gas suppliers' licence relates to Section C and will therefore only be applicable to domestic suppliers. However, for the avoidance of doubt, Ofgem will be encouraging I&C suppliers to accede to the SPAA on a voluntary basis. NGT and certain key suppliers have already signalled to Ofgem their intention to accept the proposed licence condition.

Ofgem consider that the implementation of SPAA would represent a significant improvement in the governance of the gas retail market. However, it must be recognised that effective governance can only be a means to an end goal of enhanced gas retail processes, particularly those related to consumer transfers. Much will depend on the continuing active engagement of participants in the SPAA procedures, in particular by bringing forward appropriate change proposals.

In order that the apparatus of SPAA may be in place immediately upon implementation and thereby in readiness for the RGMA go-live, Ofgem is also at this stage seeking the nomination of party representatives to serve as members of the SPAA Executive Committee ("SPAA EC"). Details are provided in Chapter 3. Nominations to the SPAA EC will be on a without prejudice basis, and will not in itself be regarded as implying acceptance of the proposed licence condition.

Taking into account the two Bank Holidays during May, the deadline for representations and objections to the Section 23 notices will be 2 June 2004. Subject to licensees accepting the proposals, it is Ofgem's intention to make the new licence conditions effective by 11 June 2004. Initial compliance with the licence conditions will be

discharged by accession to the SPAA. A pro-forma accession agreement is provided in Schedule 2 of the SPAA, which for reference is attached to this document. Accession agreements will be formally issued to relevant licensees in due course by Ofgem, which will be acting as provisional Secretary to the SPAA.

Participation in the SPAA will not be taken as agreement to any of the potential developments that may be progressed under SPAA, some of which are discussed in this document. All changes will be subject to consultation under the SPAA change control and, where appropriate, by Ofgem.

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1. Introduction

- 1.1. In August 2000 Ofgem established the Review of Gas Metering Arrangements (“RGMA”) project, which sought to facilitate competition in the provision of gas metering services. Of fundamental concern to the RGMA project was not only how to facilitate suppliers’ choice in the appointment of metering service providers, but how to ensure that the emergence of non-standard metering arrangements was not to the detriment of the already competitive gas supply market, for instance by introducing undue complexity and difficulties in the transfer of consumers between suppliers.
- 1.2. In July 2001, the consultation paper *‘Gas Supply Market: Change of supplier process and governance arrangements’* initially discussed the establishment of a gas suppliers’ agreement. This consultation paper was presented in two parts. Part I discussed the Change of Supplier process and the possible amendments to introduce the additional data that would be required as a result of increased competition in metering services. Critically, the identity of the meter provider must be known to the incoming supplier in order that they can make suitable arrangements, as they will no longer be able to assume that the meter is provided by the Gas Transporter (“GT”). Part II discussed the issues surrounding the governance of the new metering arrangements and other supply market processes, and discussed options for addressing those issues.
- 1.3. Respondents to the July 2001 document were overwhelmingly in favour of the establishment of new governance arrangements that take a holistic approach to retail market processes. For the avoidance of doubt, in this context the retail market is considered to be the sale of gas and associated services to the end consumer, whether they are a Domestic or I&C consumer.
- 1.4. There was also a strong preference amongst respondents for much of the project management and drafting of the agreement to be undertaken by industry, with Ofgem facilitating rather than leading. To this end, the Gas Forum established the Gas Industry Governance Group (“GIGG”). The GIGG has met, and continues to meet, regularly in order to progress the development of the agreement, which has come to be known as the Supply Point Administration Agreement (“SPAA”).

- 1.5. In December 2001 Ofgem published its *Summary of responses and way forward* document, which recognised the need for appropriate governance arrangements, with scope strictly limited through a standard licence condition that would require licensees to become parties to the SPAA and provide a means of ensuring compliance.
- 1.6. In June 2003 Ofgem published a *Further Consultation* document, which included a draft licence condition, potentially to be applied to Domestic and I&C Suppliers, as well as the draft SPAA document. It was proposed, at this stage, that GT involvement and the potential migration of supply point administration (“SPA”) provisions from Network Codes could form a second phase in the development of the SPAA, to follow implementation of the RGMA procedures, which at that time was expected to be November 2003.
- 1.7. Many respondents to the June 2003 document identified the need for GTs to be party to SPAA, either at its inception or shortly thereafter. Common themes amongst respondents who were of this view were the need to ensure seamless end to end governance of metering arrangements (recognising that, to an extent, GTs retain an interest in and influence over metering arrangements) and a greater degree of certainty that the changes earmarked as a second phase of development for SPAA would actually happen.
- 1.8. Responses also led Ofgem to conclude that I&C suppliers were reluctant to accept a licence condition mandating accession to SPAA, given that in contrast to Domestic suppliers and GTs they were under no licence obligation to participate in the activities intended to be governed by SPAA, namely the provision of metering services. However, it was widely recognised that I&C suppliers have commercial incentives to ensure that the RGMA Baseline remains relevant to the needs of that sector, and it was suggested that voluntary accession would provide an appropriate and pragmatic means of achieving I&C participation.
- 1.9. Given the views of respondents, together with the opportunity provided by the deferment of RGMA implementation from November 2003 to July 2004, Ofgem considered it appropriate to try to tackle the outstanding issues in advance of issuing the Section 23 Notices that seek to bring the licence modifications, and therefore the SPAA, into effect. To this end, Ofgem published its *Final Proposals*

in March 2004. Other than minor amendments to SPAA itself, that document centred upon who should be party to the agreement. In particular, it proposed that I&C Suppliers' participation should be on a voluntary basis, and that all GTs should be a party from the outset, effectively bringing forward the second phase of development.

- 1.10. This document summarises the views of respondents to the final proposals document, discusses Ofgem's conclusions and sets out the anticipated way forward.

Timetable

- 1.11. Subject to the outcome of Ofgem's proposals to introduce new licence conditions, the indicative timetable for the implementation of SPAA is as follows:

2 June 2004	Deadline for objections and representations on statutory consultations.
By 11 June 2004	Ofgem makes licence modifications and designates the SPAA under new Standard Condition 34A of the Gas Suppliers Licence. Ofgem (as acting Secretary) issues accession agreements to all gas suppliers and transporters (Domestic Suppliers and GTs being obligated to accede, I&C suppliers invited to accede on a voluntary basis). Nominated representatives appointed members of the SPAA EC appointed (if necessary following election)
14 June 2004	Change proposal raised with the effect of migrating RGMA Baseline and associated documents into the SPAA as a new schedule
12 July 2004	RGMA implementation

Views invited

- 1.12. Responses to the issues raised in this document, including objections and representations on the statutory consultations, should be sent to:

Nick Simpson
Director, Modifications
Office of Gas & Electricity Markets
9 Millbank
London
SW1P 3GE

E-mail: industrycodes@ofgem.gov.uk

Contact

- 1.13. If you have any questions about the issues raised in this document please contact either Bryony Sheldon (020 7901 7174, industrycodes@ofgem.gov.uk), Jonathan Dixon (020 7901 7354, industrycodes@ofgem.gov.uk) or Nigel Nash (020 7901 7065), nigel.nash@ofgem.gov.uk who will be happy to discuss them with you.

2. Responses to the March 2004 document and Ofgem's views

- 2.1. The June 2003 consultation document established the fundamentals of the SPAA, with respect to the areas that would be governed and the way they would be governed. Respondents were generally in favour of the agreement and its intent, though there was a large degree of concern over the proposed requirements to participate. The paper proposed a licence condition to mandate the accession of both Domestic and I&C suppliers, with GTs not being involved initially, but to come on board as a second phase of development following implementation of the RGMA project.
- 2.2. Therefore, rather than the next step being a decision document as originally intended, Ofgem sought to address the concerns raised by respondents by developing final proposals, published in March 2004. This chapter summarises responses to those final proposals and provides Ofgem's conclusions.

Voluntary I&C accession

- 2.3. In recognition of the fact that the SPAA will govern activities which I&C suppliers are currently under no licence obligation to provide, and so as not to extend the scope of current regulation, Ofgem proposed not to require I&C suppliers to accept a licence condition mandating their accession to SPAA, but instead to actively encourage accession on a voluntary basis.

Respondents views

- 2.4. Opinion on Ofgem's proposal not to introduce a licence condition upon I&C suppliers was mixed, although of those commenting, the majority were in favour. The move was welcomed as a positive development by some respondents; notable amongst them, three I&C suppliers. Others offered more qualified support, commenting that it is a reasonable compromise representing a pragmatic, rather than ideal, way forward.
- 2.5. Other respondents did not support Ofgem's proposal, and generally felt that voluntary accession for I&C Suppliers was a diminution in the robustness of the

SPAA and raised concerns both over the likely degree of I&C participation and the potential for divergence in governance arrangements. Some respondents queried whether it is appropriate for parties who have acceded voluntarily to have the same rights and obligations as those mandated by licence.

Conclusion

- 2.6. Ofgem remains of the view that it is appropriate to recognise the differing scope of regulation currently applicable to the I&C and domestic sectors. To have ignored the concerns of I&C suppliers and pressed ahead with a licence modification would have been contrary to Ofgem's preferred approach of regulating prescriptively only where really necessary, and moreover could have jeopardised the implementation of SPAA in any form.
- 2.7. Ofgem continues to believe that it will be in the best interests of I&C suppliers and the industry as a whole if such suppliers are party to the SPAA agreement. Ofgem will therefore actively encourage participation by I&C suppliers, though ultimately their decisions will be based upon the tangible benefits of participation. This is discussed further below.
- 2.8. Ofgem disagrees with the respondent who suggested that parties acceding on a voluntary basis should not have the benefit of the same rights under SPAA. This could be counter-productive, potentially dissuading the accession of otherwise active participants and undermining the equitable principles of SPAA.
- 2.9. Whilst the absence of a licence condition may not have a long-term impact upon the levels of I&C participation in SPAA (subject to alternative incentives to accede being available) it will mean that licence enforcement cannot be a means of ensuring compliance of I&S suppliers with the RGMA Baseline or any other provision of SPAA. However, given that I&S suppliers are under no licence obligation to provide metering services, it would in any event have been inappropriate to enforce a given manner in which they could be provided. To the extent I&S suppliers may be required to comply with any non-RGMA provisions of SPAA, alternative remedies should be sought.

Full I&C participation

- 2.10. Ofgem recognised within its final proposals that, without mandatory licence requirements, the participation of all I&C suppliers in SPAA cannot be guaranteed. Ofgem therefore asked for comments on how full participation could be encouraged.

Respondents views

- 2.11. Respondents on the whole agreed that 100% participation cannot be guaranteed without a licence condition. However, some respondents believed that there would be sufficient commercial incentives for I&C suppliers to accede voluntarily, specifically with respect to development on RGMA. There were also several suggestions on how reassurance could be provided to I&C suppliers to encourage participation, a common one being the development of straightforward exit arrangements. Another respondent emphasised the need for a non-prohibitive charging structure.

Conclusion

- 2.12. As discussed in Chapter 4, the RGMA Baseline is as relevant to the I&C sector as to the domestic, and it is likely to be imperative to I&C suppliers that it remains so. Logically, there can only be one Baseline and, as discussed throughout this document, that Baseline will be a schedule of the SPAA. Therefore, if I&C Suppliers wish to be in a position to raise changes to and otherwise influence the development of the Baseline, the SPAA will be the appropriate vehicle to achieve this.
- 2.13. As stated in the June 2003 document, Ofgem considers that the long term direction of SPA services (i.e. looking beyond the current price control period) must be determined by all stakeholders inclusively, in particular suppliers, to whom the service is provided, and all GTs, who have obligations to provide the service. This cannot appropriately be achieved under existing Network Code governance, from which suppliers are excluded and is specific to a single network. Ofgem consider that the SPAA will be the most appropriate forum for such discussions, going forward. This will not preclude incremental short-term

developments to the SPA services being progressed through the individual Network Codes, as appropriate.

- 2.14. Taking into account the areas discussed above, perhaps together with the potential, as yet unforeseen, opportunities for improvement that the SPAA may provide, Ofgem consider that there are sufficient reasons for those I&C suppliers with an active interest in the management of industry change to participate in SPAA.
- 2.15. Furthermore, whilst 100% participation of relevant parties would be desirable, this is in many respects an ideal that is rarely achieved in practice. Scarcity of resource, awareness, or even interest, often limits the number of active participants in a given process. For instance, Ofgem consultation documents do not attract responses from all those persons potentially impacted by any given proposals. However, this is not necessarily problematic, as a sufficiently broad sample can be used to adequately gauge the opinions of the industry as a whole (or a particular sector thereof). Therefore, Ofgem does not consider that the absence of 100% participation would necessarily preclude SPAA from being the structure under which industry-wide changes are discussed and decided upon.

The proposed GT condition

- 2.16. In the June 2003 document, Ofgem stated that it welcomed the principle of GT accession, but envisaged that it would form a second phase of development for the SPAA, to follow implementation of the RGMA, which at that time was scheduled to be November 2003. However, consideration of responses to that document, together with the opportunity provided by the deferment of RGMA implementation to July 2004, caused Ofgem to reassess this view, and in March 2004 we proposed that GTs be involved from the outset of SPAA. In order to ensure full participation and compliance with the SPAA it is proposed that GTs accept a licence condition to that effect.

Respondents views

- 2.17. The proposal to introduce a GT licence condition was widely welcomed as a positive development by the majority of respondents. A few respondents commented that if GTs are to be parties to SPAA, it would also be appropriate for them to contribute to its funding. Comparisons were drawn with the Master

Registration Agreement (“MRA”), to which electricity distributors contribute one third of the costs. Others however agreed with Ofgem’s proposal that GTs should not be required to fund SPAA until such time as it is able to deliver tangible benefits upon which some approximation of value could be placed. The need to understand better the cost implications of participation in SPAA was also a common concern from the four GTs which submitted responses.

- 2.18. One supplier disagreed with the extension of SPAA to GTs, with their objection seeming to be based upon concerns over the possible migration of SPA provisions from Network Code.

Conclusion

- 2.19. Ofgem notes that some iGTs in particular have requested further clarity on the likely implications of SPAA upon their costs and funding arrangements. To a large extent this will be subject to the nature of change proposals that are raised, but any material impact upon iGT costs can reasonably be expected to be limited to the adoption of metering and/or SPA related changes. This is on the understanding that as and when it becomes appropriate for GTs to contribute to the operational costs of SPAA, it would be on the same per Meter Point Registration Number (“MPRN”) as suppliers, and therefore not of material significance to iGTs.
- 2.20. Since the introduction of the Relevant Price Controls¹ (“RPCs”) upon iGTs on 1 January 2004, they are required to levy separate charges for metering services if they wish to recover the costs of providing such services. Unlike NGT, iGTs are not subject to metering tariff caps and therefore not precluded from passing through any additional costs reasonably incurred. Wherever practicable, it would seem sensible for suppliers to be made aware of any additional costs that may result from a given change proposal and take this fully into consideration when voting upon it.
- 2.21. In contrast to metering, SPA services are captured with the activities funded via transportation charges and subject to the iGTs RPC. iGTs would therefore not

¹ Although iGTs are not individually subject to Price Controls, since 1 January 2004 their changes must track those that would be levied by NGT for providing the equivalent service, subject to a floor and ceiling based on a fixed percentage band.

have the same ability to pass through any additional costs of SPA related changes. However, this will be the case whether the change originates from the SPAA or is raised as a modification to the iGTs own Network Code. Until such time as it may be considered appropriate to migrate SPA provisions from Network Codes, if at all, any change to SPA prompted by the SPAA will require commensurate change to the Network Codes, and such change will need to demonstrably facilitate the relevant objectives of the Network Code, as currently. Therefore, while SPA remains a price controlled activity of the GT, the treatment of costs and criteria for change being approved will remain the same.

- 2.22. If it would provide additional comfort, it may be appropriate to codify within the SPAA its relationship with the Network Codes and their Relevant Objectives. This can be achieved by any SPAA party successfully raising a suitable change proposal.
- 2.23. In the longer term, in order to address concerns over the lack of appropriate incentives to develop SPA services suitably, NGT and Ofgem have agreed to review the funding of its SPA services, which may lead to proposals for alternative methods of funding in preparation for NGT's next price control review. Given the consequential impact upon iGTs own funding arrangements, it would be appropriate for them, and indeed the suppliers to whom these services are provided, to be involved in the development of any detailed proposals in this area. Ofgem will provide further details in due course.

Interaction with the Network Code

- 2.24. In its March 2004 paper Ofgem stated its view that it will be crucial for the effective governance of the gas retail market for the SPAA and Network Code(s) to operate in tandem, being complementary to each other, rather than duplicating provisions, leaving gaps or contradicting each other. Ofgem considered that the relationship between the two arrangements would be particularly important in respect of the end-to-end governance of the gas metering market and, should it be considered appropriate, to facilitate the orderly migration of SPA provisions from Network Code(s) to the SPAA. Ofgem also stated that its role in the decision making process should ensure that the two

documents remain synchronised, but that it would be desirable for the change procedures of both to be closely aligned.

Respondents' views

- 2.25. Several respondents recognised the need for complementary changes to SPAA and Network Code(s) to be progressed in parallel. Three respondents commented that it would be appropriate to obligate GTs to raise changes to their own Network Code which keep them in line with the SPAA, with one suggesting this obligation should be placed in the GT licence itself, rather than the SPAA. Another stated that SPAA parties should not be able to raise change to Network Code unless they are also a signatory to that document. They went on to note that, in any case, metering provisions are to be removed from NGT's Network Code into separate metering contracts.
- 2.26. One respondent suggested that the work undertaken by the GT workgroup should be allowed to reach a formal conclusion, and offered to chair future meetings to this end. Another suggested that the issue of interaction between codes should form part of a more fundamental review of gas governance.

Conclusion

- 2.27. Ofgem remains of the view that it will be desirable, if not essential, for the change control procedures of the two governance regimes to be closely aligned and cognisant of development which may impact upon each. Ofgem considers that its role as decision maker for all Network Code changes and all mandatory SPAA changes will, as far as practicable, ensure that parties to either agreement are not placed under obligations which they are unable to discharge or would place them in breach of another obligation elsewhere. However this should be considered a backstop and it would be preferable for any discrepancies between provisions, or other issues arising, to be identified and dealt with at the earliest opportunity, for instance in joint working groups, before they are submitted to Ofgem for its decision.
- 2.28. Ofgem agrees with those respondents who suggest that where a change to SPAA may impact upon Network Code, or indeed vice versa, a complementary change or modification should be raised in order to facilitate the two remaining aligned. Ofgem also agrees that obligating the GTs themselves to undertake this activity

may be a sensible solution, especially as they should be best placed to determine the consequential impacts upon their own Network Codes of a given SPAA change proposal. Ofgem consider that such an obligation could be adequately captured with the SPAA itself, and entirely in keeping with the intent of the agreement, rather than by inclusion in the GT licence. For the avoidance of doubt, the scope of such an obligation could only be as far as raising an appropriately complementary modification/change proposal, it is not wholly within their gift to ensure it is subsequently approved and implemented.

Content of Licence Condition(s)

- 2.29. The draft suppliers' licence condition was first consulted upon in the June 2003 document, though the final proposals document of March 2004 was the first opportunity for any party to comment upon the proposed GT licence condition. With both licence conditions, Ofgem has sought to adopt provisions with which parties are already familiar and are well-proven. In particular, the drafting replicates existing licence provisions relating to the electricity MRA and the GTs' Network Codes.

Respondents' views

- 2.30. Whilst some respondents were wholly supportive of the style and content of the proposed licence conditions, others either stated, or made comments which lead us to believe that, the intention behind some of the text is ambiguous or has otherwise been misunderstood. For instance, certain clauses have been taken to be obligations that each licensee must individually be in a position to discharge, rather than being a function of the SPAA itself. Others felt that the suppliers licence was overly prescriptive and could be simplified.
- 2.31. One respondent suggested that there should not be a suppliers' licence condition in facilitation of SPAA at all, but instead the obligations should be placed upon NGT specifically.

Conclusion

- 2.32. The objectives set out in the licence condition are not intended to be licence obligations in themselves, but criteria against which Ofgem may determine the suitability of proposed changes that are brought to it for a decision, i.e. is the

proposal within scope of the agreement. This principle is well established in industry codes such as the GT Network Codes, whereby any proposed modification must facilitate the furtherance of the Code relevant objectives in order for it to be accepted. It is hoped that the adoption of drafting more in keeping with that of Standard Condition 9 of the GT licence, i.e. reference to 'relevant objectives', together with this decision document will provide further clarity on this.

- 2.33. Some respondents have also questioned the intent behind the reference to '*the efficient discharge of the licensee's obligations under [its] licence*' as a relevant objective of the agreement. Again, those familiar with the operation of Network Code will recognise this provision. Essentially, it means that where appropriate (where within scope), a licensee may seek to utilise the SPAA as a means of discharging its licence obligations, where the co-operation of other parties is required, for instance in the maintenance of common documents, standard procedures for transference of metering arrangements etc. By contrast, the maintenance of documents which do not require the agreement of other parties would be unlikely to fall within the scope of SPAA. It has not been created as a tool to assist individual parties with their own administration tasks.

Consumer Representation

- 2.34. The document suggested that energywatch should have access to relevant documentation, attend meetings (including the SPAA EC) and be able to raise change proposals, but should not have the ability to vote or raise appeals.

Respondents views

- 2.35. Opposition to the proposed level of consumer representation was expressed much more strongly than in the 2003 consultation, with some domestic suppliers who are otherwise wholly supportive of SPAA suggesting they would be unwilling to accept the SPAA as drafted. In particular respondents raised concerns over the confidential nature of certain issues that may appropriately be discussed at the SPAA EC. It was also felt that the provisions as drafted would increase risk to parties' reputations. Suggested remedies put forward by respondents included a requirement for the consumer representative to sign a confidentiality agreement (as would ordinarily be applied to a party to the SPAA

under Clause 11) or, to the extent it is different, an agreement in advance that it will not “*seek publicity*” from its involvement with the SPAA. Another suggestion was for change proposals to be accompanied by what would effectively be a business case.

Conclusion

- 2.36. Ofgem remains of the view that the principle of consumer representation on the SPAA is correct. Essentially it will facilitate the agreement being operated in a manner consistent with the interests of consumers. Ofgem is keen to ensure that improvements to the customer transfers procedures are carried forward not only to reduce the costs upon suppliers (and ultimately consumers) but to improve the transfer experience. Ofgem consider that views expressed by the consumer representative, based upon the hard evidence of complaint statistics, will facilitate SPAA parties’ efforts being targeted upon those areas likely to have the greatest benefit.
- 2.37. However, having reviewed the functions of the SPAA EC Ofgem does not consider that it is necessary for the consumer representative to have a role upon it. Specifically, the functions of the SPAA EC are to do with the operational aspects of the agreement, such as the appointment of a service provider etc, rather than directing the policies which are given effect by the SPAA. This latter function will be carried out by the SPAA Forum, to which the consumer representative will continue to have full access.
- 2.38. Ofgem is also cognisant that the SPAA EC will have a role in hearing applications for, and granting, derogations against particular obligations that a party, or parties, may not reasonably be able to discharge during a given time period. If parties genuinely consider that approaching the SPAA EC for a derogation will expose them to negative press coverage, it reduces the likelihood of problems being discussed and tackled in an appropriate manner at an early stage, which would not only diminish the effectiveness of the SPAA, but be generally detrimental to the industry. Given the above, the SPAA drafting has been amended accordingly.
- 2.39. Ofgem consider there is merit in the idea of change proposals being accompanied by sufficient rationale to make the case for it. It would not only

deter spurious change proposals, but provide parties with firmer basis upon which to make their decisions about accepting or rejecting a proposal. Moreover, it would be consistent with existing procedures, such as under the Network Code, where the party raising a proposal is required to provide a reasonable level of justification for it, paying particular attention to the Relevant Objectives. However, this requirement to provide a reasonable level of justification must be applied equally to all proposals. Attendees of the last meeting of the constitution sub-group of GIGG were also generally in favour of this approach.

SPAA drafting

- 2.40. The drafting of the SPAA has already benefited from several consultations, either by Ofgem or under the auspices of the GIGG. However, the marked up version provided as an appendix to the March 2004 document was the first opportunity for parties to comment on the limited amendments Ofgem had made following consideration of responses to the June 2003 document, and in particular the inclusion of GTs.

Respondents views

- 2.41. Having already been consulted upon, most of the comments on the SPAA itself were confined to minor drafting errors. Several respondents noted that as Ofgem is now proposing that I&C accession be voluntary, the exit arrangements need to be amended such that they are not predicated upon the party being in default or otherwise leaving the market.
- 2.42. One respondent expressed its opposition to the electronic voting mechanism proposed under SPAA as being too regimented and having significant cost implications.
- 2.43. One respondent suggest that the GT constituency should be split between large and small GTs. Another suggested that I&C suppliers do not have sufficient significant voice on SPAA proceedings and suggested either a separate constituency, populated by I&C only suppliers (to the exclusion of those with mixed portfolios) or weighting based on a measure of throughput rather than on a per MPRN basis.

Conclusion

- 2.44. Whilst Clause 10 of the SPAA already provided exit arrangements, these were drafted when it was envisaged that all parties would be mandated by licence. Most of the provisions therefore related to a party leaving the market and/or having their licence revoked. It was therefore appropriate to amend this clause to reflect the orderly egress of a party who has acceded voluntarily, but is not in a position of default.
- 2.45. In order to facilitate the above, whilst making the minimum change to the original text, the constitution group agreed with Ofgem's suggestion to amend Clause 10.10 such that it differentiates between I&C suppliers who need only provide notice and settle their account and domestic suppliers who must remain a party in order to comply with their licence. To the extent that the nominal shareholding would need to be transferred, this is provided for under Schedule 4 of the SPAA.
- 2.46. With respect to the concerns expressed over the electronic voting mechanism, the only provision to which this seems to relate is Clause 9.9, which refers to votes being submitted by email. If this is provision to which the respondent refers, Ofgem considers email to be a perfectly valid, cost-effective means of communication.
- 2.47. The voting mechanism and constitution of the SPAA were developed and agreed upon by the GIGG, following lengthy discussion. The GIGG was and continues to be an open forum, to which any interested party may attend, whether they are a prospective signatory to SPAA or not. Given that it was agreed at the outset that Ofgem's role is to facilitate the introduction of SPAA rather than to lead it, and being cognisant of the level of discussion already held on the SPAA constituencies, Ofgem has not considered it appropriate to amend or otherwise influence the drafting provided, other than to reflect the accession of GTs. This too is wholly in line with the constituencies of other categories of party.
- 2.48. Furthermore, Ofgem consider the current structures to be equitable, particularly when considered in their entirety rather than piecemeal. The two-tier voting arrangements mean that whilst I&C suppliers have a relatively small weighted vote on a per MPRN basis, they by far outnumber domestic suppliers in number,

which is to their advantage for the second threshold of 65% of parties needing to approve a change. For instance, should the 'big six' suppliers wish to make a change impacting upon the I&C constituency, to which I&C-only suppliers were opposed, it would not satisfy the 65% threshold if even four I&C-only suppliers registered a vote of rejection.

- 2.49. There SPAA also contains an appeals mechanism, as set out below. Should I&C Suppliers consider a change proposal they have raised to have been unreasonably rejected, they could raise the matter with the SPAA Forum and if still not satisfied, onto Ofgem. Over and above this, all changes which carry mandatory status must be approved by Ofgem. In addition to having regard to the relevant objective of the SPAA, Ofgem's statutory duties now include a requirement to conduct Impact Assessments, which should identify the costs and benefits of a given proposal where practicable.
- 2.50. Of course, absent a licence condition and without alternative remedies being in place, the extent to which anything applicable to I&C suppliers can be other than on a voluntary or elective basis is debatable. Adoption of changes with such status would therefore be at the I&C suppliers discretion.
- 2.51. Although a measure of throughput may be an appropriate means of determining weighted voting upon issues where it has a direct relevance, Ofgem is not convinced this is necessarily the case for the matters that may be included within SPAA. Notwithstanding the above, it is open to any party to propose amendments to the constituencies or voting mechanism which they consider to enhance decision making process and ensure equitability.
- 2.52. At the request of attendees to the GIGG meeting of 30 April 2004, a review of funding arrangements has been added to the list of possible future developments, as set out in Schedule 5 of the SPAA.
- 2.53. Typographical errors have been amended where identified.

Appeals

- 2.54. The SPAA was drafted with provisions enabling parties to appeal decisions. For instance, decisions of the SPAA Executive Committee may be appealed to the wider SPAA Forum. Equally, decisions of the SPAA Forum may be appealed to

Ofgem. This right of appeal is in addition to Ofgem's role in being the final decision maker on all mandatory provisions.

- 2.55. The purpose of the appeal mechanism is to ensure that no decision, albeit having been approved under SPAA as being in the interests of the wider community, should unfairly prejudice the interests of a given party. In recognition of the concerns of niche players, Ofgem extended the provisions for appeals to include class actions, enabling an individual party or group of parties to appeal against a decision which is considered to prejudice unfairly a class of party to which they belong, even if they are not individually discriminated against.

Respondents views

- 2.56. The introduction of 'class actions' was welcomed by the three respondents who commented on it, though one asked for additional clarity as to which groups it may be applicable.
- 2.57. Two respondents suggested that there should be a right of appeal against an Ofgem decision on SPAA changes to an independent external body, specifically the Competition Commission.

Conclusion

- 2.58. Ofgem does not consider it necessary or appropriate for its decision under SPAA to be subject to appeal to an external body, as is envisaged for existing codes such as the Network Code and Balancing and Settlement Code. In particular, whereas all changes to the Network Code and Balancing and Settlement Code must be approved by Ofgem, under SPAA only those relating to mandatory provisions will come to Ofgem for final approval, with the majority expected to be voluntary or elective and therefore decided upon solely by the parties themselves.
- 2.59. Ofgem also understand that appeals against its decisions will be restricted to instances where Ofgem has gone against the majority view of parties, as may be represented in a panel recommendation where appropriate. By contrast, change proposals under SPAA must pass the twin voting thresholds of 65% of MPRNs and 65% of parties in favour before being submitted to Ofgem for final approval.

Furthermore, should Ofgem decide to reject a change proposal, this would not in itself preclude it from being adopted on a voluntary basis. Where the change proposal is considered to have a significant impact upon SPAA parties or other persons, Ofgem will also conduct a Impact Assessment which will inform its decision.

- 2.60. Notwithstanding the above, and as noted by one respondent, parties will be free to provide representations upon the issue of appeals to the Department of Trade and Industry when it consults on the secondary legislation necessary to implementation an appeals mechanism, following enactment of the Energy Bill.

3. The SPAA Executive Committee

- 3.1. The SPAA Executive Committee ("SPAA EC") will be made up of seven people, representing each of the categories of party to the agreement, namely I&C Suppliers, Domestic Suppliers and Gas Transporters. The constitution of the SPAA EC and the roles that will be assigned to it are set out in Clause 6 of the SPAA.
- 3.2. Appointment to the SPAA EC will be on an annual basis, with all parties being able to nominate a representative of their organisation to be a member. Where the number of nominees for a particular category exceeds the number of available seats, membership will be subject to an election procedure. The document currently refers to the appointment of SPAA EC members taking effect on the 1st November of each year.
- 3.3. At its last meeting of 23 April 2004, the GIGG constitution group confirmed to Ofgem its preference that the full election procedures laid out in the SPAA are followed as far as practicable, rather than simply proceeding by appointing executive members for an interim period, as set out under Clause 6.17. Therefore, in order that the SPAA EC can be in place prior to the RGMA implementation date, Ofgem is asking for nominations to the SPAA EC by no later than 7 May 2004. This will be on a without prejudice basis, and therefore will not be taken as acceptance of the proposed licence condition, for which the deadline to respond is 2 June 2004. Should any category of parties fail to provide a SPAA EC member, Ofgem may make such appointment (see Clause 6.16). On that basis, the timeline for appointment of SPAA EC members will be as follows:

7 May 2004	Ofgem (as acting Secretary) receives nominations to each of the seven seats of the SPAA EC.
11 May 2004	Ofgem circulates the list of nominees to all parties. If the number (and categories) of nominees match the requirements of the SPAA EC they will be appointed at this stage, otherwise parties will be invited to vote for their favoured candidate.

25 May 2004	Parties submit their choice of representative to Ofgem.
27 May 2004	Having calculated the outcome of the vote (in accordance with Clause 6.8) Ofgem notifies the successful candidates of their election to the SPAA EC and calls the first meeting.
11 June 2004	(giving at least 10 working days notice) first possible meeting date of the SPAA EC.

Interim arrangements

- 3.4. In order to facilitate its operation, the SPAA EC may appoint a Secretary whose duties include the keeping of SPAA EC minutes, circulation of papers etc, as set out in Clause 6.27 of the SPAA. In addition, the SPAA EC may appoint a person or persons known as the Secretariat, who may assist the Secretary, the SPAA EC and any sub-committee of it in the fulfilment of their duties. For the purposes of managing change to the SPAA, the Secretariat shall also fulfil the role of Change Control Administrator.
- 3.5. Whilst much work has been done by the procurement sub-group of the GIGG, it will not be practicable for contracts (covering the provision of such services as outlined in the roles of Secretary and Secretariat) to be issued and signed until such time as SPAA is in effect and capable of recovering costs, as set out in Clause 8. Moreover, the appointment of such persons must be carried out by the duly elected party representatives on the SPAA EC.
- 3.6. Once one or more suitable service providers have been selected, there will need to be a reasonable period of notice before the contract comes into effect. Ofgem understand from the procurement group that they anticipate being in a position to sign contracts by the week commencing 2 August 2004, to come into effect on, or around, 1 September 2004.
- 3.7. It is reasonable to assume that in the period immediately following implementation of the SPAA a significant amount of business must be carried out by the SPAA EC, not least of all the overseeing of RGMA related change proposals following the insertion of the of the RGMA Baseline as a schedule on or around 12 July 2004. Given the necessary delay in the appointment of a

service provider, Ofgem is therefore willing to provide the administrative assistance to the SPAA EC that would ordinarily be undertaken by the Secretary or Secretariat.

- 3.8. Whilst Ofgem is willing to provide assistance to the SPAA EC for this interim period, it will be important to ensure that it in no way prejudices its role as appellate body and decision maker for mandatory changes. Ofgem will therefore not be making any of the decisions associated with the roles of Secretary or Secretariat, (such as the rejection of incomplete Change Proposals under Clause 9.6), but will defer all such decisions to the SPAA EC.
- 3.9. **Parties wishing to nominate a person or person to serve on the SPAA EC are invited to submit such nominations to Bryony Sheldon (bryony.sheldon@ofgem.gov.uk) by 7 May 2004.**

4. The RGMA Baseline

Introduction

- 4.1. In order to facilitate competition in the provision of gas metering services, whilst at the same time ensuring no detriment to the already competitive gas supply market, it was considered necessary to develop industry standard procedures for the transmission of appropriate metering data. This has been achieved through the Review of Gas Metering Arrangements (“RGMA”) project, established August 2000. The procedures and data flows developed under the RGMA project are contained within the document known as the RGMA Baseline. Full details of the RGMA project are available on the Ofgem website at: www.ofgem.gov.uk

Governance of RGMA

- 4.2. The SPAA will have two key functions with respect to the RGMA Baseline. First, it is the means by which the Baseline and associated documentation will be maintained, in line with market developments and in order to assure its ongoing relevance. Secondly, it is intended that the SPAA will provide the means of enforcing compliance with those aspects of the Baseline considered mandatory, but which are not themselves already obligations under licence or statute.
- 4.3. For the avoidance of doubt, the Baseline should not seek to duplicate or enforce those obligations that are already in existence, such as the Gas Meters (Information on connection and disconnection) Regulations but merely to refer to, and provide a means of complying with, such obligations. The Baseline may however seek to fill the gaps in current governance, such as the transfer of data between suppliers and/or between agents.
- 4.4. It is envisaged that the Baseline and its associated appendices will be inserted in their entirety as a Schedule into the SPAA. A sub-group of the GIGG is currently developing a change proposal to this effect. Whilst this change proposal is anticipated to be raised shortly after the inception of SPAA, Ofgem considers it would be appropriate for its implementation date to be consistent with that of the RGMA procedures themselves, namely 12 July 2004. Until that time, existing change procedures should continue.

- 4.5. To date, changes to the Baseline have been managed through a Change Control Board (“CCB”) set up under the auspices of the Industry Metering Separation & Implementation Forum (“IMSIF”). Ofgem understands that it is the intention of the CCB to carry out a sweep up of all the changes that have been identified as necessary during testing, to be incorporated into a handover version of the Baseline by the end of June. It is this version of the document that will be inserted into SPAA.
- 4.6. Several potential parties to the SPAA have commented, and Ofgem would agree, that it would be sensible as far as possible for the expertise that has been accumulated by the CCB to be retained. However, as the current Terms of Reference of the CCB - and therefore its mandate - expire upon RGMA implementation it will be necessary to, in effect, reconstitute the CCB as a sub-group of, and reporting to, the SPAA EC or SPAA Forum. SPAA parties may wish to consider proposing a change to this effect.
- 4.7. Furthermore, it would no longer be appropriate for Ofgem to chair the CCB in order to avoid conflict with, or in any way fettering, its role as decision maker and appellate body under SPAA. Equally, the CCB would not have a decision making role, but make recommendations to the SPAA EC which is duly empowered either to pass a resolution or submit the recommendation(s) to a vote.
- 4.8. It may also be sensible for there to be a short moratorium on non-essential changes, in order that resources of SPAA and its parties can be focused upon the unforeseen changes that may be identified once the RGMA processes operate in a live environment and are considered to be absolutely necessary. Depending on the nature of these changes, it may be appropriate for them to be afforded urgent status and followed shortened procedures, at the SPAA EC’s discretion. Once parties are confident that the prevailing Baseline is sufficiently robust, with no more, or at least a manageable number of, unforeseen changes being identified, it is likely that parties will seek to bring forward the suite of potential changes to the Baseline that have to date been considered desirable rather than absolutely necessary, and have therefore been kept on hold by the CCB.

I&C Suppliers

- 4.9. Whilst I&C suppliers do not have the same obligation to provide metering services as domestic suppliers, they generally do so as a matter of course in providing a good service to the consumer. That said, it was in the I&C market that competitive metering services first emerged, led by consumers who were willing to explore (and pay a premium for) non-standard arrangements in order to procure a service that better suited their needs, for example a shortened lead time for the completion of meter works or simply more information on their gas consumption. I&C suppliers may therefore have greater experience of, and commercial drivers for, dealing with meters provided by parties other than the GT.
- 4.10. The costs of replacing large I&C meters, both in terms of engineering costs and the downtime to the consumer's operations, can be exponentially greater than for domestic meters, making it all the more desirable for incoming suppliers to make suitable arrangements for the ongoing provision of the in-situ meter. Whilst in some cases this could be achieved with bespoke arrangements, these should be the exception and for any kind of significant volumes automated procedures are required. It is therefore no surprise that I&C suppliers have been instrumental in the development of the RGMA Baseline. Indeed, the additional procedures and data requirements of the I&C market account for much of the complexity of the Baseline.
- 4.11. Ofgem is keen to ensure that the integrity of the RGMA Baseline is maintained, as being the definitive document on competitive metering procedures and data. This means the document must evolve in line with developments in the market and offer the appropriate degree of flexibility. Any divergence from the established Baseline may ultimately lead to degradation in the desired levels of standardisation and subsequent interoperability between suppliers. In short, Ofgem consider that there should only ever be one Baseline.
- 4.12. Given the above, Ofgem consider that there are sufficient incentives for I&C Suppliers, or at least those who intend to offer a metering service to their customers, to accede to the SPAA on a voluntary basis, if only to retain their influence over the Baseline and its ongoing relevance to their business.

Independent Gas Transporters

- 4.13. A common concern amongst Independent Gas Transporters appears to be the degree to which they may be required to conform to the Baseline. Although iGTs made a significant contribution to the early development of RGMA and were not excluded from proceedings at any stage, the work necessarily focused on the separation of NGT's metering and transportation businesses and the opening up to metering competition on its network. Perhaps consequentially, the involvement of iGTs in the RGMA to date has, whilst understandably, been less than ideal. However, in Ofgem's opinion it would be misguided to assume that the RGMA programme does not, and will not, impact upon iGTs.
- 4.14. The iGTs engagement with competitive metering providers (i.e. sourced other than through themselves) has thus far been largely confined to I&C consumers. However, Ofgem would envisage that at some point Domestic suppliers will inevitably want to offer a uniform level of service to all of their customers, rather than having to discriminate on the basis of the network they happen to be connected to. They may seek to achieve this through the SPAA, or if that option is not available, through metering contracts and/or the Network Code(s).
- 4.15. Ofgem therefore consider it absolutely vital that the iGTs engage in the RGMA discussions sooner rather than later, and ensure that their own issues and requirements are given due consideration. It is widely acknowledged that iGTs cannot reasonably be expected to build the same kinds of systems as developed by NGT, as they simply do not have the volumes and commensurate finance to justify doing so. However, the principle behind the RGMA project was not for all parties to share the same systems, but to ensure the necessary levels of interoperability between parties and the different systems they operate. There is no reason why iGTs (or any other party for that matter) cannot be fully compliant with the intent of the RGMA Baseline by passing the standard data, in the standard format, at the standard point in proceedings, but using a lower-tech, lower cost solution that is adequate for lower volumes.
- 4.16. Ofgem consider that it would be far preferable for iGTs to engage proactively in the process and reach agreement with suppliers on something that is mutually acceptable, even if it mean building some additional flexibility into the RGMA Baseline, than continually reacting to market developments and having little

opportunity, or being too late, to influence them. Given that all GTs would be fully enfranchised within the SPAA decision making process, with changes impacting upon GTs needing to be agreed by the GT constituency (and where mandatory, have satisfied the twin tests of both 65% of MPRNs and 65% of parties as well as Ofgem's final determination), Ofgem consider that in many respects iGTs would have more protections against 'inappropriate' changes being made than they currently do under their own Network Codes.

The NGT metering contract

- 4.17. Ofgem is aware of concerns amongst suppliers that there may currently be some discrepancies between the provisions of the Baseline and the NGT 'Rainbow' agreement. To the extent that such discrepancies relate to the voluntary aspects of the Baseline this should not be of concern. Indeed, the Baseline was only intended to provide the fundamentals, upon which service providers and suppliers could build value added services and associated data-flows by commercial agreement. However, Ofgem would be extremely disappointed if any of the data-flows identified within the Baseline as being mandatory have not been adopted, especially as NGT have been instrumental in the development of the Baseline, with two seats on each of the development groups specifically to ensure that the divergent views of the transportation and metering businesses were appropriately represented.
- 4.18. Notwithstanding the above, it is clear that suppliers cannot be placed in a position whereby they have an obligation under SPAA which they are not in a position to discharge through their key metering service provider. Therefore, to the extent that such discrepancies exist, it will be necessary that they are identified in advance of the RGMA Go-live and dealt with accordingly. It appears that this could be done in two ways. Firstly, data-flows which are identified in the RGMA Baseline as being mandatory but are not reflected in the NGT Rainbow manual could be downgraded from mandatory to voluntary status. Secondly, the mandatory status could be retained, but the SPAA EC, having been made aware of the situation, could grant a derogation to all parties for a given period. This would allow for a thorough verification of the need, or otherwise, for each mandatory provision and, where appropriate, necessary change requests to the Rainbow manual to be made.

- 4.19. Suppliers have emphasised to Ofgem the importance of ensuring that the NGT metering contracts continue to be compliant with the RGMA, both in its current form and in line with any changes that are made to it. Ofgem concurs with this view.
- 4.20. It would be wholly inappropriate for NGT, given its position in the gas metering market, to have a veto over the changes reasonably requested by suppliers. However, it is also acknowledged that while NGT's metering activities remain subject to a price control it may be exposed to increased costs resulting from such change that, in contrast to a competitive metering provider, it has limited ability to recover by amending its charges.
- 4.21. Ofgem has recently issued a consultation document² on proposed licence amendments in facilitation of metering competition. Among the proposals are; an amendment to NGT's licence, placing a duty upon it to develop and maintain its metering business on reasonable terms, and; amendments to allow NGT to depart from its published statement of metering charges where it is considered necessary in order to allow it to develop its metering business on reasonable terms.
- 4.22. Should these proposals to amend licences be accepted, it would ensure that where suppliers feel that NGT is unreasonably refusing to make a requested change (or for that matter, NGT feel suppliers are being unreasonable in their requests) they will be able to refer the matter to Ofgem for a decision. Given that the metering contracts will be outside of the ordinary regulatory scope, such a route may not otherwise have been available. Furthermore, providing scope to amend the prevailing metering charges would allow NGT additional flexibility to provide services it may not otherwise have been appropriately funded to carry out.
- 4.23. Regardless of the above, it will be essential to ensure that the inability (or unwillingness) of NGT to adopt a proposed change should not hinder the rest of the industry from benefiting from improvements to the Baseline. Therefore, in instances where suppliers agree to a change to the Baseline, but are unable to

² Competition in the Provision of Gas Metering Services: Licence Amendments – Final Proposals. April 2004.

get it incorporated into the NGT metering contract, it should still be implemented, albeit on a voluntary basis.

Conclusion

- 4.24. Ofgem is confident that all of the necessary apparatus will be in place in good time to provide robust governance of the RGMA Baseline. However, its success will ultimately depend upon the continuing efforts of its parties, particularly those elected to positions upon the SPAA EC.

Appendix 1 List of Respondents

- 1.1 The companies which sent non-confidential responses to the Gas Retail Governance: Final Proposals document are listed below. With the exception of any sections marked confidential, these responses are available on the Ofgem website: www.ofgem.gov.uk

BP
Centrica
EdF
energywatch
GdF
Gemserv
Innogy
National Grid Transco
Powergen
Scottish Power
Scottish & Southern
Statoil
Shell
The Gas Forum
Total

Appendix 2 Copies of Licence Modification Notices

Notice under Section 23(3) of the Gas Act 1986

The Gas and Electricity Markets Authority ("the Authority") hereby gives notice pursuant to section 23(3) of the Gas Act 1986 ("the Act") as follows:

1. The Authority proposes to modify all of the gas suppliers licences granted or treated as granted under section 7A of the Act by adding standard condition 34A containing paragraphs 1 to 6, which will have the effect described in paragraph 4 of this notice.
2. The reasons why the Authority proposes to make these licence modifications and their effect were published by the Authority in the following documents:
 - a. *Gas supply market: governance arrangement. Summary of Responses and Way Forward, December 2001*
 - b. *Gas Retail Governance: Further Consultation, June 2003*
 - c. *Gas Retail Governance: Final Proposals, March 2004*
 - d. *Gas Retail Governance: Decision Document, April 2004*
3. The proposed standard condition 34A is set out in the schedule to this notice.
4. In summary, the effect of the modifications now proposed is to add standard condition 34A which states the scope relevant and objectives of a supply point administration agreement and includes a requirement for domestic suppliers to become parties to and thereafter to comply with the supply point administration agreement.
5. A pro forma that relevant licence holders may wish to use in order to register a statutory objection is appended to this notice.
6. A copy of the proposed modifications and other documents referred to in this notice are available (free of charge) from the Ofgem Library (telephone 020 7901 1600) or on the Ofgem website (www.ofgem.gov.uk).
7. Any representations or objections with respect to the proposed modifications may be made on or before 02 June 2004 and should be addressed to Nick Simpson, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to industrycodes@ofgem.gov.uk

John Neilson

Managing Directors, Corporate Affairs

Duly authorised on behalf of the Authority 30 April 2004

Condition 34A. The Supply Point Administration Agreement

1. The licensee shall, in conjunction and co-operation with all other suppliers, prepare, maintain and be a party to a form of agreement to be known as the Supply Point Administration Agreement, as may be designated by the Authority for the purposes of this condition generally, being a document
 - (a) designed to facilitate achievement of the relevant objectives set out in paragraph 4; and
 - (b) including the modification procedures required by paragraph 5 and the matters required by paragraphs 6 and 7.
2. The licensee shall comply with the relevant provisions of the Supply Point Administration Agreement.
3. The Supply Point Administration Agreement shall be an agreement made between:
 - (a) on the one part, the licensee and all other gas suppliers to whom this condition applies; and
 - (b) on the other part, such other persons as are necessary parties, as determined by parties to the agreement.
4. The relevant objectives referred to in paragraph 1(a) are:
 - a) the development, maintenance and operation of an efficient, co-ordinated and economical change of supplier process;
 - b) the furtherance of effective competition between gas suppliers and between relevant agents;
 - c) the promotion of efficiency in the implementation and administration of the supply point administration arrangements; and
 - d) so far as is consistent with sub-paragraphs (a), (b) and (c), the efficient discharge of the licensee's obligations under this licence.
5. The Supply Point Administration Agreement shall contain:

- a) provisions for admitting as an additional party to the Supply Point Administration Agreement any person who accepts the terms and fulfils the conditions (each as specified in the Supply Point Administration Agreement) on which accession to the Supply Point Administration Agreement is offered;
- b) provisions for the licensee to refer to Ofgem for determination, whether of its own motion or as provided in the Supply Point Administration Agreement, any dispute which shall arise as to whether a person seeking to be admitted as a party to the SPAA has fulfilled any accession conditions; and if Ofgem determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the Supply Point Administration Agreement;
- c) arrangements enabling modification of the Supply Point Administration Agreement:
 - (i) so as to better facilitate the achievement of the relevant objectives as set out in paragraph 4; and
 - (ii) following consultation with the parties, or representatives of the parties, to that agreement and other interested parties.
- d) provisions (which shall be approved in advance by Ofgem) by virtue of which specified parts of the Supply Point Administration Agreement shall not be capable of modification without the prior approval of the Authority;
- e) provisions enabling parties to the Supply Point Administration Agreement to appeal against any proposed modification of the Supply Point Administration Agreement to the Authority for determination; and
- f) provisions for the Authority to be furnished with a copy of any modification which is made.
- g) provisions for a copy of the Supply Point Administration Agreement and accompanying schedules to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy.

6. The licensee shall take all reasonable measures to secure and implement (consistently with the procedures applicable under or in relation to the core industry documents to which it is party (or in relation to which it holds rights in respect of amendment)), and shall not take any steps to prevent or unduly delay, such changes which are appropriate in order to give full and timely effect to any modification which has been made to the Supply Point Administration Agreement.

Notice under Section 23(3) of the Gas Act 1986

The Gas and Electricity Markets Authority ("the Authority") hereby gives notice pursuant to section 23(3) of the Gas Act 1986 ("the Act") as follows:

1. Authority proposes to modify all of the gas transporters licences granted or treated as granted under section 7 of the Act by altering standard condition 14 (currently not used) to bring it into use and by including in it paragraph 1, which will have the effect described in paragraph 4 of this notice.
2. The reasons why the Authority proposes to make these licence modifications and their effect were published by the Authority in the following documents:
 - a. *Gas Retail Governance: Further Consultation, June 2003*
 - b. *Gas Retail Governance: Final Proposals, March 2004*
 - c. *Gas Retail Governance: Decision Document, April 2004*
3. The proposed modification to standard condition 14 is set out in the schedule to this notice.
4. In summary, the effect of the modification now proposed is to amend standard condition 14 by including a requirement for gas transporters to become parties to and thereafter comply with the supply point administration agreement.
5. A pro forma that relevant licence holders may wish to use in order to register a statutory objection is appended to this notice.
6. A copy of the proposed modification and other documents referred to in this notice are available (free of charge) from the Ofgem Library (telephone 020 7901 1600) or on the Ofgem website (www.ofgem.gov.uk).
7. Any representations or objections with respect to the proposed modifications may be made on or before 02 June 2004 and should be addressed to Nick Simpson, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to industrycodes@ofgem.gov.uk

John Neilson

Managing Directors, Corporate Affairs

Duly authorised on behalf of the Authority

30 April 2004

Condition 14. The Supply Point Administration Agreement

1. The licensee shall become a party to and thereafter comply with those provisions of the Supply Point Administration Agreement relevant to it.

Appendix 3 The Supply Point Administration Agreement

- 3.1 The attached document constitutes the final version of the SPAA, which Ofgem intends to designate for the purposes of Standard Condition 34A of the Gas Suppliers Licence as soon as that condition comes into effect. No further changes will be made to this version of the document, whether material or otherwise, until such time as the SPAA change control procedures are in place, when they may be progressed accordingly. A marked up version showing the alterations made since the document was submitted to Ofgem in March 2003 is available of request.



SPAA

Dated

April 2004

The Parties as named herein

- and -

SPAA Limited

Supply Point Administration Agreement

Version 1.0

Release date April 2004

This copy of the SPAA is provided to enable the user to make copies of this document but only for the purpose of a copy being given to such personnel within the user's company as is necessary for the user's company to operate and supply or transport Gas within the United Kingdom. It is a condition of this licence that copies of the SPAA made in accordance with this licence may not be distributed for any other purpose, and each copy will be destroyed when the person possessing such a copy no longer needs such copy to fulfil the purpose set out above.

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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 st 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 nd 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 th May 02		Renumbered, all clauses referenced, Ofgem's changes added	All	N/A
D 0.8	23 rd 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 th September 02		Herbert Smith redraft following consultation with SPAA Team and GIGG Members	Incidental and Clause 9	N/A
D 1.0	17 th January		Herbert Smith redraft of clause 9 and incidental	Primarily Clause 9	N/A

Version	Date of Release	Change Proposal Number	Change Proposal Title	Affected Clauses/Schedules	Effective Date
	03		clauses following consultation with SPAA Team.		
D.1.1	3 rd 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.	
D.1.2	February 2004		Ofgem redraft following consideration of responses to consultation	Various Clauses	

THIS AGREEMENT is made on day of 2004

BETWEEN:

- (1) **THE PERSONS** whose names, registered numbers and registered or principal offices are set out in Parts 1 to 4 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 [to be inserted] of the Gas Suppliers Licence and condition [to be inserted] of the Gas Transporters Licence provide respectively that each Supplier and each Transporter is required to be a Party to and comply with the provisions of this Agreement;
- (B) Each Supplier and each Transporter 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:

"Act"	means the Gas Act 1986 as amended by the Gas Act 1995 and the Utilities Act 2000;
"Accession Agreement"	means an agreement in the form set out in Schedule 2;
"Affected Party"	has the meaning given to that term in Clause 12.1;
"Affiliate"	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;
"Agreement"	means this Supply Point Administration Agreement the Schedules, Annexes and Appendices thereto;
"Application for Derogation"	has the meaning given in Clause 14.2;
"Authority"	means the Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000;
"Change Control Administrator"	means the person appointed by SPAA EC pursuant to Clause 9.3;
"Change Proposal"	means a notice in writing from any Party or Parties in accordance with Clause 9, proposing an amendment to this Agreement or to any of the SPAA Products;
"Change Report"	has the meaning given to it in Clause 9.11;
"Change Voting Date"	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;
"Competent Authority"	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;
"Confidential Information"	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;
"Contract Manager"	means a person appointed by each Party pursuant to Clause 15.1;

"Consumer"	means any person supplied or requiring to be supplied with Gas at any Premises by a Supplier;
"Data Protection Act"	means the Data Protection Act 1998;
"Defaulting Party"	has the meaning given in Clause 10.1;
"Designated Agreements"	means: <ul style="list-style-type: none"> (i) this Agreement; (ii) the Network Codes and any agreements entered into by a Party pursuant to the Network Codes; (iii) any other agreement specified as a Designated Agreement from time to time by SPAA EC; and (iv) any agreement which the Authority from time to time approves as a Designated Agreement;
"Directive"	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;
"Disclose"	means disclose, reveal, report, publish or transfer and "Disclosure" shall be construed accordingly;
"Dispute"	has the meaning given to that term in Clause 13.1;
"Disputing Party"	has the meaning given to that term in Clause 13.2;
"Domestic Supplier"	means a Party who is entitled to make Domestic Supplies and who is described in Part 2 of Schedule 1;
"Domestic Supply"	means a supply of Gas to premises which is taken wholly or mainly for domestic purposes;
"Effective Date"	means the date of this Agreement;
"Elective Register"	has the meaning given to that term in Clause 5.10;
"Elective"	means a Clause(s) of and/or a Schedule(s) to (or any part(s) thereof) this Agreement which a Party, may elect to comply with pursuant to and in accordance with Clauses 5.7 to 5.9 (inclusive);
"Elective Schedule"	has the meaning given to that term in Clause 5.6;

"energywatch"	means the Gas and Electricity Consumer Council established by section 2 of the Utilities Act 2000;
"Event of Default"	has the meaning given to that term in Clause 10.1;
"Extra Votes"	has the meaning given to that term in Clauses 6.9 and 6.11;
"Financial Year"	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 st 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;
"Force Majeure"	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;
"Forum Chairman"	has the meaning given to that term in Clause 7.16;
"Gas"	has the meaning given in Section 48(1) of the Act;
"Gas Suppliers Licence"	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;
"Gas Transporter"	means a Party who is entitled to transport gas and who is described in Part 4 of Schedule 1 and "Transporter(s)" shall be construed accordingly;
"Gas Transportation Database"	means the database of information (including on MPRNs) held by each holder of a Gas Transporters Licence;
"Gas Transporters Licence"	means a licence to transport Gas granted by the Authority pursuant to section 7 or 7(4) of the Act;
"Group of Domestic Suppliers"	means a group of Domestic Suppliers and their Affiliates who are also Parties and Domestic Suppliers;
"Group of Gas Transporters"	means a group of Gas Transporters and their Affiliates who are also Parties and Gas Transporters;
"Group of Industrial and Commercial Suppliers"	means a group of Industrial and Commercial Suppliers and their Affiliates who are also Parties and Industrial and Commercial Suppliers;

"Group of Parties"	means a group of Suppliers or Transporters and their Affiliates who are also Parties, provided that any Affiliates who are not Suppliers or Transporters shall be excluded and for the avoidance of doubt where the phrase Group of Parties in a category of Parties is used only those Affiliates who are in the same category of Parties shall be included in the group;
"I&C Supplier Member"	has the meaning given to that term in Clause 6.3.1;
"I&C Supply"	means a supply of Gas to a Consumer 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);
"Industrial and Commercial Supplier"	means a Party who is entitled to make I&C Supplies and who is described in Part 3 of Schedule 1;
"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);
"Large Domestic Supplier Member"	has the meaning given to that term in Clause 6.3.2;
"Large Domestic Supplier"	means a Domestic Supplier who has one (1) million or more MPRNs for Domestic Supplies Registered on all Gas Transportation Databases;
"Large Transporter"	means a Gas Transporter who has one (1) million or more MPRNs Registered on its Gas Transportation Database;
"Large Transporter Member"	has the meaning given to that term in Clause 6.3.4
"Mandatory"	means a Clause(s) of and/or a Schedule(s) to (or any part(s) thereof) this Agreement which a Party is obliged to comply with pursuant to Clauses 5.3, 5.4 and 5.5;
"Mandatory Schedule"	has the meaning given to that term in Clause 5.2;
"MPRN"	means a unique reference number that identifies each point on a pipeline system, the conveyance of Gas through which is authorised by a Gas Transporters 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;
"Network Code"	means the document prepared by the holder of a Gas Transporters Licence, pursuant to Condition 9(2) of a Gas Transporters Licence, that forms the basis of arrangements between the holder of a Gas

	Transporters Licence and the shippers whose Gas it transports, such as the Transco Network Code;
"New Party"	has the meaning given to that term in Clause 4.1;
"Operational Issue"	means an issue or problem perceived by one or more Parties arising out of the operation of the arrangements designed to facilitate 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 10.15;
"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;
"Shadow SPAA EC Member"	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;
"Small Domestic Supplier Member"	has the meaning given to that term in Clause 6.3.3;
"Small Domestic Supplier"	means a Domestic Supplier who has less than one (1) million MPRNs Registered on all Gas Transportation Databases;
"Small Transporter"	means a Gas Transporter who has less than one (1) million MPRNs Registered on its Gas Transportation Database;
"Small Transporter Member"	has the meaning given to that term in Clause 6.3.5;
"SPAA EC"	means the executive committee of SPAA Ltd constituted pursuant to Clause 6.3 consisting of the SPAA EC Members;
"SPAA EC Chairman"	means the person appointed as chairman of the SPAA EC pursuant to Clause 6.22;
"SPAA EC Member"	has the meaning given to that term in Clause 6.3;
"SPAA Forum"	means the body constituted pursuant to the terms of Clause 7;
"SPAA Products"	means those items listed in Schedule 6;
"Supplier"	means an Industrial and Commercial Supplier and/or a Domestic Supplier and "Suppliers" 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;
"Total Weighted Vote"	has the meaning given to that term in Clause 6.9;
"VAT"	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;
"Voluntary"	means a Clause(s) of and/or a Schedule(s) to (or part(s) thereof) this Agreement with which a Party is not obliged to comply;
"Voluntary Schedule"	has the meaning given to that term in Clause 5.17;
"Weighted Votes"	has the meaning given to that term in Clause 6.8; and

"Working Day"

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 includes 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 Party in a category of Parties (which does not hold a Gas Suppliers Licence or Gas Transporters Licence (as appropriate)) pursuant to a Mandatory Schedule, and the right of such Party to make an election in respect of an Elective Schedule, shall be subject to such Party holding a Gas Suppliers Licence or Gas Transporters Licence (as appropriate) in that capacity and SPAA EC notifying the Parties that it has received evidence of such licence pursuant to Clause 4.
- 2.2 A Party shall not be obliged to give a Party which does not hold a Gas Suppliers Licence or Gas Transporters Licence (as appropriate) the benefit of any provision in a Mandatory Schedule which relates to such category of Parties and shall not be under any obligation in relation thereto unless and until such Party holds a Gas Suppliers Licence or Gas Transporters Licence (as appropriate) 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 Party in a category of Parties 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 Parties.

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 10.13 and 10.14, 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 10.13 and 10.14, 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 Suppliers Licence in that capacity, or a Gas Transporter Licence in that capacity, or being in the process of application for a Gas Suppliers Licence in that capacity, or a Gas Transporters 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 Suppliers Licence or Gas Transporters 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 Suppliers Licence or Gas Transporters Licence to it (and in such a case shall send a copy of its Gas Suppliers Licence or Gas Transporters Licence (or other evidence thereof) to SPAA EC); or
 - (B) the refusal to grant a Gas Suppliers Licence or Gas Transporters 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, 5.5, 5.11, 5.12, 5.14, and 5.18, 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, or a Transporter 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.
- 5.5 A Transporter shall be obliged to comply with a Mandatory Schedule designated as Mandatory for Gas Transporters

Elective Schedules

- 5.6 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, or a Transporter as part of a Change Proposal (an "**Elective Schedule**").
- 5.7 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.
- 5.8 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.
- 5.9 A Transporter may elect to comply with an Elective Schedule designated as Elective for Transporters by notice in writing to SPAA EC.
- 5.10 The SPAA EC shall maintain and send to all Parties and the Authority each month a list of Parties ("**Elective Register**") who at such time have elected, pursuant to Clauses 5.7, 5.8 or 5.9, 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.
- 5.11 Once a Party has informed SPAA EC of its written election to adhere to an Elective Schedule and SPAA EC has entered such Party on the Elective Register in respect of such Schedule such Party 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.
- 5.12 Where a Party 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 Party from the Elective Register in respect of such Elective Schedule at the end of the time period specified in the Party's notice and, from such date, the Party shall not be obliged to comply with such Elective Schedule.
- 5.13
- 5.13.1 Any Party who is registered on the Elective Register may report ("**Reporting Party**") any suspected non-compliance with an Elective Schedule by another Party ("**Non Compliant Party**") to SPAA EC describing the non-compliance and requesting that such Party be removed from the Elective Register.
- 5.13.2 On receipt of such report SPAA EC shall notify the Non Compliant Party and shall invite such Party 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.
- 5.13.3 If the Party does not submit a report within the period referred to in Clause 5.13.2, SPAA EC shall remove such Party from the Elective Register at the end of such period.
- 5.13.4 If the Non Compliant Party submits a report within the period referred to in Clause 5.13.2:
- (A) SPAA EC shall hear representations from the Parties concerned;
- (B) following consideration of the Parties' reports and representations it shall resolve whether the Non Compliant Party should be retained on or removed from the Elective Register;
- (C) SPAA EC shall notify the Reporting Party and the Non Compliant Party of its decision pursuant to Clause 6.41;

- (D) if the SPAA EC resolves that the Non Compliant Party has not complied with an Elective Schedule, it shall remove such Party 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 Party 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 Party has complied with the Elective Schedule it shall not remove such Party from the Elective Register provided that the Reporting Party 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.
- 5.13.5 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 5.13.5 (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.
- 5.14 If the SPAA Forum dismisses any appeal made by the Non Compliant Party or allows any appeal made by the Reporting Party, SPAA EC shall remove the Non Compliant Party 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 Party or dismisses any appeal of the Reporting Party, SPAA EC shall not remove the Non Compliant Party from the Elective Register in respect of the non-compliance reported.
- 5.15 A Party 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 Party to the Elective Register in respect of such Elective Schedule, after having considered any report or representations from such Party. Such Party 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 Party's appeal, SPAA EC shall reinstate such Party onto the Elective Register within 5 Working Days of receipt of the SPAA Forum determination.
- 5.16 The right for a Party who is registered on the Elective Register to request removal of another Party from the Elective Register pursuant to Clause 5.13 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

- 5.17 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, or a Transporter as part of the Change Proposal (a "**Voluntary Schedule**").
- 5.18 A Voluntary Schedule shall contain statements of best practice and guidelines that a Party 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

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

Appeals

- 5.20 If a Non Compliant Party or Reporting Party appeals to the SPAA Forum pursuant to Clauses 5.13.4(D), 5.13.4(E) or 5.15, 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 Supplier Members**") appointed pursuant to Clause 6.7 by the Industrial and Commercial Suppliers;
 - 6.3.2 two SPAA EC Members (the "**Large Domestic Supplier Members**") appointed pursuant to Clause 6.7 by Large Domestic Suppliers
 - 6.3.3 one SPAA EC Member (the "**Small Domestic Supplier Member**") appointed pursuant to Clause 6.7 by Small Domestic Suppliers.
 - 6.3.4 one SPAA EC Member (the "**Large Transporter Member**") appointed pursuant to Clause 6.7 by Large Transporters.
 - 6.3.5 one SPAA EC Member (the "**Small Transporter Member**") appointed pursuant to Clause 6.7 by Small Transporters.
- 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 Parties 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 1st 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 Supplier 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 Supplier 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 Supplier Member;
 - 6.7.4 each Transporter who has (on the date of such proposal) one (1) million or more MPRNs Registered on its Gas Transportation Database may propose to the Secretary one (1) candidate for election as a Large Transporter Member;
 - 6.7.5 each Transporter who has (on the data of such proposal) less than one (1) million Registered on its Gas Transportation Database may propose to the Secretary one (1) candidate for election as a Small Transporter 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 Parties entitled to vote for a Large Domestic Supplier Member, a Small Domestic Supplier Member, an I&C Supplier Member, a Large Transporter Member, or a Small Transporter 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, only Industrial and Commercial Suppliers shall be entitled to vote for an I&C Member, only Large Transporters shall be entitled to vote for a Large Transporter Member, and only Small Transporters shall be entitled to vote for a Small Transporter Member.

- 6.8 Subject to Clauses 6.9, 6.10, and 6.11 the percentage of the vote to which each Party in a category of Parties 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 Party in a category of Parties shall be entitled, calculated to two decimal places;

"N" means either:

- (i) the number of MPRNs for which a Party in a category of Suppliers 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 21.2; or
- (ii) the number of MPRNs which a Party in a category of Transporters had Registered on its Gas Transportation Database in the month preceding the election which shall be determined from the Report submitted by that Transporter in respect of that month pursuant to Clause 21.2; or
- (iii) one

whichever is the greater.

"SN" means either:

- (i) the total number of MPRNs for which Parties in that category of Suppliers 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 Party pursuant to Clause 21.2; or
- (ii) the total number of MPRNs which Parties in that category of Transporters had Registered on their Gas Transportation Databases in the month preceding the election which shall be determined from the Report submitted in respect of each month by each such Party pursuant to Clause 21.2.

"X" means either:

- (i) the number of Parties in that category of Suppliers 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 Parties pursuant to Clause 21.2; or
- (ii) the number of Parties in that category of Transporters who had no MPRNs Registered on their Gas Transportation Databases in the month preceding the election which shall be determined from the Report submitted in respect of that month by such Parties pursuant to Clause 21.2.

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

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

6.9.2 where there are five or less Parties (not being in a Group of Parties) and Groups of Parties in a category of Parties, each such Party and Group of Parties 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 Party 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 Parties in the same category of Parties (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 Party in that category of Parties 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 Party in that category of Suppliers 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 21.2; or

- (ii) the number of MPRNs which the Party in a category of Transporters has Registered on its Gas Transportation Database in the month preceding the election which shall be determined from the Report submitted by that Transporter in respect of that month pursuant to Clause 21.2; or

- (iii) 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 Party in that category of Parties 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 Party pursuant to Clause 21.2;

"X" means either:

- (i) the number of Parties in that category of Suppliers 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 Party pursuant to Clause 21.2; or
- (ii) the number of Parties in that category of Transporters who had no MPRNs Registered on their 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 Party pursuant to Clause 21.2..

- 6.11 Where, as a result of the reallocation of Extra Votes in accordance with Clause 6.10, any Party in a category of Parties or Group of Parties in a category of Parties 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 Party in a category of Parties or Group of Parties in a category of Parties has more than 20% of the Total Weighted Vote, this Clause 6.11 shall be applied for each Party or Group of Parties in that category of Parties with more than 20% of the Total Weighted Vote.
- 6.12 The two I&C Supplier 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 Supplier Members from 1st November in that year. The two Large Domestic Supplier 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 Supplier Members from 1st November in that year. The Small Domestic Supplier 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 Supplier Member from 1st November in that year. The Large Transporter Member that receives the most percentage of the vote, or, where only one candidate is proposed, that candidate shall be appointed as the Large Transporter Member from 1st November in that year. The Small Transporter Member that receives the most percentage of the vote, or, where only one candidate is proposed, that candidate shall be appointed as the Small Transporter Member from 1st 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 Parties 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 Parties holding Weighted Votes in aggregate totalling more than 50% of the Total Weighted Vote of the category of Parties that appointed such SPAA EC Member, agree at any time, to 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 Parties 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 Parties. 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 Parties 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 Parties 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 Parties has decided upon an appointment and notified the Authority accordingly, to appoint a SPAA EC Member on behalf of that category of Parties or to remove any such person so appointed by the Authority.
- 6.17 From the Effective Date until 1st November 2004, SPAA EC Members shall be [] as the I&C Members, [] as the Large Domestic Members, [] as the Small Domestic Member, [] as the Large Transporter Member and [] as the Small Transporter 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 Parties 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 Party and has not had its Gas Suppliers Licence or Gas Transporters Licence (as appropriate) 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, one (1) Small Domestic Member, one (1) Large Transporter Member and one (1) Small Transporter 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, all Parties, and to the Authority.
- 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 a 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 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 Party 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, 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 5.13.4(E) or where a Party 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 Party or will cause that Party to be in breach of this Agreement, of its Gas Suppliers Licence or Gas Transporters Licence (as appropriate), 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 Parties that has appointed him under Clause 6.3.1 to 6.3.5;
- 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 Parties that has appointed him under Clause 6.3.1 to 6.3.5; or

- 6.45.5 a Party has its Gas Suppliers Licence or Gas Transporters Licence (as appropriate) (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 Parties that has appointed him under Clause 6.3.1 to 6.3.5;

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 Parties 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 Clause 11 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 Party 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 Clause 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 Party 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 5.13.4 or 5.15 or Clauses 9.15, 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 5.13.4 or 5.15 or Clauses 9.15, 9.16, 9.17 or 9.18;
 - 7.10.3 by SPAA EC, forthwith upon receipt of a requisition by 4 Parties; 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 Parties 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 7.3 and 7.4, the Authority and energywatch. 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, to all Suppliers, to Large Transporters, to Small Transporters or to all Transporters. 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 VI of this Agreement and/or Schedules 2, 3, or 4 or 5 shall be deemed to concern all Parties. Notice shall be given to all Parties, all SPAA EC Members, the Authority and energywatch. If any Party 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 Parties 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;

7.17.3 persons representing (including by proxy) Transporters together holding Weighted Votes totalling 50% or more of the Total Weighted Votes of Gas Transporters,

and in each case, the Weighted Vote of each Party in Clauses 7.17.1, 7.17.2 and 7.17.3 shall be determined by the Secretary from the Report submitted by each Party in respect of the previous month pursuant to Clause 21.2.

- 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 Parties, 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 Parties 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 7.22.6, 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 7.22.6, 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 7.22.6, 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 together casting Weighted Votes totalling 65% of the Total Weighted Vote of Industrial and Commercial Suppliers, in each case present or represented (including by proxy) at the meeting; or
 - 7.22.4 subject to clause 7.22.6, for a matter relating to the Transporters only, Transporters' representatives together casting Weighted Votes totalling 65% or more of the Total Weighted Vote of Transporters in each case present or represented (including by proxy) at the meeting; or
 - 7.22.5 subject to clause 7.22.6, for a matter relating to all Parties, Domestic Suppliers' representatives together casting Weighted votes totalling 65% or more of the Total Weighted Vote of Domestic Suppliers, Industrial and Commercial Suppliers' representatives together casting Weighted Votes totalling 65% or more of the Total Weighted Vote of Industrial and Commercial Suppliers, and Transporters' representatives together casting Weighted Votes totalling 65% of the Total Weighted Vote of Transporters, in each case present or represented at the meeting.
 - 7.22.6 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, Industrial and Commercial Suppliers' representatives together casting Weighted Votes totalling 65% of the Total Weighted Vote, and Transporters' representatives together casting Weighted

Votes totalling 65% of the Total Weighted Vote (provided in each case the category of Parties 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, 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, and 65% or more by number of representatives of Transporters (not being in a Group of Transporters) and Groups of Transporters' representatives (provided in each case the category of Parties has an interest in the resolution),

in each case present or represented (including by proxy) at the meeting.

- 7.23 On a vote, each Parties' representative shall be entitled to Weighted Votes of the Party whom it is representing, calculated in accordance with Clauses 6.8 to 6.11 (inclusive). A Party 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 Parties.
- 7.24 The Authority shall be entitled to send a representative to any SPAA Forum 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 be entitled to speak but shall not be entitled to vote .

Minutes

- 7.25 The Secretary shall prepare minutes of all meetings of the SPAA Forum and shall circulate copies of such minutes to all Parties, each SPAA EC Member, energywatch 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 a Party 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 Parties, each SPAA EC Member, energywatch and the Authority.

Appeals

- 7.26 Where a Party 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 Party, or (ii) will cause that Party to be in breach of this Agreement or (iii) will cause that Party to be in breach of its Gas Suppliers Licence or Gas Transporters Licence (as appropriate) or (iv) the Act, such Party may within 15 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 Party'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 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 31st 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 21.2, 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 21.2, 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 1st 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 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 4.2, Clause 4.4, Clauses 5.1 to 5.5 (inclusive), Clause 5.15,,Clauses 6.1 to 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, Clause 10 and Clause 14.

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, New Party or energywatch 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 15 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, SPAA EC, the Authority and energywatch 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, SPAA EC, the Authority and energywatch ("**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.

Urgent Changes

- 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 Suppliers Licence revoked or, the Authority provides for Section C or Section D of a Supplier's Gas Suppliers Licence to cease to have effect, or a Supplier, having acceded to this Agreement pending the grant of a Gas Suppliers Licence, notifies SPAA EC that its application for a Gas Suppliers Licence has not been granted;
- 10.1.8 a Transporter has its Gas Transporter Licence revoked, or a Transporter, having acceded to this Agreement pending the grant of a Gas Transporters Licence, notified SPAA EC that its application for a Gas Transporters 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 Parties that Party shall not be entitled to receive the benefit of any Mandatory Schedule relating to such category of Parties 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 Parties 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 Parties 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 Parties 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 Parties 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 Parties 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 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 and in the case of a Domestic Supplier, where:

10.10.1 it is no longer Registered for any MPRNs on any Gas Transportation Database; and

10.10.2 it no longer holds a Gas Suppliers Licence.

- 10.11 A Transporter 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:

10.11.1 it no longer has Registered MPRNs on its Gas Transportation Database; and

10.11.2 it does not hold a Gas Transporters Licence; and

- 10.11.3 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.
- 10.12 A Party shall cease to be a party to this Agreement with immediate effect if its Gas Suppliers Licence or Gas Transporters Licence (as appropriate) 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 Suppliers Licence ceases to have effect if the Authority provides that Section C of such Supplier's Gas Suppliers 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 Suppliers Licence ceases to have effect if the Authority provides that Section D of such Supplier's Gas Suppliers Licence shall cease to have effect.
- 10.13 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.
- 10.14 Where a Party ceases to be a party to this Agreement, Clauses 10, 11, 12, 13, 15 to 16 (inclusive), 20.1, 21 and 22 shall remain in full force and effect as regards the Party.
- 10.15 Subject to Clause 10.18 and 10.20 and save as provided in this Clause 10.15 and Clause 10.16 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:
- 10.15.1 physical damage to the property of that other Party, its officers, employees or agents; and/or
- 10.15.2 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.
- 10.16 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.
- 10.17 Subject to Clause 10.20 no Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to any other Party for:
- 10.17.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- 10.17.2 any indirect or consequential loss; or
- 10.17.3 loss resulting from the liability of such other party to any other person howsoever and wheresoever arising save as provided in Clauses 10.15 and 10.16.
- 10.18 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 or 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.

- 10.19 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:

10.19.1 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

10.19.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence or otherwise howsoever.

- 10.20 Each of the sub-clauses of this Clause 10 shall:

10.20.1 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

10.20.2 survive termination of this Agreement.

- 10.21 Each Party hereby acknowledges and agrees that each of the other Parties holds the benefit of Clauses 10.15, 10.16 and 10.17 for itself and as trustee and agent for its officers, employees and agents.
- 10.22 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.
- 10.23 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 V: 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 VI: 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 VII: 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 Suppliers Licence or Gas Transporters 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 Suppliers Licence or Gas Transporters 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 VIII: 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, energywatch 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 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 10.13 and 10.14, any Party may transfer its rights and obligations under this Agreement to any successor holder of its Gas Suppliers Licence (or part thereof) or Gas Transporters Licence (or part thereof) (as appropriate) provided that:

19.2.1 the Authority has approved the transfer of such Gas Suppliers Licence or Gas Transporters Licence (as appropriate) 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, 3 and 4 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

- 21.1 On request by SPAA EC each Party 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 Party in relation to any MPRN for which it is or has been Registered, or has Registered on its Gas Transportation Database (as appropriate) 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 Suppliers Licence or Gas Transporters Licence in the [28] months prior to that date;
 - 21.1.3 any software, hardware, data or information held by the Party or its agents where reasonably required by the auditor; and
 - 21.1.4 the Party's premises.
- 21.2 Each [Party] shall provide the [Secretary] [Secretariat] with a report detailing the number of MPRNs in respect of which, in the case of Suppliers, that Supplier was Registered, or in the case of Transporters, that Transporter has Registered on its Gas Transportation Database, on the [15th]day of each calendar month, taking into account all (if any) resolutions of objections which may change the number of such MPRNs on that [15th]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 21.2 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 20.

SCHEDULE 1

Part 1

PARTIES

Part 2

DOMESTIC SUPPLIERS

Address:

Fax:

e-mail:

Part 3

INDUSTRIAL AND COMMERCIAL SUPPLIERS

Address:

Fax:

e-mail:

Part 4

TRANSPORTERS

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] or [Transporter] 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] or [Transporter] 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] or [Part 4] of Schedule 1 of the Supply Point Administration Agreement as a [Domestic Supplier] and/or [Industrial and Commercial Supplier] or [Gas Transporter].
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 20 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

[To be inserted]

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 1st 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 4 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 therefore 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:

- 3.2.1 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
- 3.2.2 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 5.1.2.5 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 of this Agreement 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 of this Agreement 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 of this

Agreement by the Suppliers entitled to appoint the Small Domestic Member;

5.1.2.4 in the case of the removal of the Director who is the Large Transporter Member, severally and rateably in accordance with Clause 8.8 of this Agreement by the Gas Transporters entitled to appoint the Large Transporter Member;

5.1.2.5 in the case of the removal of the Director who is the Small Transporter Member, severally and rateably in accordance with Clause 8.8 of this Agreement by the Transporters entitled to appoint the Small Transporter 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, one (1) Small Domestic Member, one (1) Large Transporter and one (1) Small Transporter (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 Suppliers Licence or Gas Transporters licence (as appropriate) 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 Suppliers Licence or Gas Transporters Licence (as appropriate) 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, two shareholders must be representatives of Domestic Suppliers and two shareholders must be representatives of Transporters. Regulation 40 of Table A shall be modified accordingly. (The terms Industrial and Commercial

Suppliers, Domestic Suppliers and Transporters shall have the same meaning as that provided in the most recent version of the 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 (1) I&C Supplier Member, one (1) Large Domestic Supplier Member, one (1) Small Domestic Supplier Member, one (1) Large Transporter Member and one (1) Small Transporter 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 Review of the Gas Metering Arrangements project into this Agreement.
- 2.3 The incorporation of any part of the Supply Point Administration provisions from the Gas Transporter's Network Codes.
- 2.4 A review of the ongoing suitability of SPAA funding arrangements, in particular the appropriate level of contribution from GTs should SPA provisions be incorporated into the SPAA, recognising that this may also be subject to a separate and prevailing Price Control review by Ofgem.

SCHEDULE 6

SPAA Products

None.