Appendix

CHAPTER: One
Question 1: *Are there other key issues that we should be looking into in the non-domestic sector?*

We do not believe there are any other key issues.

Question 2: *What would stakeholders like to see on our website to help business customers and support a competitive supply market?*

There should be easily accessible information held on the Ofgem website warning customers of the dangers of rogue traders and how customers should deal with them. This would describe behaviour of companies that use deceitful tactics to secure sales, for example contacting customers with scare stories and untruths about their current contracts. This sort of information would be of value to customers who lack the experience or knowledge of the energy market who are the most likely to be targeted by this kind of campaign. Appropriate links could also be provided to the licensed suppliers list and sources of impartial information and advice for business customers (for example the CBI and the FSB).

Similarly, generic examples of 'best practice' could also be added to the website – this would be of benefit to consumers as it would set expectations against an appropriate benchmark, and it would be of benefit to both existing and new entrant suppliers in the non-domestic market as it would provide clarity as to the service required to meet both the letter and the spirit of the licence conditions.

CHAPTER: Two
Question 3: *Do stakeholders agree with our proposals to extend the scope of SLC 7A to include a wider small business definition, and do you agree with our proposed definition?*

Our view is that if the scope of SLC 7A is to be widened it should be to include **single site** customers only, falling within either of the following definitions:
European Commission small business definition

- < 50 employees
- ≤ €10m turnover or balance sheet

Consumption thresholds

- Electricity: Profile class 3 and 4 or
- Gas: ≤ 293,000 kWh

Ofgem has proposed a broader definition of micro-businesses to include gas consumption up to 293,000 kWh and electricity Profile Classes 3 & 4. An important distinction can be drawn between the small businesses that Ofgem intends to catch within the broader definition and the larger business that would also fall within the proposed definition - both in the types of customer covered and in the way these customers engage with the energy market.

We believe that Profile Class 3 and 4 would capture many multi-site customers. Such customers are much more sophisticated in their engagement with the market, will generally apply greater focus to secure the best price. They are able to use their larger aggregate demand to negotiate bespoke contracts which cover all of their sites, and on better terms than are available to smaller businesses. Similarly, these larger businesses are generally better equipped to deal with any contractual disputes that may arise without recourse to the type of consumer protection that is appropriate for micro-businesses, such as the Complaint Handling Regulations and escalation/ referral to the Ombudsman. To treat them as being similar to micro-business customers ignores this distinction and could affect their ability to negotiate suitable contracts (to their detriment).

Question 4: *Do stakeholders foresee significant costs or complications if we were to introduce our proposals? If so, please provide details and cost estimates.*

If Ofgem were to introduce its proposals we estimate that it would lead to an increase of around £100k per annum for postage costs and an increase in staff numbers to handle any queries arising.

Question 5: *Do stakeholders agree with our estimates on the number of extra businesses covered by our proposed definition?*

The estimate Ofgem has produced of the number of micro-businesses is based on all sites, whereas in reality a large number of these sites are part of groups who do not qualify under either the current or proposed criteria.

We would agree that the difference in numbers between micro and small business is comparatively low: an increase of 5.6 % if our single site definition in Question 3 were used.

Question 6: *Do stakeholders agree that we should review termination procedures and our current position that allows automatic rollovers?*

The recent changes that were brought in around the renewal and rollover of contracts have had the effect of making the process much more transparent, with improved customer understanding of their contract and the renewal process. Last year our contract rollovers generated written and verbal complaints in only 2 % of cases. Our view is that the process defined by SLC 7A works well and that the vast majority of customers understand it and are happy with it.

A bigger concern would be if contracts were not allowed to rollover, this would lead to a large number of customers being billed on Deemed Rates. These are necessarily higher than contract rates as demand forecasts for customers on Deemed Contracts are less certain (customers could leave at any time). Consequently, energy to satisfy this demand cannot be purchased in advance in the same way that is possible for contracted customers. This short-term purchasing strategy carries a different risk which must be priced into the rates charged to customers.

Prohibiting 12 month contract rollovers would therefore lead to a large number of dissatisfied customers (this is already an area which leads to complaints) and the charges could not be reduced retrospectively, as any contract negotiated after a customer has moved on to Deemed Rates cannot be backdated (due to the way energy is purchased).

Conversely, committing customers to a fixed term contract through the existing rollover process has the benefit of reducing the risk on suppliers' demand forecasts and lowers prices for consumers. This is a benefit to all market participants. Given that SLC 7A ensures that customers are informed of the renewal process and of their choices at the appropriate time, it is not clear to SSE where the scope for customers to be 'caught out' by contract renewals can arise. We keep our own contract and renewal materials under review to ensure they continue to meet our customers' expectations. We therefore do not understand the rationale behind the proposal to review the current rollover procedure.

Question 7: *Are there other clauses that stakeholders believe we should be reviewing, in light of our expanded definition proposal?*

We do not believe any further clauses should be reviewed.

CHAPTER: Three
Question 8: *Do stakeholders agree with the conclusions we have drawn?*

We would support any work that is done to monitor and enforce this area.

Question 9: *Do stakeholders agree that we do not need to make changes to SLC 14 governing objections to supply transfer for non-domestic suppliers?*

SLC 14 should be fit for purpose – subject to appropriate enforcement action being taken in cases where suppliers abuse the process.

Question 10: *Do stakeholders believe that we should publish our data relating to supplier objections on a regular basis?*

We would support the publishing of supplier objection data on a regular basis – improved transparency will improve trust and encourage customer engagement.

Question 11: *Are there other issues with the objections procedure, other than the obligations of the licence condition, which stakeholders consider need to be addressed?*

We are concerned about the high level of withdrawals by some suppliers and would support any monitoring of this by Ofgem. We are also concerned about the legality of winbacks. To help provide clarity in this area, we would welcome Ofgem issuing a clear statement on this behaviour. We believe there is a real issue caused by some suppliers offering reduced rates or cash incentives to customers who are under contract to a new supplier. This practice results in an erosion of customer trust in supply companies which ultimately damages competition.

Question 12: *Do suppliers who have voluntarily sent data have views on whether the data we currently ask for on a monthly basis needs to change and why?*

We are happy to provide Ofgem with data around the objection process.

CHAPTER: Four
Question 13: *Do stakeholders agree that the introduction of a new supply licence condition focussed on sales activities is a suitable method to prevent harmful sales and marketing activities in the non-domestic sector?*

Whilst we would support any regulation of the TPI market, we do not feel that a new standard licence condition putting the emphasis on the supplier to monitor the activities of the TPI is the right solution. Any regulating or monitoring of the TPI market should be done directly by Ofgem.

We do not think that the draft licence condition is workable. In particular we do not believe that it is appropriate to classify TPIs as suppliers' 'representatives' by virtue of commission payments alone. Furthermore, it is not clear that this measure would have the desired result: the SLC would cause some suppliers to have contracts in place with all TPIs they deal with to protect them as far as possible from the risk of a TPI misselling on their behalf. We would envisage that these more onerous contracts would cause more TPIs to choose to operate outside this area of the market (i.e. to avoid any relationships with suppliers). Meanwhile, other suppliers would continue to deal with TPIs on the same basis as they do now. The

overall impact would be damaging to competition, as we anticipate some suppliers would be less active in certain areas of the market. Under this scenario, some business customers would be no better protected than they are today, and all business customers would suffer if the range of tariffs advertised by TPIs comprised a smaller sample of the market.

We believe that the additional regulatory burden of the proposed licence condition (with Ofgem's suggested interpretation of the word 'representative') would constitute an additional barrier to entry/ expansion into this sector of the market.

In our view, the most effective means of ensuring that customers' interests are safeguarded would be for Ofgem to be granted the power to enforce the Business Protection from Misleading Marketing Regulations (BPMMR). This measure would provide Ofgem with the necessary powers to take enforcement action that leads to meaningful changes for the better whilst not adversely affecting the ability of small businesses to engage with the market. We intend to write to BIS in support of Ofgem's request for these powers.

Question 14: *Do stakeholders agree that this licence condition is necessary if Ofgem decides not to proceed with its Standards of Conduct proposals?*

The proposed sales and marketing licence condition SLC 7B would certainly be redundant if SLC 1A were introduced. We do not support the introduction of either licence condition.

We do not agree that it would be appropriate to attempt to regulate TPIs by proxy, using a licence condition which puts the burden onto suppliers – the most appropriate solution is for Ofgem to require that all TPIs are accredited, and to ensure that action is taken under the BPMMRs if required.

Question 15: *Do stakeholders consider the introduction of an accreditation scheme for TPI Codes of Practice will reduce harmful TPI activities across the whole market?*

In our view, an optional scheme would not be effective – if accreditation were compulsory for TPIs to operate in this market then it could help to reduce instances of bad practice.

Question 16: *What do stakeholders consider to be key criteria for an accreditation scheme for TPI Codes of Practice?*

An accreditation scheme would only work if it became mandatory for all TPIs and was monitored by a body with the appropriate powers to deal with any misdemeanours.

The Code of Practice (CoP) should explicitly cover the standards required by the BPMMRs, to highlight the areas of conduct that are currently of the greatest concern, both to SSE and other stakeholders.

The high level criteria that Ofgem have identified in Appendix 5 of the consultation document form a good starting point for stakeholder discussions of what is required for an effective CoP.

Question 17: *Do stakeholders believe it is necessary for TPIs to disclose their actual fee, or would making clear the fact that the customer is paying a fee for their services be sufficient?*

This is an area where increased transparency would help customers understand the market and could lead to improved customer engagement. SSE would be happy to be transparent over commission payments to TPIs if that became a condition of their accreditation.

CHAPTER: Five
Question 18: *Do you feel the revised SoCs will help to achieve our objectives?*

We strongly disagree with the introduction of legally binding SoCs via an overarching licence condition. There are various issues with the introduction of a principle based regulation of this type that would encompass all interactions between suppliers and consumers. We deal with a number of TPIs on various levels but could not accept being held responsible for all of their actions. Of particular concern is the interpretation of 'representative' – we strongly disagree with the classification of TPIs as suppliers' 'representatives' by virtue of commission payments alone. As noted elsewhere in our response, we believe this puts too onerous a burden on suppliers to account for the behaviour of TPIs or other agents acting on their behalf.

Although we have discussed this we also are unclear regarding Ofgem's approach to enforcement and whether it is really aligned with the requirements of principles based regulation: we would expect increased dialogue and co-operation between Ofgem and regulated companies under a principles based approach, and possibly even a two stage enforcement process. What we would not expect is a zero tolerance approach to compliance likely to result in a more adversarial relationship. Uncertainty on this point is also likely to result in the imposition of a greater than anticipated burden on suppliers and may have the unintended consequence of creating a barrier to entry or a disincentive to expansion.

We believe that the SoCs as drafted in the consultation are a fair reflection of how we run our business. We would favour making a public commitment to uphold SoCs (Option 2 in the consultation document) as that is consistent with our approach as a supplier and with our Building Trust initiative. Our preferred implementation would be to publish our own charter which could be issued in support of the energy contract (with all complaints assessed in reference to this charter). This would be consistent with the approach we take in the domestic market. This approach would allow suppliers the greatest scope to differentiate their service level within the market, whilst offering the benefits of a clear framework for self-regulation.

In considering this option we do not believe that Ofgem has fully acknowledged the significance of the reputational damage that would result from a supplier failing to live up to such a public commitment. It is very unhelpful for Ofgem to suggest that such a commitment would provide a less effective measure to raise standards than the proposed licence condition. It is also inconsistent with Ofgem's view on the efficacy of self regulation in the context of accredited codes of practice for TPIs, as stated in 4.12 of the consultation document. Furthermore, a self-regulated charter would be a living document containing Service Level Agreements that could be adapted as customer needs change.

We would emphasise that we believe the SoCs should only apply to the smaller end of the business market. Larger businesses generally include suitable Service Level Agreements in their contract negotiations.

Question 19: *Do you agree that the SoCs should be in a licence condition and enforceable?*

No.

Question 20: *Do you agree the revised SoCs should apply to all interactions between suppliers and consumers?*

No. Interactions between suppliers and customers should be self-regulated in accordance with a clear commitment to standards, preferably in the form of a Customer Charter. The requirements of the SoCs are the way we run our business now without the need for additional regulation.

We do not accept the additional burden that the SoCs put on suppliers to monitor TPI activities. Implementing the SoCs is likely to have the unintended consequence of damaging competition in this sector, either through the creation of an additional barrier to entry or by giving existing suppliers cause to review their own participation in this market. What is particularly unclear is how Ofgem expects suppliers to monitor TPI activity without putting contracts in place to govern all such relationships, or the steps that a supplier could take to monitor compliance of a broker which 'represents' more than one supplier (and possibly all suppliers) in the non-domestic market.

Question 21: *Do you have information regarding potential costs this may impose on suppliers?*

The absence of regulatory clarity – in particular the interpretation of the SoCs for enforcement purposes – is likely to lead suppliers to take a very cautious view when implementing the SoCs, with the increased costs of compliance ultimately being passed on to customers.

There would be a cost for any suppliers who felt that the only way to comply with the current proposals was to put contracts in place with all TPIs they deal with (despite Ofgem's assertion in Table 4.1 that imposing this requirement on suppliers would be a disproportionate intervention, we believe it would be a rational response to the introduction of the SoCs). These costs would cover drafting, negotiation and possibly monitoring of suitable contracts. Should TPIs have the option of dealing with suppliers who did not require such onerous contracts there is the risk of lost business for suppliers no longer able to compete in this market.

Question 22: *Do you think these proposals should apply to the whole non-domestic market, or only a sub-set of it, e.g. small businesses?*

The SoCs or our preferred option of a public commitment to a Customer Charter should only be considered for application to the small business end of the market. Larger customers agree individual SLAs with us as part of their contract. The SoCs as drafted replicate the type of protection that is offered under Consumer Protection Regulations. Larger businesses are generally better equipped to deal with any contractual disputes that may arise without recourse to the type of consumer protection that is appropriate for micro-businesses.

Question 23*: Given your answers to the questions above, do we still need the licence changes proposed elsewhere in this document?*

We do not support the introduction of SLC 1A. If it were introduced it would render draft SLC 7B redundant.

If (in the event that SLC 1A is abandoned) Ofgem wish to pursue the introduction of a sales and marketing licence condition, we believe that the drafting needs to change. As it stands, SLC 7B puts an unrealistic burden on suppliers to monitor TPI activity that we believe would damage competition.