

# **Energy Price Guarantee for Domestic Gas Consumers in Great Britain**

## **Scheme Document**

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## **1 Introduction and background**

- 1.1 This document (**Scheme Document**) is issued by the Secretary of State for Business Energy and Industrial Strategy to establish the Energy Price Guarantee Scheme for Domestic Gas Consumers in Great Britain (the **Scheme**).
- 1.2 In the current wholesale energy price environment, the Secretary of State wishes to secure reductions (relative to what they would otherwise be) in the gas bills of domestic consumers in Great Britain.
- 1.3 For that purpose the Secretary of State wishes to establish a scheme under which:
- (a) gas suppliers will reduce domestic consumer gas tariffs by an amount (in p/kWh) from time to time (for specified periods) decided by the Secretary of State; and
  - (b) the Secretary of State will pay financial support to gas suppliers to allow them to make those tariff reductions.
- 1.4 The object (**Object**) of the Scheme is that:
- (a) consumers' energy bills are lower than they would otherwise be, by an amount that directly reflects the reduction in tariffs decided by the Secretary of State from time to time; and
  - (b) to that end, gas suppliers should pass to consumers, on a p/kWh basis, as reductions of the tariffs which would otherwise be charged, the whole of the support payments made to gas suppliers under the Scheme.
- 1.5 The Scheme Document provides for Xoserve Limited to have functions relating to Scheme administration; and The Uniform Network Code has been modified to authorise Xoserve (as CDSP) to fulfil these functions.
- 1.6 The Scheme Document provides for gas shippers (as Shipper Users under the UNC) to be Parties for the purposes only of providing information to gas suppliers (who are not parties to the UNC) in connection with the operation of the Scheme.
- 1.7 The Scheme Document is made contractually binding between the Parties by the Scheme Agreement.

## **2 Interpretation**

### **2.1 Defined terms**

- 2.1.1 In the Scheme Document, terms (not otherwise defined) which are defined in:
- (a) the UNC, have the meanings given to them in the UNC; and
  - (b) the Supply Licence Conditions and are not defined in the UNC, have the meanings given to them in the Supply Licence Conditions.
- 2.1.2 In the Scheme Document:

**Accession Agreement** means an agreement providing for a person to accede to the Scheme Agreement, substantially in the form set out in Schedule 4 (*Form of Accession Agreement*);

**Aggregate Support Amount** means, in respect of a Support Payment Period, the sum of the Support Payments for all Suppliers;

**Applicant Party** has the meaning given to it in Section 4.2.1;

**Base Rate** means the rate of interest published from time to time by the Bank of England as its base rate;

**Base Support Amount** means, in respect of a Support Payment Period and a Supplier, the amount payable to the Supplier in respect of the Support Rate for the Reference Payment Class, calculated in accordance with Schedule 1 (*Scheme Calculations*), subject to Section 9.6;

**Base Tariff** has the meaning given to it in Section 2.2.1(a);

**Business Day** means a day (other than a Saturday or a Sunday) on which banks are open in London for the transaction of general business;

**Calculation Month** has the meaning given to it in Section 9.6.1;

**Certificate of Compliance** means, in respect of a Supplier, a certificate substantially in the form set out in Schedule 3 (*Certificate of Compliance*) signed by the Finance Director certifying that, to the best of their knowledge and belief, having made all reasonable enquiries, such information is in all material respects true, complete, accurate and not misleading, in each case by reference to the facts and circumstances then existing;

**Consumer** means a Domestic Customer;

**Consumer Payment Class** means a class of Consumer defined by the Payment Method applying at the relevant time under the Consumer's Supply Contract, as specified in Section 7.3;

**Discontinuing** in relation to a Party, has the meaning given to it in Section 6.3.1;

**Dispute** means any dispute or claim (other than as to a Statement Error, unless such error is to be resolved as a Dispute under Section 9.5.4(d)) in any way relating to or arising out of the Scheme Document, whether contractual or non-contractual (and including any dispute or claim regarding: (i) its existence, negotiation, validity or enforceability; (ii) the performance or non-performance of a Party's obligations pursuant to it; or (iii) breach or termination of it);

**Error Reconciliation Amount** means, in respect of a Supplier and a Support Payment Statement, any amount determined as payable by or to the Supplier pursuant to the correction of any Statement Error in accordance with Section 9.5.6;

**Excluded Fixed Rate Consumer** has the meaning given in Section 7.1.2;

**Final Reconciliation Amount** has the meaning given in Section 9.9.3;

**Financial Counterparty Approval** in relation to a Supplier means the approval, from a Financial Counterparty, of the Supplier's participation in the Scheme, where such approval is

required under the terms of the financing or arrangement referred to in the definition of Financial Counterparty;

**Financial Counterparty** means any bank or financial institution which provides debt financing to a Supplier, or a person with which the Supplier has arranged to trade wholesale gas on terms under which that person holds a security interest in respect of the Consumer receivables of the Supplier;

**Finance Director** means, in respect of a Supplier, a board director responsible for the finances of that Supplier at the relevant time or (in each case provided that the Secretary of State has given prior written approval in respect of such person) either:

- (a) another board director, or
- (b) a senior manager in the Supplier's finance department;

**Fixed Rate Consumer** means a Consumer for which the Supply Contract is a Fixed Rate Contract;

**Fixed Rate Contract** means a Fixed Term Supply Contract under which the terms and conditions to which the fixed term period applies include Charges for the Supply of Gas; and does not include any contract of supply to which any of Supply Licence Condition 28A, 28AA or 28AD applies to restrict the level of Charges for Supply Activities;

**Ineligibility Case** has the meaning given to it in Section 9.7.1;

**Ineligible Amount** has the meaning given to it in Section 9.7.1(a);

**gas shipper** has the meaning given in section 7A(11) of the Gas Act 1986;

**gas supplier** has the meaning given in section 7A(11) of the Gas Act 1986;

**Insolvency Event** in relation to a Supplier, means where:

- (a) the Supplier:
  - (i) is unable or admits inability to pay its debts as they fall due (excluding, for the avoidance of doubt, debts that are not properly due or are disputed); or
  - (ii) suspends making payments on any of its debts;
- (b) the value of the assets of the Supplier is less than its liabilities (taking into account contingent and prospective liabilities, and taking account of any statements made by any parent company of the Supplier as to the making available of funds to the Supplier) such that the Secretary of State reasonably considers that the Supplier will be unable to pay its debts as they fall due;
- (c) a moratorium is declared in respect of any indebtedness of the Supplier;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary

arrangement, scheme of arrangement or otherwise) of the Supplier other than a solvent liquidation or reorganisation;

- (ii) a composition, compromise, assignment or arrangement with any creditor of the Supplier;
- (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Supplier or any of its assets; or
- (iv) enforcement of any security over any assets of the supplier, or any analogous procedure or step is taken in any jurisdiction; or
- (e) the Supplier stops carrying on business.

**Party** means a party to the Scheme, in accordance with Section 4.1;

**Provisional UBQ Adjustment Amount** has the meaning given to it in Section 9.6.6;

**Quantity Reconciliation Amount** means, in respect of a Supplier and a Support Payment Period, the amount determined in accordance with Schedule 1 (*Scheme Calculations*) in respect of reconciliations (pursuant to Offtake Reconciliation) in respect of Support Period Quantity in any prior Support Payment Period;

**Reduced Tariff** has the meaning given to it in Section 2.2.1(b);

**Reduced Tariff Floor** means:

- (a) in respect of a Fixed Rate Consumer, other than a protected Fixed Rate Consumer pursuant to notice given by the Secretary of State under Section 7.1.4(c), the applicable tariff floor set out in the prevailing RTF Table; and
- (b) in respect of any other Consumer (including such a protected Fixed Rate Consumer), nil;

**Reference Payment Class** means, in respect of a Support Rate Period, the Consumer Payment Class designated as such under Section 7.3.3;

**Relevant Shipper** means, in relation to a Consumer supplied by a Supplier (and in relation to that Supplier), the Shipper which is the Relevant Gas Shipper in relation to the Consumer's premises;

**RTF Adjustment Amount** means, in respect of a Supplier and a Support Payment Period, the amount determined (by reference to the Reduced Tariff Floor) as payable by the Supplier in accordance with Section 9.3;

**RTF Table**, means, in respect of a Support Rate Period, a table setting out, for different categories (decided by the Secretary of State) of Fixed Rate Consumer, the amount (in p/kWh) determined by the Secretary of State as the lowest Tariff (**tariff floor**) which should result from the Scheme;

**Scheme** has the meaning set out in Section 1.1;

**Scheme Account** has the meaning given to that term in Section 10.1.1(a);

**Scheme Administrator** means a person designated by the Secretary of State in accordance with Section 12.3(c) to discharge functions in connection with the administration of the Scheme;

**Scheme Agreement** means the agreement, between the Secretary of State, Xoserve (as initial Scheme Administrator) and such gas suppliers and gas shippers and other persons as have become party by accession, by which the Scheme Document is made binding among the Parties;

**Scheme Commencement Date** means 0500 hours on 1 October 2022;

**Scheme Document** has the meaning set out in Section 1.1; and references to the Scheme Document include the contract between the Parties, incorporating the Scheme Document, established by the Scheme Agreement;

**Scheme End Date** has the meaning given to that term in Section 6.1.2;

**Scheme Month** has the meaning given to it in Section 9.6.1;

**Scheme Timetable** means the timetable for operation of certain provisions of the Scheme applying in accordance with Section 7;

**Shipper Licence** means a licence granted or treated as granted under section 7A(2) of the Gas Act 1986;

**Shipper Licence Conditions** means the Standard Conditions of Shipper Licences;

**Specified Time** means the time by which (in relation to a Support Payment Period, or any other period) any step under the Scheme is to be taken, as set out in the prevailing Scheme Timetable;

**Statement Adjustment** has the meaning given to that term in Section 9.5.1(b);

**Statement Error** has the meaning given to that term in Section 9.5.1(a);

**Statement Reference Date** means, in relation to a Support Payment Statement, the day which is one (1) Business Day before the Specified Time at which the Support Payment Statement is to be issued by the Scheme Administrator;

**Supplier** means a gas supplier (including a supplier acting pursuant to a Last Resort Supply Direction) which is party to the Scheme Agreement and has not ceased to be a Party pursuant to Section 6.3.5;

**Supplier End Date** has the meaning given to it in Section 6.3.1;

**Supplier Scheme Effective Date** means, in relation to a Supplier, the Day (in accordance with Section 5) on which the rights and obligations of the Supplier (other than under Sections 1 to 5 (inclusive) under the Scheme are effective and binding, subject (in relation to a Consumer supplied by the Supplier at that date) to Section 6.1.3;

**Supply Contract** means the contract under which a Supplier supplies gas to a Consumer (being either a Domestic Supply Contract or a Deemed Contract);

**Supply Licence** means a gas supply licence granted or treated as granted pursuant to section 7A(1) of the Gas Act 1986;

**Supply Licence Conditions** means the Standard Conditions of Gas Supply Licence;

**Support Payment** means, in respect of a Support Payment Period and a Supplier, the sum of the Base Support Amount, the RTF Adjustment Amount, RTF Estimation Correction Amount (if any), the CPC Adjustment Amount, the Support Reconciliation Amount, the Provisional UBG Adjustment Amount (if any) and the Ineligible Amount (if any);

**Support Payment Period** means, in respect of a Supplier, a period of the duration specified in Section 7.2.1(b), 9.4.1, or 9.4.2 (as the case may be), being the period in respect of which payments are to be made to or by that Supplier under the Scheme;

**Support Payment Statement** has the meaning given in Section 9.2.1(c);

**Support Period Quantity** means, in respect of a Support Payment Period and a Supplier, the quantity of gas treated as supplied by the Supplier to Consumers (or where the context requires, a Consumer or Consumers of a Consumer Payment Class) in all Days falling within that period, determined in accordance with Schedule 1 (*Scheme Calculations*), subject to Section 9.6;

**Support Rate** means the rate, for each Consumer Payment Class, in p/kWh of gas supplied to the premises of a Consumer of that Consumer Payment Class, of tariff support to be provided by the Secretary of State under the Scheme;

**Support Rate Period** means the period (being a whole number of calendar months) for which a particular Support Rate applies;

**Support Reconciliation Amount** means, in respect of a Support Payment Period and a Supplier, the sum of the Quantity Reconciliation Amount and any Error Reconciliation Amount, in accordance with Section 2.2.4;

**Tariff Period** means in relation to a Consumer of a Supplier, each period from (and including) a tariff period date to (but not including) the next tariff period date; where a **tariff period date** is each of (1) the Supplier Scheme Effective Date, (2) the first day of a Support Rate Period, (3) the first day with effect from which a new or revised Tariff applies under the Supplier's contract with that Consumer, and (4) the day after the Scheme End Date;

**Tariff Reduction** has the meaning given to it in Section 2.2.1(c);

**Tariff-Setting Requirements** means the requirements in Sections 8.1, 8.2, 8.3, 8.4, 8.5 and 8.6;

**Tax** means any taxes, levies, duties, imposts and any charges, deductions or withholdings in the nature of tax including taxes on gross or net Income, profits or gains and taxes on receipts, sales, use, occupation, development, franchise, employment, value added and personal property, together with any penalties, charges and interest relating to any of them;

**Unbilled Quantity** has the meaning given to it in Section 9.6.1;

**Unbilled Quantity Proportion** has the meaning given to it in Section 9.6.1;



**UNC** means the Uniform Network Code that is provided for in Standard Special Condition A11(6) of Gas Transporter Licences; and

**Xoserve** means Xoserve Limited, company registered in England and Wales with company number 05046877 with registered office at Lansdowne Gate, 65 New Rd, Solihull B91 3DL.

## **2.2 Specific interpretation**

2.2.1 In relation to a Consumer of a Supplier, in respect of any Tariff Period:

- (a) the **Base Tariff** is the Tariff which (but for the Scheme) would apply, in accordance with Section 8.1(a);
- (b) the **Reduced Tariff** is whichever is the greater of (i) the Base Tariff less the Support Rate, and (ii) the Reduced Tariff Floor; and
- (c) the **Tariff Reduction** is the Base Tariff less the Reduced Tariff.

2.2.2 References in the Scheme Document to a Tariff:

- (a) are to Charges for the Supply of Gas (forming part of the Tariff); and
- (b) unless the context otherwise requires, are to the Unit Rate or (as the case may be) each of the Unit Rates within such Charges for the Supply of Gas.

2.2.3 The value of each of the following terms may be positive or negative: Quantity Reconciliation Amount, Error Reconciliation Amount, RTF Adjustment Amount, Support Reconciliation Amount, Support Payment; and where:

- (a) the value is positive, the term represents an amount payable by the Secretary of State to a Supplier;
- (b) the value is negative, the term represents an amount payable (disregarding its sign) by a Supplier to the Secretary of State.

2.2.4 In respect of a Support Payment Period, the amounts to be included in the Support Payment Statement for a Supplier in respect of Error Reconciliation Amounts, Quantity Reconciliation Amounts and RTF Adjustment Amounts, are those amounts which:

- (a) have been determined (pursuant to the relevant provision of the Scheme) by the Statement Reference Date; and
- (b) have not been included in any prior Support Payment Statement.

2.2.5 References to the Support Rate in relation to a Consumer are to the Support Rate for the Consumer Payment Class to which the Consumer belongs.

2.2.6 A Day is treated as falling in the calendar month or Support Payment Period in which the Day starts.

## **2.3 General interpretation**

2.3.1 In the Scheme Document:

- (a) headings are for ease of reference only and to be ignored when interpreting the Scheme Document;
- (b) the Eiusdem Generis rule does not apply to interpretation. The words **include**, **including** and **in particular** indicate examples only. They do not limit the general nature of any preceding words. A phrase finishing with the words **or other** or **otherwise** is not limited by any preceding words where a wider interpretation is possible;
- (c) where a word or expression is defined related words and expressions have a consistent meaning; and
- (d) unless the context otherwise requires, the singular shall include the plural and vice versa.

### 2.3.2 Any reference in the Scheme Document:

- (a) to any **Section** or **Schedule** is (unless otherwise stated) to a section or schedule of the Scheme Document. All the Schedules are an integral part of the Scheme Document;
- (b) to the Scheme Document, the Scheme Agreement or any other document is to the Scheme Document, Scheme Agreement, or that other document, as varied, novated, supplemented or replaced from time to time;
- (c) to **£** or **pounds** is to the lawful currency of the United Kingdom;
- (d) to **kWh** is to kilowatt hours;
- (e) to **p/kWh** is to pence per kilowatt hour;
- (f) to a quantity of gas is to a quantity expressed in kWh or a multiple thereof;
- (g) to **SLC xx** is to Supply Licence Condition xx; and
- (h) to any gender includes the others.

### 2.3.3 In the Scheme Agreement and the Scheme Document:

- (a) the word **person** includes each of the following, even if they have no separate legal personality: an individual (including a special administrator), firm, partnership, trust, joint venture, body corporate, unincorporated body, association, organisation or any government, state or local body or authority;
- (b) the expression **this Clause** or (as the case may be) **this Section**, unless followed by the number of a specific part of the Clause or Section, refers to the whole clause or section in which it occurs; and
- (c) references to any statute, statutory provision or other legislation include a reference to that statute, statutory provision or legislation as amended, extended, re-enacted, consolidated or replaced from time to time (whether before or after the date of the Scheme Agreement) and include any order, regulation, instrument or other subordinate legislation made under the relevant statute, statutory provision or legislation.

### 3 Representations and warranties

Each Supplier and each Shipper represents and warrants to the Secretary of State that as at the date upon which it becomes a party to the Scheme Agreement, the following statements are true, accurate and not misleading:

- (a) **Status:** it is duly formed, in good standing and validly existing under the laws of its jurisdiction of incorporation or other formation, and has the power and capacity to own its assets and carry on its business as it is currently being conducted and as contemplated by the Scheme Document.
- (b) **Power and authority:** it has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Scheme Document.
- (c) **Enforceability:** the Scheme Agreement has been duly executed by it and the Scheme Document constitutes the legal, valid and binding obligations of it, enforceable against it in accordance with its terms.
- (d) **Regulatory:** in the case of a Supplier, it holds a Supply Licence. In the case of a Shipper, it holds a Shipper Licence, and is party as a Shipper User to (and as defined in) the UNC.
- (e) **Solvency:** except where the Supplier is subject to an energy supply company administration order under the Energy Act 2011, no Insolvency Event has occurred in relation to it.
- (f) **No requirement to deduct or withhold:** it is not required by any law or legal requirement applicable to it, as applied, interpreted or modified by the published practice of any relevant competent authority of any jurisdiction in which it is resident for Tax purposes, to make any deduction or withholding for or on account of any Tax from or in relation to any payment to be made by pursuant to the Scheme Document.

### 4 Parties and accession

#### 4.1 Parties

4.1.1 The Parties are:

- (a) the Secretary of State;
- (b) each Supplier;
- (c) each Shipper; and
- (d) the Scheme Administrator.

#### 4.2 Accession of Suppliers and Shippers

4.2.1 Any gas supplier or gas shipper (**Applicant Party**) shall be entitled to be admitted as a Party prior to the Scheme End Date.

- 4.2.2 If a gas supplier or gas shipper requests admission as a Party, the Scheme Administrator shall as soon as reasonably practicable comply with such request by drawing up and entering into an Accession Agreement with the Applicant Party.
- 4.2.3 Each Party hereby irrevocably and unconditionally authorises the Scheme Administrator to execute and deliver on behalf of such Party an Accession Agreement duly executed by an Applicant Party, and to admit the Applicant Party as a Party.
- 4.2.4 Upon the accession of an Applicant Party to the Scheme Agreement, the Applicant Party becomes a Party with effect from the date of its request for admission as a Party; and such Party's rights and obligations under the Scheme Document shall become effective in accordance with Section 5.1.
- 4.2.5 Where a Supplier is Party it shall:
- (a) use all reasonable endeavours to procure that each gas shipper which (at the date of the Supplier's accession to the Scheme Agreement) is a Relevant Shipper requests admission as a Party;
  - (b) notify the Secretary of State if it is or becomes aware that any such gas shipper is delaying or declining to request admission.

If any question arises as to whether a person should be admitted (as an Applicant Party) as a Party, the Scheme Administrator may refer the question to the Secretary of State for decision.

### **4.3 Accession of successor Scheme Administrator**

- 4.3.1 Sections 12.5 and 12.6 set out the basis on which a person may accede to the Scheme Agreement as a Scheme Administrator and on which its rights and obligations become effective.

## **5 Scheme effectiveness**

### **5.1 General**

- 5.1.1 Save as provided in Section 5.1.2, the rights and obligations of a Party pursuant to the Scheme Document are effective and binding:
- (a) in the case of the Secretary of State and Xoserve (as the Scheme Administrator), on and from the Scheme Commencement Date; and
  - (b) in the case of a Supplier, subject to Section 5.1.2, on and with effect from the latest of:
    - (i) the date on which it becomes a Party;
    - (ii) the Scheme Commencement Date; and
    - (iii) in the case of a Supplier to which Section 5.2 applies, the date on which the Supplier gives notice under Section 5.2.2(c) that Financial Counterparty Approval has been obtained; and
  - (c) in the case of a Shipper, on and with effect from the later of:

- (i) the date on which it becomes a Party; and
- (ii) the Scheme Commencement Date.

5.1.2 The rights and obligations of each Party under Sections 1 to 5 (inclusive) are effective and binding on and from the date it enters into or accedes to the Scheme Agreement.

5.1.3 In relation to each Consumer supplied by a Supplier at the date at which it becomes a Party, the rights and obligations of the Supplier under the Scheme Document are effective on and from:

- (a) the first Day, being the first Day of a calendar month, on or before which the following conditions are met:
  - (i) (if by notice to the Scheme Administrator, before the date at which the condition in paragraph (ii) is met, the Supplier requires this condition to apply) the Relevant Shipper is a Party; and
  - (ii) the rights and obligations of the Supplier are effective pursuant to Section 5.1.1 (disregarding the reference to this Section 5.1.3); or
- (b) the first Day of the calendar month in which the conditions in paragraph (a) are met, if the Supplier gives notice to the Secretary of State and the Scheme Administrator, before the date at which the condition in paragraph (a)(ii) is met:
  - (i) electing that this paragraph (b) shall apply; and
  - (ii) confirming that it has complied or will comply with the Tariff-Setting Requirements with effect from that Day.

5.1.4 In relation to each Consumer which the Supplier starts to supply after the date at which it becomes a Party:

- (a) the Supplier's rights and obligations under the Scheme are effective from the Day such supply starts;
- (b) accordingly it is the Supplier's responsibility to ensuring that the Relevant Shipper is a Party.

5.1.5 Pursuant to Section 5.1.3, the Scheme applies in respect of gas supplied by a Supplier on and from the Supplier Scheme Effective Date.

## **5.2 Financial Counterparty Approval**

5.2.1 This Section 5.2 applies to a Supplier where:

- (a) the Supplier's participation in the Scheme requires Financial Counterparty Approval (and it has not obtained such approval at the date it becomes a Party); and
- (b) the Supplier, when entering into the Accession Agreement, has indicated that Financial Counterparty Approval is so required.

5.2.2 Where this Section 5.2 applies in relation to a Supplier, the Supplier shall:

- (a) use all reasonable endeavours to obtain Financial Counterparty Approval as soon as reasonably practicable after becoming a Party;
- (b) provide to the Secretary of State reports in such form and with such frequency as the Secretary of State may reasonably require as to its progress towards obtaining Financial Counterparty Approval; and
- (c) as soon as reasonably practicable and in any event within two (2) Business Days after obtaining Financial Counterparty Approval, give notice to the Secretary of State and the Scheme Administrator that it has obtained such approval.

## **6 Duration of Scheme**

### **6.1 Scheme as a whole ending**

- 6.1.1 Subject to and in accordance with Section 6.3, the Scheme shall end on the Scheme End Date.
- 6.1.2 The **Scheme End Date** shall be 0500 hours on 1 January 2023, or such later date to which it is extended in accordance with Section 6.1.3.
- 6.1.3 The Secretary of State may extend the Scheme End Date by a period of three (3) calendar months from the then current Scheme End Date (whether 31 December 2022 or a later date to which it has been extended under this Section 6.1.3), by giving notice of such extension not less than twenty-three (23) Business Days before the then current Scheme End Date.

### **6.2 Scheme ending in respect of a Supplier**

- 6.2.1 A Supplier's participation in the Scheme may end in accordance with Section 14.
- 6.2.2 A Shipper's participation in the Scheme may end in accordance with Section 14.

### **6.3 Effect of Scheme ending (Suppliers)**

- 6.3.1 In this Section 6.3, the **Discontinuing** Parties and (in respect of a Discontinuing Supplier) the **Supplier End Date** are determined as follows:
  - (a) where a Supplier's participation in the Scheme ends under Section 14, each of that Supplier and (in relation to that Supplier) the Secretary of State and the Scheme Administrator is a Discontinuing Party, and the Supplier End Date is the last day before such participation ends; and
  - (b) where the Scheme ends on the Scheme End Date under Section 6.1, all of the Parties (excluding any Supplier whose participation in the Scheme ended earlier under Section 14) are Discontinuing Parties, and the Supplier End Date is the Scheme End Date.
- 6.3.2 The provisions of the Scheme Document shall:
  - (a) continue in force and effect for the Discontinuing Parties in respect of quantities of gas supplied by each Discontinuing Supplier to Consumers up to and including the Supplier End Date; and

- (b) not have force or effect between the Discontinuing Parties in respect of quantities of gas supplied by any Discontinuing Supplier to Consumers after the Supplier End Date for that Discontinuing Supplier.
- 6.3.3 Pursuant to Section 6.3.2(a), in respect of quantities of gas supplied by each Discontinuing Supplier to Consumers up to and including the Supplier End Date:
- (a) amounts under the Scheme in respect of Support Period Quantity, Base Support Amount, Quantity Reconciliation Amount, RTF Adjustment Amount (if any), Error Reconciliation Amount, Provisional UBQ Adjustment Amount, Ineligible Amount, CPC Adjustment Amount, Support Reconciliation Amount and Aggregate Support Amount shall continue to be determined and payable;
  - (b) the Discontinuing Parties shall continue to comply with their respective obligations under Sections 9, 10 and 11 in respect of the determination, notification and payment of such amounts and related reporting;
  - (c) the provisions of Section 9.5 in respect of Statement Errors continue to apply; and
  - (d) the Discontinuing Supplier shall continue to comply with the Tariff Setting Requirements including but not limited to Section 8.2(f) in respect of meter readings.
- 6.3.4 Pursuant to and subject to the foregoing, after the Supplier End Date, the Discontinuing Parties continue to be Parties (and bound by the Scheme Document), subject to Sections 6.3.5, 6.3.6 and 6.4.1.
- 6.3.5 Where, upon application from a Supplier, after its Supplier End Date, and not (unless otherwise agreed by the Secretary of State) before the determination and payment of the Final Reconciliation Amount, the Secretary of State accepts (on advice from the Scheme Administrator) and notifies the Supplier that no further material non-zero amounts will in future be determined for that Supplier in respect of Quantity Reconciliation Amount, RTF Adjustment Amount or Error Reconciliation Amount, Provisional UBQ Adjustment Amount, Ineligible Amount or CPC Adjustment Amount (the **exit condition**), then the Supplier may give notice to the Secretary of State and the Scheme Administrator that it wishes to cease to be a Party, and such Supplier shall cease to be Party to the Scheme Agreement with effect from such notice being given.
- 6.3.6 If, on advice from the Scheme Administrator and after consultation with Parties, the Secretary of State determines that the exit condition in Section 6.3.5 is met for all Suppliers, the Secretary of State may by notice terminate the Scheme Agreement.

#### **6.4 Effect of Scheme ending (Shippers)**

- 6.4.1 Where a Shipper's participation in the Scheme ends, it is assumed that each Supplier for which it is Relevant Shipper will make arrangements with a replacement Shipper which ensure continuance of information provision under Schedule 1; and accordingly the ending of the Shipper's participation does not affect the rights or obligations of any Supplier under the Scheme.
- 6.4.2 Where, upon application from a Shipper, the Secretary of State accepts (on advice from the Scheme Administrator) and notifies the Shipper that no Supplier for which it is a Relevant Shipper remains a Party, then the Shipper may give notice to the Secretary of State and the

Scheme Administrator that it wishes to cease to be a Party, and such Shipper shall cease to be Party to the Scheme Agreement with effect from such notice being given.

## **7 Details for operation of Scheme**

### **7.1 Support Rate and Reduced Tariff Floor and scope**

7.1.1 For each Support Rate Period, and (subject to paragraph 7.3.2) for each Consumer Payment Class, the Secretary of State shall, not less than twenty-three (23) Business Days before the start of the Support Rate Period (except for the first, starting on the Scheme Commencement Date), determine (in the Secretary of State's discretion) and give notice of:

- (a) the Support Rate; and
- (b) the RTF Table,

each to apply throughout that Support Rate Period.

7.1.2 Subject to Section 7.1.3, where a Consumer enters into a Fixed Rate Contract with a Supplier after the date of the Scheme Agreement, with effect from the date of that Fixed Rate Contract and for the fixed term period under that Fixed Rate Contract, the Consumer is an **Excluded Fixed Rate Consumer**.

7.1.3 The Scheme does not apply in respect of Excluded Fixed Rate Consumers; and Section 9.3.2 applies for the purposes of giving effect to this Section 7.1.3.

7.1.4 The Secretary of State may (in their discretion) from time to time:

- (a) determine and give notice (**switch-off notice**) that with effect from the date specified in the notice, Section 7.1.3 shall not apply in respect of Consumers which enter into Fixed Term Contracts on or after that date (and accordingly such Consumers are not Excluded Fixed Term Consumers);
- (b) determine and give notice (**switch-on notice**) that, with effect from the date specified in the notice, a previously given switch-off notice is revoked, so that Section 7.1.3 shall apply in respect of Consumers which enter into Fixed Term Contracts on or after the date specified in the switch-on notice (and accordingly such Consumers are Excluded Fixed Term Consumers);
- (c) determine and give notice that, with effect from the date specified in the notice, Fixed Rate Consumers which (pursuant to a switch-off notice) are not Excluded Fixed Rate Consumers are **protected** Fixed Rate Consumers for the purposes of the definition of Reduced Tariff Floor.

7.1.5 A notice given by the Secretary of State under Section 7.1.4:

- (a) may not specify an effective date earlier than the date of the notice;
- (b) shall be publicly available to Consumers and shall make clear that the relevant determination is that of the Secretary of State.

7.1.6 The Secretary of State may change the Support Rate and RTF Table applying in respect of the Support Rate Period which begins on 1 April 2023 (the 1 April SPP), by giving notice of the changed Support Rate and RTF Table no later than 16th March 2023, provided that the



changed Support Rate is higher than the Support Rate for the 1 April SPP of which notice was given in accordance with Section 7.1.1.

## **7.2 Scheme Periods and Timetable**

7.2.1 For the purposes of the Scheme, until and unless changed under Section 13:

- (a) the Support Rate Period is a period of three (3) months;
- (b) the Support Payment Period is a period of one (1) week, subject to Sections 9.4.1 and 9.4.2, and subject to and in accordance with Section 7.2.2; and
- (c) the Scheme Timetable is the timetable in Schedule 2 (*Scheme Timetable*).

7.2.2 The first Support Payment Period (of one (1) week) starts on the Scheme Commencement Date; and the Support Payment Period which is the last to start before the Scheme End Date is the period of days ending on the Scheme End Date, save as set out in Sections 9.4.1 and 9.4.2.

7.2.3 Where the Secretary of State considers that market conditions or other circumstances make it appropriate to change any of the details of the Scheme set out or provided for in Section 7.2.1, the Secretary of State may modify the Scheme Document (subject to and in accordance with Section 13) so as to effect such change, provided that such modification may not (except in an urgent case and with agreement of all Suppliers and the Scheme Administrator):

- (a) change a Support Rate Period which is current at the time of the modification or in relation to which the Secretary of State has given notice of the Support Rate under Section 7.1.1(a); or
- (b) result in the first such changed period ending after the prevailing Scheme End Date.

## **7.3 Consumer Payment Classes**

7.3.1 The Consumer Payment Classes, defined by the applicable Payment Method, as specified in SLC 28AD.40, are as follows:

- (a) Standard Credit;
- (b) Prepayment;
- (c) Other Payment Method.

7.3.2 The provisions of the Scheme Document in respect of Consumer Payment Classes (including the provisions of Section 9.8 in respect of CPC Adjustment Amount) apply in respect of a Support Rate Period only where the Secretary of State has decided (in the discretion of the Secretary of State) to determine different Support Rates under Section 7.1.1 in respect of different Consumer Payment Classes for that Support Rate Period.

7.3.3 Where for a Support Rate Period the Secretary of State determines different Support Rates under Section 7.1.1 in respect of different Consumer Payment Classes, the Secretary of State shall designate one of them as the Reference Payment Class for that Support Rate Period and give notice of that designation at the same time as giving notice under Section 7.1.1.

## **7.4 Guidance**

The Secretary of State may by notice issue guidance about the operation of the Scheme.

## **8 Supplier duty to reduce Tariffs**

8.1 Each Supplier must:

- (a) for each Consumer, and for each Tariff Period (other than the first), determine in compliance with law and with all of its duties under the Supply Licence Conditions, and acting in good faith having regard to the Object of the Scheme, the Tariff which it would have set but for the Scheme; and
- (b) for each Consumer, and for each Tariff Period, reduce the Base Tariff by the Support Rate which applies, in relation to the Consumer Payment Class to which the Consumer belongs, to that Tariff Period, subject to the Reduced Tariff Floor.

8.2 Pursuant to Section 8.1, each Supplier must:

- (a) for each Tariff Period, give notice (by the time required under Section 8.3) to each Consumer, for the purposes of the Supply Contract, that the Reduced Tariff will be the Tariff on which (under that contract) the Supplier supplies the Consumer in that period;
- (b) in such notice, set out the Base Tariff, the Tariff Reduction and the Reduced Tariff;
- (c) not set or alter Standing Charges in a way which frustrates the Object of the Scheme;
- (d) use all reasonable endeavours to ensure that, when the Supplier sends bills or statements of account to Consumers, those Consumers are made aware of the effect of the Tariff Reduction in the amount billed or stated; and make, and if requested discuss with the Secretary of State, arrangements for that purpose and use reasonable endeavours to accommodate any proposals made by the Secretary of State as to such arrangements;
- (e) for each Tariff Period, reset (for the purposes of SLC 28.2) each Prepayment Meter on the basis of the Reduced Tariff;
- (f) apply (and account on the basis of) the Reduced Tariff in complying with its duties under SLC 21B regarding Billing based on meter readings; and
- (g) apply (and account on the basis of) the Reduced Tariff in complying with its duties under the Supply Licence Conditions regarding Consumer payment by direct debit and Customer Credit Balances.

8.3 Notice under Section 8.2(a) is to be given, in relation to a Tariff Period, by the time (if any) required pursuant to the Supply Licence Conditions or (if no such requirement applies) as soon as reasonably practicable after the start of the Tariff Period (and where applicable, at the same time that the Supplier gives notice of a new or revised Tariff). If for a Customer a Tariff Period starts within ten (10) Business Days (or such other period as the Secretary of State may specify in guidance) of the start of another Tariff Period, a single notice may be given relating to both Tariff Periods and Tariffs.

- 8.4 If (and for so long as) the Supply Contract does not permit the Supplier to reduce the prevailing Tariff as required by Section 8.1(b):
- (a) the Supplier shall take appropriate action to give effect to the Tariff Reduction for the benefit of the Consumer;
  - (b) such action may include:
    - (i) offering the Consumer the Tariff Reduction and deeming the offer accepted unless the Consumer rejects it; or
    - (ii) notifying the Consumer that payment (of the amount of charges equivalent to the Tariff Reduction) is waived irrevocably; and
  - (c) the Supplier's compliance with paragraph (a) shall be treated as compliance with the Tariff-Setting Requirements in Section 8.1(b) and 8.2(a).

8.5 Each Supplier must:

- (a) establish and implement procedures to ensure and monitor its compliance with the Tariff-Setting Requirements and identify any non-compliance, which procedures:
  - (i) must be sufficiently robust and comprehensive to provide a high degree of assurance of compliance and of prompt identification of any non-compliance;
  - (ii) must be disclosed to the Secretary of State on request pursuant to Section 11.1.3;
  - (iii) are subject to audit under Section 11.1.4;
- (b) deal promptly and fairly with any Consumer complaints about implementing the Scheme or complying with the Tariff-Setting Requirements;
- (c) where it identifies any error or other failure in its compliance with the Tariff-Setting Requirements:
  - (i) promptly determine any amount charged to the Consumer in excess of what should have been charged, and credit that amount to the Consumer's account or Prepayment Meter (where applicable by providing the Consumer with a voucher, special action message or (failing any other means) by cheque; and
  - (ii) report such error or failure in its next report under Section 11.1.1.

8.6 A Supplier may not (except to comply with Section 8.1(b)) make any agreement or arrangement with a Consumer under which the Tariff under any Fixed Rate Contract entered into before the Supplier Scheme Effective Date is or will be varied (within the fixed term period for which it applies) from the Tariff provided for in that contract; and if (in breach of this provision) such an agreement or arrangement is made, the Consumer shall be treated as an Excluded Fixed Rate Consumer for the purposes of Section 9.3.2. This prohibition does not apply where the Supplier and Consumer agree to end (before the end of the fixed term period) a Fixed Term Contract so that it becomes or is replaced by a Supply Contract which is not a Fixed Term Contract, but without prejudice to Section 9.3.8.

- 8.7 Where the Base Tariff for a Consumer comprises different tariffs applicable to supply at different times of day, unless the Secretary of State has given notice to the Supplier waiving (for a particular tariff or period) this requirement, the Supplier must (in complying with Section 8.1(a)) set each of those tariffs such that the tariff, less the Support Rate, is not less than 1 p/kWh.
- 8.8 Each Supplier must, by the fourteenth (14<sup>th</sup>) day of each month, provide to the Secretary of State (with copy to the Scheme Administrator) a Certificate of Compliance signed by the Finance Director of the Supplier, in the presence of a witness, as to the Supplier's compliance or any non-compliance, in the preceding month M, with the Tariff-Setting Requirements, unless the Secretary of State has, in their discretion, notified the Supplier in writing that it is not required to provide a Certificate of Compliance in respect of month M.
- 8.9 Without prejudice to any other remedy of the Secretary of State, where a Supplier has failed to pass the benefit of the Support Rate to a Consumer in accordance with Section 8.1 (other than in error, corrected by a Consumer credit, as provided in Section 8.5(c)):
- (a) the Supplier is liable to repay to the Secretary of State, immediately on demand, the amount not passed to the Consumer; and
  - (b) after giving the Supplier an opportunity to remedy the matter, the Secretary of State may publicly name the Supplier and its failure.
- 8.10 In relation to a Tariff Period which falls within a Support Rate Period for which the Support Rate for a Consumer Payment Class is zero, and in relation to Consumers of that Consumer Payment Class:
- (a) it is acknowledged that no duty of a Supplier arises under Section 8.1(b);
  - (b) provided that the Supplier has informed a Consumer that there is no Tariff Reduction, the duties of a Supplier under Section 8.2 in respect of Tariff Reduction and Reduced Tariff do not apply.

## **9 Determination of Scheme amounts**

### **9.1 Support Payment**

9.1.1 Each Support Payment in respect of a Supplier shall:

- (a) if it is a positive amount, be an amount that is payable by the Secretary of State to that Supplier; or
- (b) if it is a negative amount, be an amount that (disregarding its sign) is payable by the Supplier to the Secretary of State,

in each case subject to and in accordance with the further provisions of the Scheme Document.

### **9.2 Determination and notification of amounts**

9.2.1 For each Support Payment Period, the Scheme Administrator shall, by the Specified Time:

- (a) determine for each Supplier:

- (i) the Support Period Quantity, the Base Support Amount and the Quantity Reconciliation Amount, in accordance with Schedule 1 (*Scheme Calculations*);
  - (ii) the amounts to be taken into account in respect of:
    - (A) RTF Adjustment Amount (if any);
    - (B) RTF Estimation Correction Amount; (if any)
    - (C) the CPC Adjustment (if any);
    - (D) any Error Reconciliation Amount;
    - (E) any Provisional UBQ Adjustment Amount; and
    - (F) any Ineligible Amount;
  - (iii) the Support Reconciliation Amount; and
  - (iv) the Support Payment;
- (b) determine the Aggregate Support Amount;
- (c) provide to each Supplier a statement (**Support Payment Statement**):
- (i) setting out the amounts referred to in paragraph (a); and
  - (ii) showing the basis on which such amounts have been calculated;
- (d) provide to each Shipper supporting information as provided in Schedule 1;
- (e) provide to the Secretary of State a statement of:
- (i) the amounts (for all Suppliers) referred to in paragraph (a);
  - (ii) the Aggregate Support Amount.

9.2.2 The Scheme Administrator shall, by the Specified Time, provide to the Secretary of State an estimate (made on such basis as the Secretary of State may reasonably require) of the Aggregate Support Amount in respect of each Support Payment Period.

9.2.3 For the avoidance of doubt, Quantity Reconciliation Amounts, Error Reconciliation Amounts and RTF Adjustment Amounts are determined without counting any interest as running (on any amount included in such determination) in respect of the period ending when such amounts are due to be included in a Support Payment Statement.

### 9.3 Reduced Tariff Floor

9.3.1 The **RTF Adjustment Amount** for a Supplier and a Support Payment Period is calculated as:

$$- \sum_c (SR - TR_c) * SPV_c$$

where:

$\sum_c$  is the sum over all the Supplier's Fixed Rate Consumers; and

SR is the Support Rate for the Reference Payment Class;

and where, for each Fixed Rate Consumer:

TR<sub>c</sub> is the Tariff Reduction; and

SPV<sub>c</sub> is the Support Period Quantity,

(and consistent with the rule in Section 2.2.3, the RTF Adjustment Amount has negative sign, as an amount representing a credit to the Secretary of State).

- 9.3.2 In respect of an Excluded Fixed Rate Consumer, the RTF Adjustment Amount shall be determined on the basis that the Tariff Reduction TR<sub>c</sub> for such Consumer is zero.
- 9.3.3 The Secretary of State may, after consultation with Suppliers, determine and give notice of the basis on which amounts in respect of RTF Adjustment Amounts are to be counted in the Support Payment in respect of any Support Payment Period, which may require:
- (a) an estimate of the RTF Adjustment Amount to be made in advance and counted in determining the Support Payment for the Support Payment Period in which the quantity 'SPV<sub>c</sub>' was supplied to Consumers;
  - (b) a subsequent adjustment in a later Support Payment Period by way of reconciliation in respect of such adjustment.
- 9.3.4 The Supplier shall determine and notify to the Scheme Administrator the amount to be counted (in the Support Payment in respect of any Support Payment Period) in respect of the RTF Adjustment Amount:
- (a) in accordance with any determination of the Secretary of State under Section 9.3.3, or
  - (b) (if no such determination has been made) by determining (as its good faith best estimate) and notifying the RTF Adjustment Amount no later than ten (10) Business Days after the Support Payment Period to which it relates; and
  - (c) by way of further adjustments of such amount pursuant to Offtake Reconciliation and refinements of estimates made under paragraph (b).
- 9.3.5 If for any Support Payment Period the Supplier does not comply with the requirement (**notification requirement**) to notify the RTF Adjustment Amount to the Scheme Administrator by the time required under Section 9.3.4(b):
- (a) the Scheme Administrator shall give notice to the Secretary of State and the Supplier to inform them of that fact and of the prospective application of this Section 9.3;
  - (b) subject to paragraph (c), the Scheme Administrator shall calculate an estimate of such amount applying the methodology in Schedule 6 and use that estimate in calculating the Support Payment;
  - (c) paragraph (b) applies:

- (i) if, by the fifteenth (15<sup>th</sup>) Business Day after the Support Payment Period the Supplier has not complied with the notification requirement, or
  - (ii) immediately upon the Supplier not complying with the notification requirement, if the Secretary of State has given notice to the Scheme Administrator that the Secretary of State considers that an Insolvency Event has occurred or is likely to occur in relation to the Supplier;
- (d) for each subsequent Support Payment Period for which the Supplier does not comply with the notification requirement:
- (i) the Scheme Administrator shall calculate (applying the methodology in Schedule 6) and use an estimate of the RTF Adjustment Amount;
  - (ii) the requirements (in paragraphs (a) and (c)(i) for the Scheme Administrator to give notice to the Secretary of State and the Supplier, and (where applicable) for the Scheme Administrator to wait until the 15<sup>th</sup> Business Day after the Support Payment Period before using an estimate, do not apply;
- (e) if, for a subsequent Support Payment Period, the Supplier does comply with the notification requirement, the use of the estimated RTF Adjustment Amount will cease (but without prejudice to the further application of this Section 9.3.5 in the event of a further failure to comply with the notification requirement);
- (f) if the Supplier subsequently notifies to the Scheme Administrator the RTF Adjustment Amount for any Support Payment Period for which an estimate was used and the difference between the estimated amount and the RTF Adjustment Amount so notified:
- (i) the Scheme Administrator will verify the Supplier's calculation of the difference between the estimated amount and the amount so notified;
  - (ii) subject to verification under paragraph (i), an amount (the **RTF Estimation Correction Amount**) equal to one half of that difference shall be counted in calculating the Support Payment in each of the two Support Payment Periods for which the Support Payment Statements are next issued;
- (g) upon being informed of any non-compliance by a Supplier with the notification requirement, the Secretary of State may, in the absolute discretion of the Secretary of State, instruct the Scheme Administrator not to apply or to suspend or delay the application of paragraphs (c) and (d).

9.3.6 For the purposes of Section 9.2 the reference to the RTF Adjustment Amount (in respect of any Support Payment Period) is to the amount which (pursuant to Section 9.3.4) is to be taken into account in determining the Support Payment for any Support Payment Period (and such amount shall be signed negative or positive consistent with the rule in Section 2.2.3).

9.3.7 The Supplier shall establish adopt a methodology for determining (consistent with any determination by the Secretary of State under Section 9.3.3) the amounts to be taken into account in respect of RTF Adjustment Amounts; and upon request of the Secretary of State, the Supplier shall submit such methodology to the Secretary of State for approval (not unreasonably to be withheld).

9.3.8 Where:

- (a) (as contemplated in the second sentence of Section 8.6) the Supplier has, on or after 1 October 2022, agreed with a Consumer, or otherwise arranged, to end a Fixed Term Contract (the **former** contract) before the end of its fixed term period, and
- (b) the Tariff Reduction determined (disregarding this Section 9.3.8) in respect of the Supply Contract which replaces the former contract (the **new** contract) is greater than the Tariff Reduction in respect of the former contract

then with effect from the later of (1) 13 October 2022 and (2) the date on which the former Fixed Term Contract is ended, until the date at which the fixed term period of the former Fixed Term Contract would otherwise have ended, for the purposes of determining Support Amounts (but not for the purposes of the Tariff-Setting Requirements):

- (c) the new Supply Contract shall be treated as a Fixed Term Contract under which the Base Tariff is the same as the Base Tariff under the former Fixed Term Contract;
- (d) the Reduced Tariff and the RTF Adjustment Amount shall be determined accordingly; and
- (e) the obligations of the Supplier under Sections 9.3.4 and 9.3.7 shall apply accordingly.

9.3.9 Section 9.3.8(a) includes (without limitation) where the Supplier waives any restriction under the Fixed Term Contract on the Consumer ending it before the end of its fixed term period, or waives in whole or in part any liability (for a prescribed payment or for damages or otherwise) of the Consumer under the contract for so ending it; but Section 9.3.8(a) does not include where the Consumer exercised a right (without any such restriction or liability) to end the contract unilaterally.

#### **9.4 End of Scheme**

9.4.1 For a Supplier whose participation is ended under Section 14:

- (a) the Support Payment Period which is the last to start before the Supplier End Date shall (subject to Section 6.3.2(b)) continue;
- (b) thereafter each Support Payment Period for that Supplier shall, until Section 9.4.2 applies (and for all purposes of the Scheme Document):
  - (i) start on the day after the previous Support Payment Period ends, and
  - (ii) end 4 (four) weeks later or on the Scheme End Date, if earlier.

9.4.2 With effect from the Scheme End Date, each Support Payment Period is (in respect of all Suppliers) a period of one (1) calendar month.

#### **9.5 Statement Error Resolution**

9.5.1 For the purposes of the Scheme Document:

- (a) a **Statement Error** is an error in any Support Payment Statement sent to a Supplier, including a failure to use the correct data, an error in a calculation made, or an error in stating the result of such calculation;



- (b) a **Statement Adjustment** is the adjustment required in respect of a Support Payment Statement to correct a Statement Error; and
  - (c) for the avoidance of doubt, any dispute or query as to the correctness of any data produced under a rule or procedure of or under the UNC is not a Statement Error (any resolution of which under the UNC will be reflected in a Quantity Reconciliation Amount).
- 9.5.2 In this Section 9.5 references to a Party are to the Scheme Administrator and the Supplier to which a Support Payment Statement was sent (but for the avoidance of doubt the Scheme Administrator is not a principal in respect of any payment obligation related to a Statement Error).
- 9.5.3 If either Party identifies or considers that there is a Statement Error:
- (a) such Party shall promptly give notice (**Error Query Notice**) to the other Party, stating what it has identified as or considers to be a Statement Error and what it considers to be the Statement Adjustment;
  - (b) either Party may give equivalent notice to each Relevant Shipper.
- 9.5.4 As soon as reasonably practicable after giving or receiving an Error Query Notice:
- (a) the Scheme Administrator shall investigate the matter;
  - (b) if the Scheme Administrator is satisfied beyond a reasonable doubt that the Statement Error occurred and that the proposed Statement Adjustment will correct it, the Scheme Administrator shall give notice to the Supplier to that effect and setting out such Statement Adjustment;
  - (c) otherwise the Scheme Administrator shall report to the Supplier the conclusion of its investigation, and following such report:
    - (i) the Parties shall seek to agree whether there was a Statement Error and if so what it was, and what Statement Adjustment is necessary to correct it; and
    - (ii) if the Parties agree on such Statement Adjustment, the Scheme Administrator shall give notice to the Supplier setting out the agreed Statement Adjustment;
  - (d) if the Parties have not reached such agreement within fifteen (15) Business Days after the Error Query Notice was provided, either of the Secretary of State or the Supplier may seek resolution of the matter as a Dispute in accordance with Section 18.14.
- 9.5.5 If either Party so requires, each Relevant Shipper shall cooperate with the Parties in their discussions under Section 9.5.4(c) including providing information (as described in Schedule 1) relevant to the Statement Error.
- 9.5.6 The amount of a Statement Adjustment:
- (a) set out in a notice under Section 9.5.4(b) or Section 9.5.4(c)(ii); or
  - (b) determined pursuant to the resolution of a Dispute pursuant to Section 9.5.4(d),

is in each case an Error Reconciliation Amount (and shall be signed as positive or negative consistent with the rule in Section 2.2.3).

9.5.7 A Supplier is not entitled to dispute or withhold payment of any amount shown in a Support Payment Statement until and unless it is corrected by a Statement Adjustment either:

- (a) determined in accordance with and notified under Section 9.5.4(b) or Section 9.5.4(c)(ii) so that it is an Error Reconciliation Amount; or
- (b) (subject to Section 9.5.4(d)) determined pursuant to the resolution of a Dispute.

## 9.6 Unbilled Quantity Adjustment

9.6.1 For the purposes of the Scheme Document:

- (a) the **Calculation Month** in respect of each Scheme Month (each a **relevant** Scheme Month in respect of that Calculation Month):
  - (i) for each Scheme Month from and including October 2022 to and including February 2023, is March 2023; and
  - (ii) for each other Scheme Month, is the month immediately following that Scheme Month;
- (b) a **Scheme Month** in respect of a Supplier is October 2022 and each subsequent calendar month that starts before its Supplier End Date;
- (c) the **Unbilled Quantity** in respect of a Supplier and any period is the quantity of gas which (subject to Section 9.6.7):
  - (i) is counted in calculating Support Period Quantity under paragraphs 2 and 3 of Schedule 1, but
  - (ii) is not billed by the Supplier to a Consumer, and
  - (iii) accordingly, is not quantity in respect of which the Supplier provides to a Consumer a reduction in tariffs as provided in Section 1.3; and
- (d) **Unbilled Quantity Proportion** means, in respect of a Supplier and any period, Unbilled Quantity expressed as a proportion of total quantity allocated (in respect of its Consumers) to the Supplier pursuant to the rules and processes of the BSC which are referred to in Schedule 1.

9.6.2 For the purposes of Section 9.6.1(c)(ii), gas is not billed to a Consumer if (without limitation):

- (a) it is never billed (or it never will be billed) to the Consumer;
- (b) it is billed but the amount billed is subsequently credited to the Consumer.

9.6.3 Without limitation, Unbilled Quantity may include:

- (a) unbilled consumption on a change of Consumer at particular premises;
- (b) unbilled consumption on a change of Supplier in respect of particular premises;

- (c) consumption written off following a Consumer complaint;
- (d) consumption for which the Supplier is prevented from invoicing the Consumer by the operation of SLC 21BA;
- (e) over-estimated consumption which is not reconciled by Quantity Reconciliation.

9.6.4 Adjustments shall be made in respect of Unbilled Quantity:

- (a) on a provisional basis as described in Section 9.6.6; and
- (b) on a final basis as described in Section 9.9.

9.6.5 The Supplier shall, by the twentieth (20<sup>th</sup>) day of each Calculation Month, provide to the Scheme Administrator a statement setting out:

- (a) the Supplier's best estimate of the Unbilled Quantity Proportion for the twelve (12) months that started twenty-four (24) months, and ended twelve (12) months, before the start of that Calculation Month;
- (b) the Provisional UBQ Adjustment Amount(s), determined in accordance with Section 9.6.6 as required by Section 9.6.7.

9.6.6 The **Provisional UBQ Adjustment Amount** for a Supplier for each Scheme Month is calculated as follows (and has negative sign):

$$\text{EUQP} * \text{ASPM}$$

where:

- (a) EUQP is:
  - (i) subject to paragraph (ii), the estimate of Unbilled Quantity Proportion provided by the Supplier under Section 9.6.5 in the Calculation Month for that Scheme Month, unless that estimate is negative in which case EUQP is zero;
  - (ii) if the Supplier fails to provide such estimate, five (5) percent or such lower proportion as the Secretary of State shall (in its absolute discretion) determine and notify the Scheme Administrator.
- (b) ASPM is the aggregate of the Support Payments paid or payable to the Supplier for each Support Payment Period that commenced during that Scheme Month, adding back any Provisional UBQ Adjustment Amounts taken into account in those Support Payments.

9.6.7 A provisional adjustment shall be made in respect of Unbilled Quantity in calculating the Support Payment for the last Support Payment Period to start in each Calculation Month, by counting in that Support Payment the Provisional UBQ Adjustment Amount for the relevant Scheme Month in respect of that Calculation Month, or in the case of the Calculation Month March 2023, such amounts for each relevant Scheme Month from and including October 2022 to and including February 2023.

9.6.8 The Supplier must provide to the Secretary of State such further information as the Secretary of State requires for the purposes of verifying any of the Supplier's estimates of Unbilled Quantity.

## **9.7 Ineligible Amounts**

9.7.1 This Section 9.7 applies in any case (**Ineligibility Case**) where:

- (a) the procedures in Schedule 1 result in the determination of any amount, counted within a Support Payment, which does not reflect a tariff reduction made pursuant to the Scheme by a Supplier to a consumer which is a Domestic Consumer (an **Ineligible Amount**, which has negative sign); and
- (b) that determination will not be corrected by a Quantity Reconciliation Amount or as Unbilled Quantity and is not the subject of an Error Query Notice.

9.7.2 Without limitation, Section 9.7.1 applies where a meter point of a consumer which is not a Domestic Consumer is taken into account in applying the procedures in Schedule 1.

9.7.3 Each Supplier must use reasonable diligence to identify any Ineligibility Case.

9.7.4 The Supplier must, promptly upon identifying or otherwise becoming aware of an Ineligibility Case not already counted (as a deduction) in calculating a Support Payment, send to the Scheme Administrator and the Secretary of State a statement setting out:

- (a) details of the Ineligibility Case and the circumstances in which it arose;
- (b) the period to which the Ineligibility Case relates;
- (c) the Ineligible Amount.

9.7.5 The Ineligible Amount shall be counted (as a deduction) in calculating the Support Payment for the Payment Support Period in which the Supplier sends the statement under Section 9.7.4

9.7.6 Where a Supplier sends a statement under Section 9.7.4:

- (a) the Supplier or the Scheme Administrator may (by notice to the other of them, copied to the Secretary of State) make a proposal to vary how the procedures in Schedule 1 are applied with the object of avoiding the continuance or recurrence of the Ineligibility Case;
- (b) if the Supplier makes such a proposal, the Scheme Administrator shall implement the proposal if it is practicable to do so and the Scheme Administrator considers that it will achieve the object in paragraph 9.7.6(a);
- (c) if the Scheme Administrator makes such a proposal, the Scheme Administrator shall implement the proposal unless, upon application of the Supplier, the Secretary of State directs it not to do so.

9.7.7 A failure by a Supplier to identify or give notice of an Ineligibility Case or to determine an Ineligible Amount correctly is treated as a Statement Error for the purposes of Section 9.5

## 9.8 CPC Adjustment

9.8.1 The **CPC Adjustment Amount** for a Supplier and a Support Rate Period is calculated as:

$$\sum_S \sum_P \sum_{C,P} \{(ASR_P - SSR) * SPQ_{C,P}\} + Adj_{SRP-1}$$

where:

$\sum_S$  is the sum over all Support Payment Periods that fall (in whole or part) within the Support Rate Period

$\sum_P$  is the sum over Consumer Payment Classes other than the Reference Payment Class

SSR is the Support Rate for the Reference Payment Class

$Adj_{SRP-1}$  is an adjustment in respect of the CPC Adjustment Amount (if any) for the preceding Support Rate Period determined as the difference between that amount, and that amount recalculated on the basis of Support Period Quantity as adjusted to take account of subsequent Quantity Reconciliation

and where, for each Payment Class (P)

$\sum_{C,P}$  is the sum over all the Supplier's Consumers belonging to Payment Class P; and

$ASR_P$  is the Support Rate for Payment Class P;

and where, for each of the Supplier's Consumers belonging to Payment Class P;

$SPQ_{C,P}$  is the Support Period Quantity (or where the Support Payment Period starts before or ends after the relevant Support Rate Period, that part of such quantity supplied within the relevant Support Rate Period)

9.8.2 (and consistent with the rule in Section 2.2.3, the CPC Adjustment Amount has positive sign (disregarding the term  $Adj_{SRP-1}$ ), as an amount representing a credit to the Supplier) The Supplier shall determine for each Support Rate Period, and notify to the Scheme Administrator and the Secretary of State, the CPC Adjustment Amount no later than ten (10) Business Days after that Support Rate Period.

9.8.3 The CPC Adjustment Amount shall be counted in the Support Payment in respect of the first Support Payment Period to start after the Support Rate Period.

## 9.9 Final Reconciliation

9.9.1 The Supplier shall, within the fifteen (15) days starting on the relevant date, provide to the Scheme Administrator and the Secretary of State:

- (a) the data required to calculate the aggregate amount payable to the Supplier, in accordance with the Scheme Document, in respect of gas supplied in the period (**Supplier Scheme Period**) from the Scheme Commencement Date to the Supplier End Date (both dates inclusive);

- (b) such supporting data and explanation as the Secretary of State may require to support and justify the data under paragraph (a), and to reconcile it with data and calculations previously provided and made under the Scheme.

9.9.2 The data includes the following, in respect of each Support Payment Period in the Supplier Scheme Period:

- (a) Support Period Quantity;
- (b) Unbilled Quantity;
- (c) Ineligible Amount;
- (d) RTF Adjustment Amount;
- (e) such other data as the Secretary of State may require.

9.9.3 As soon as reasonably practicable after receiving the data under Section 9.9.1 the Scheme Administrator shall:

- (a) calculate the net aggregate amount payable to the Supplier under the Scheme in respect of the Supplier Scheme Period;
- (b) calculate the difference (**Final Reconciliation Amount**) between that aggregate amount and the aggregate amount paid to the Supplier under the Scheme;
- (c) prepare and send to the Supplier and the Secretary of State a final Support Payment Statement setting out the Final Reconciliation Amount.

9.9.4 In Section 9.9.1 the relevant date is the earlier of:

- (a) the date that is 14 months after the Supplier End Date; and
- (b) the later of:
  - (i) the date that is 14 months after the last day of the last Support Rate Period for which the Reference Support Rate was not zero;
  - (ii) the date that is 3 months after the Scheme End Date.

## **9.10 Supplier Payment Reserve**

Schedule 7 has effect.

## **10 Payment of Scheme amounts**

### **10.1 Bank accounts**

10.1.1 The Scheme Administrator shall:

- (a) establish (unless already established) and thereafter maintain (in compliance with Section 10.2) a dedicated, segregated and interest earning bank account (the **Scheme Account**) to receive and hold amounts payable to and by it under the Scheme Document; and

- (b) provide details of the Scheme Account to the Secretary of State and by the Supplier Scheme Effective Date each Supplier.

10.1.2 Subject to and without prejudice to the requirements of Section 10.2, the Scheme Administrator may change the Scheme Account on giving the Secretary of State and each Supplier not less than ten (10) Business Days' advance notice of the new Scheme Account details.

10.1.3 Each Supplier:

- (a) shall (not later than two (2) Business Days after the Supplier Scheme Effective Date) notify to the Scheme Administrator details of the bank account to which amounts payable to it under the Scheme Document are to be paid; and
- (b) may change such account on giving the Scheme Administrator not less than ten (10) Business Days' advance notice of the new account details.

10.1.4 The Secretary of State:

- (a) shall notify to the Scheme Administrator details of the bank account to which amounts payable to the Secretary of State under the Scheme Document are to be paid; and
- (b) may change such account on giving the Scheme Administrator not less than ten (10) Business Days' advance notice of the new account details.

10.1.5 The details of a bank account to be notified under this Section 10.1 or Section 10.2.5(d) are: bank name, branch name, sort code, account name and account number.

## **10.2 Scheme Account**

10.2.1 The Scheme Administrator holds all funds from time to time standing to the credit of the Scheme Account on trust for the Secretary of State as sole beneficiary until they are paid out in accordance with the Scheme.

10.2.2 The Scheme Administrator shall promptly upon the Scheme Account being opened in accordance with Section 10.1.1 (or if later, by the Scheme Commencement Date) or changed in accordance with Section 10.1.2 give notice of the trusts under Section 10.2.1 to the account bank at which the Scheme Account is held and seek written acknowledgement from the account bank of that notice.

10.2.3 The Scheme Administrator shall not pay any sums into or out of the Scheme Account except pursuant to the Scheme Document, and shall require that all sums payable to it from any Party pursuant to the Scheme Document are paid directly by that Party into the Scheme Account. The Scheme Administrator shall not create any security over the Scheme Account; or permit the Scheme Account to be overdrawn.

10.2.4 Each Party shall make all payments it is required by the Scheme Document to make to the Scheme Administrator directly to the Scheme Account.

10.2.5 The Scheme Account bank must be a UK bank which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A+ or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A1 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency. If the account bank ceases to have such a credit rating, the Scheme Administrator must:

- (a) immediately notify the Secretary of State;
- (b) as soon as reasonably practicable open an account with a UK bank which has a credit rating which meets the above requirements (which shall then become the Scheme Account in place of the previous such account);
- (c) promptly comply with Section 10.2.2 in relation to the new Scheme Account; and
- (d) promptly provide details of the new Scheme Account to the Secretary of State and each Supplier.

10.2.6 Any amounts (pursuant to the Scheme) received by the Scheme Administrator into an account other than the Scheme Account (including, without limitation, into a former Scheme Account) shall be promptly transferred by the Scheme Administrator to the Scheme Account (and such amounts shall be held on trust for the Secretary of State pending such transfer).

10.2.7 The Scheme Administrator shall account to the Secretary of State for any amounts:

- (a) accruing to the Scheme Account by way of interest earned on the balance in such account; or
- (b) paid to the Scheme Administrator by a Supplier as default interest under Section 10.10,

either (as the Secretary of State shall choose) by deducting such amounts in calculating Aggregate Support Amounts or by paying such amounts to the Secretary of State.

10.2.8 If there is any balance in the Scheme Account at the time the Scheme Agreement is terminated under Section 6.3.6, the Scheme Administrator shall pay such amount to the Secretary of State.

### **10.3 Payment of Aggregate Support Amount and Support Amounts**

10.3.1 In respect of each Support Payment Period, by the Specified Time, subject to Section 10.3.4, the Secretary of State shall pay the Aggregate Support Amount to the Scheme Administrator.

10.3.2 In respect of each Support Payment Period, the Scheme Administrator shall (in each case subject to Section 10.2):

- (a) receive and hold each Aggregate Support Amount paid to it by the Secretary of State; and
- (b) by the Specified Time, in respect of amounts payable by and to the Secretary of State:
  - (i) subject to Section 10.6 and Section 10.3.4, pay each positive Support Payment in respect of a Supplier, to the Supplier;
  - (ii) receive and hold each negative Support Payment paid to it by a Supplier.

10.3.3 In respect of each Support Payment Period, each Supplier shall in respect of amounts payable by the Secretary of State to it, and by it to the Secretary of State:

- (a) receive each positive Support Payment that is paid to it by the Scheme Administrator;



- (b) by the Specified Time, pay each negative Support Payment due to be paid by it, to the Scheme Administrator.

10.3.4 The Scheme Administrator may, when making payment to a Supplier of any amount shown in a Support Payment Statement as payable to a Supplier, set off from that amount any unpaid amount due from that Supplier to the Secretary of State under the Scheme.

10.3.5 If in respect of any Support Payment Period the Aggregate Support Amount is payable to the Secretary of State, the Scheme Administrator shall pay such amount to the Secretary of State by the Specified Time.

#### **10.4 Payment obligations determined by statements**

10.4.1 The obligation of a Party to pay a Support Payment is to pay the amount stated in the Support Payment Statement in respect of such Support Payment.

10.4.2 Where a Party disputes an amount in a Support Payment Statement, Section 9.5 shall apply, and accordingly such amount shall be paid in full pending determination of an Error Reconciliation Amount pursuant to that Section.

#### **10.5 Scheme Administrator as agent of the Secretary of State**

10.5.1 In making and receiving payments under the Scheme, the Scheme Administrator acts as agent of the Secretary of State, who has the primary obligation to make payments to Suppliers and the primary right to receive payments from them.

10.5.2 The obligation of the Secretary of State to make payment of a Support Payment to a Supplier is satisfied by payment by the Scheme Administrator of the Support Payment to the Supplier.

10.5.3 The obligation of a Supplier to make payment of a Support Payment to the Secretary of State is satisfied by payment by the Supplier of the Support Payment to the Scheme Administrator.

#### **10.6 Supplier payments condition**

10.6.1 Subject to Section 10.6.3, no Support Payment shall be payable by the Secretary of State to a Supplier:

- (a) at any time at which the Supplier has not complied with the obligation to provide a Certificate of Compliance under Section 8.7; or
- (b) if a Certificate of Compliance discloses any non-compliance with the Tariff-Setting Requirements which the Secretary of State considers (in their discretion) to be a material non-compliance, unless at the same time as providing such certificate the Supplier satisfies the Secretary of State that such non-compliance will be remedied promptly; or
- (c) if the Secretary of State has given notice to the Supplier of a breach of the Supplier's obligations under the Scheme Document (other than of the kind specified in Section 10.6.1(a) or Section 10.6.1(b)), and in the Secretary of State's reasonable belief such breach remains unremedied, and such breach is of such materiality that it prejudices the Object of the Scheme generally or in relation to some or all of that Supplier's Consumers.

- 10.6.2 Accordingly, the Scheme Administrator shall not pay any Support Payment to a Supplier where the Secretary of State has given the Scheme Administrator a direction in writing that paragraph (a), (b) or (c) of Section 10.6.1 applies (but in the absence of such a direction, the Scheme Administrator is not required to decide whether any such paragraph applies).
- 10.6.3 Where pursuant to Section 10.6.1, a Support Payment was not made, and subsequently (as the case may be) the Supplier provides the relevant Certificate of Compliance, or the Supplier satisfies the Secretary of State (in their discretion) that the non-compliance disclosed in such a certificate has been remedied, or (but without prejudice to Section 14.2.1) that the previously unremedied breach has been remedied, the Support Payment that was not made will be payable and the Secretary of State shall authorise the Scheme Administrator to make such payment.

## **10.7 Payments from Scheme Administrator to Suppliers**

- 10.7.1 Without prejudice to the Secretary of State's obligations as to payment of Support Payments, the Scheme Administrator is not obliged on any day to make payment to Suppliers of any amount greater than the amount standing to the credit of the Scheme Account on that day (and if such amount is insufficient to pay in full the amounts otherwise payable to Suppliers, the Scheme Administrator shall make payment pro rata those amounts).
- 10.7.2 In the event of any delay or failure in payment by the Scheme Administrator of any Support Payment to a Supplier, the Supplier shall as soon as practicable notify the Scheme Administrator and the Secretary of State of such delay or failure and (without prejudice to the Secretary of State's obligations as to payment of Support Payments) the relevant Parties shall seek to resolve the matter promptly.

## **10.8 Basis of payment**

- 10.8.1 Where a Party is to make payment of any amount to another Party under the Scheme Document, the paying Party shall make such payment by direct bank transfer or equivalent transfer of immediately available funds into the account notified to it by the recipient pursuant to Section 10.1.
- 10.8.2 Subject to Sections 10.3.4 and 10.6.2, all payments under the Scheme Document shall be made without set-off, withholding or any deduction of any kind including, but not limited to, for any Tax (unless required by applicable law), banking transfer or other costs or claims.
- 10.8.3 Without limitation of Section 10.8.2, and for the avoidance of doubt, where Section 18.6.2 applies, neither the Supplier (as Shipper) nor Xoserve (as Scheme Administrator) may set off, against any amount payable under the Scheme Document, any amount payable by either of them under the Data Services Contract.
- 10.8.4 If a Party is required by applicable law to make a withholding or deduction as referred to in Section 10.8.2, that Party shall:
- (a) ensure the withholding or deduction does not exceed the minimum amount the law requires; and
  - (b) increase the amount payable so the net amount the recipient Party receives and holds equals the amount it would have received and held if the law had not required the withholding or deduction.

## **10.9 VAT**

The Parties acknowledge that:

- (a) the Support Payments are not consideration for any taxable supply for VAT purposes; and
- (b) neither the Secretary of State nor the Scheme Administrator nor a Supplier is liable to pay any amounts in respect of VAT in addition to the Support Payments or other payments under the Scheme.

## **10.10 Default interest**

10.10.1 If any Supplier or the Secretary of State fails to pay any amount payable by it under the Scheme Document on its due date, simple interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate of two (2)% above the applicable Base Rate.

10.10.2 Any interest accruing under this Section 10.10 to the Secretary of State or a Supplier shall be payable on demand by the Party to which it is owed.

10.10.3 Without prejudice to Section 10.10.2, where any amount is payable by or to a Supplier in respect of interest under this Section 10.10, the amount of such interest accrued up to the Statement Reference Date shall be shown as an additional item on each Support Payment Statement. Payment to the Scheme Administrator shall be treated as satisfying a demand under Section 10.10.2.

10.10.4 Except by way of payment to a Supplier of an amount paid by the Secretary of State in respect of interest under this Section 10.10, no interest shall accrue on any amount of which there is delay in payment by the Scheme Administrator.

## **11 Reporting and audit**

### **11.1 Suppliers**

11.1.1 Each Supplier shall (subject to Clause 11.1.2), in respect of each month (M) within which the Supplier is a Party, submit to the Secretary of State a report (a **Monthly Report**) by the fourteenth (14th) day of the following month (or if such day is not a Business Day, the next Business Day), setting out each of the following (each an **MR Component**):

- (a) a summary of the procedures established under Section 8.5(a) or any changes to such procedures since the previous report;
- (b) in respect of month M, a summary statement of Tariff Periods which started in the month and (for each relevant Tariff) the Base Tariff, Reduced Tariff and Tariff Reduction;
- (c) in respect of each Support Payment Period ending within month M:
  - (i) the total quantity of energy determined (in accordance with the Supplier's processes for determining or estimating consumption) as supplied to Consumers;
  - (ii) the total amount (in £) received in respect of the Base Support Payment Amount;

- (iii) the total amount (in £) of the Tariff Reductions applicable to the quantities in (i);
  - (iv) the total amount (in £) of RTF Adjustment Amounts; and
  - (v) an explanation of any discrepancy between the amounts in (ii), (iii) and (iv) which is not expected to be eliminated by future Quantity Reconciliation Amounts, Provisional UBQ Adjustment Amounts, CPC Adjustment Amounts or Ineligible Amounts;
- (d) a statement and explanation of any error or failure identified in month M as referred to in Section 8.5(c) and whether it has been addressed as provided in paragraph (i) of that Section;
- (e) where (as contemplated in the second sentence of Section 8.6) the Supplier has agreed with a Consumer to end the fixed term period of a Fixed Term Contract, the date with effect from which it was ended, an estimate of the annual consumption of the Consumer, and the following details of the Fixed Term Contract (prior to its being ended): Unit Rate, standing charges under the Fixed Term Contract, end-date of the fixed term period; and
- (f) the Provisional UBQ Adjustment Amount for the Scheme Month for which the Supplier provided a statement to the Scheme Administrator in month M-1, together with an explanation of the basis of the estimation of the Unbilled Quantity Proportion used to determine that amount.

11.1.2 The Secretary of State may, in their discretion, notify a Supplier in writing in respect of any MR Component that:

- (a) it is not required to provide that MR Component for a given month M; or
- (b) it is only required to provide that MR Component (a **Nil Return Component**) for a given month M if there is anything to report;

and (following such notice) the requirement for that Supplier to provide a Monthly Report in respect of that month M shall be altered accordingly, provided that, if there is nothing to report in respect of a Nil Return Component for month M, the Supplier shall notify the Secretary of State of that (whether in the Monthly Report or separately).

11.1.3 Each Supplier shall provide such further information as the Secretary of State may at any time reasonably require relating to the Supplier's compliance with the Tariff-Setting Requirements.

11.1.4 The Secretary of State may audit the records of each Supplier:

- (a) to assess its compliance with the Tariff-Setting Requirements and with the requirements in Section 9.3, and the accuracy of its reports under Section 11.1.1 and information provided under Section 11.1.3; and
- (b) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Secretary of State has used its resources.

11.1.5 The Secretary of State may nominate an appropriate public body or a suitably qualified professional to receive any communication from a Supplier under Section 11.1.1 or 11.1.3 or

exercise (on behalf of the Secretary of State) any of the Secretary of State rights under this Section 11.1 and report its findings to the Secretary of State.

11.1.6 Each Supplier shall procure for the Secretary of State (or their nominee under Section 11.1.5) access to premises, personnel, data, information and records sufficient to enable the proper performance of any audit to be carried out under Section 11.1.4.

11.1.7 In respect of Consumers in relation to which a Supplier is acting pursuant to a Last Resort Supply Direction, the Secretary of State will give reasonable consideration to a request from the Supplier to limit or qualify (for a reasonable period of time) the information included in reports under Section 11.1.1.

## **11.2 Shippers**

11.2.1 Upon the reasonable request of the Secretary of State, and at such intervals as the Secretary of State may so request, each Shipper shall provide to the Secretary of State a report in respect of the activities carried out by the Shipper under the Scheme Document, setting out such details as the Secretary of State may so request.

## **11.3 Scheme Administrator**

11.3.1 The Scheme Administrator shall, in respect of each month (M) in which the Scheme Document is in force, submit to the Secretary of State by the fourteenth (14<sup>th</sup>) day of the following month (or if such day is not a Business Day, the next Business Day), a report setting out:

- (a) details of those Suppliers and Shippers, in month M:
  - (i) which acceded to the Scheme Agreement;
  - (ii) for which (in the case of Suppliers) the Supplier Scheme Effective Date occurred in month M;
  - (iii) for which the Supplier End Date occurred in the month; and
  - (iv) which ceased to be a Party in the month;
- (b) in respect of the Scheme Account:
  - (i) the balance on the first and last days of month M;
  - (ii) the amount of any interest accrued on the balance from time to time in the account;
- (c) in respect of the amounts referred to in Section 9.2.1(a), the aggregate of each of those amounts included in the Support Payment Statements submitted in respect of Support Payment Periods ending in month M;
- (d) in respect of payments made by or to Suppliers in month M:
  - (i) any amounts due for payment by a Supplier which are unpaid at the end of month M;

- (ii) any default interest payable by a Supplier, and how it has been accounted for;
  - (iii) any amounts not paid to a Supplier pursuant to Section 10.6;
  - (iv) any amounts netted from an amount payable to a Supplier pursuant to Section 10.3.4;
- (e) in respect of Statement Errors, a summary and explanation of:
- (i) all Error Query Notices given in month M; and
  - (ii) all Statement Errors which were resolved in month M.

#### **11.4 Rights to audit Scheme Administrator**

11.4.1 The Secretary of State may audit, or appoint a suitably qualified professional to audit, the records of the Scheme Administrator to assess its compliance with the Scheme Document and/or the accuracy of reports under Section 11.3.1.

11.4.2 The Scheme Administrator shall procure for the Secretary of State (or their nominee) access to premises, personnel, data, information and records sufficient to enable the proper performance of any audit to be carried out under Section 11.4.1.

#### **11.5 Energy Price Guarantee Assurance Programme**

Each Supplier and the Scheme Administrator are bound by and shall comply with Schedule 5 (*Energy Price Guarantee Assurance Programme (EPGAP)*).

#### **12 Designation of Scheme Administrator and change in designation**

12.1 The Secretary of State hereby designates Xoserve as sole Scheme Administrator with effect on and from the date of the Scheme Agreement.

12.2 If at any time after the Scheme Commencement Date the Secretary of State considers that:

- (a) the performance of the Scheme Administrator;
- (b) any change in the status or resources or functions (other than under the Scheme) of the Scheme Administrator;
- (c) any modification of the Scheme; or
- (d) any modification of the UNC or any procedure under the UNC,

makes it appropriate to do so, the Secretary of State may modify the Scheme Document in accordance with Section 13.

12.3 A modification of the Scheme Document under Section 12.2 may:

- (a) create new functions or alter existing functions for administration of the Scheme Administrator (**administration functions**);

- (b) divide the administration functions so that they are to be discharged by more than one person;
- (c) designate any person as a Scheme Administrator to discharge any of the administration functions;
- (d) remove any or all of the administration functions from those to be discharged by the existing Scheme Administrator (and, if it has no remaining functions, remove the designation of the existing Scheme Administrator); and/or
- (e) modify this Section 12 so as to operate by reference to the Scheme Document as so modified.

12.4 The Secretary of State may not modify the Scheme Document under Section 12.2 unless:

- (a) there will be designated, for each of the administrative functions, a person to act as Scheme Administrator;
- (b) each such person has consented so to act and (if not already a Party) has acceded or will accede to the Scheme Agreement;
- (c) the Secretary of State is satisfied that each such person has:
  - (i) the resources, and use of and access to the data and systems, necessary to enable it to discharge those functions; and
  - (ii) the authority to do so of any person who (in law or contract) has the right to object to such use and access.

12.5 Each Party hereby irrevocably and unconditionally authorises the Secretary of State to execute and deliver on behalf of such Party an Accession Agreement duly executed by a person to be designated (pursuant to Section 12.3(c)) as Scheme Administrator (such person a **new Scheme Administrator**), and to admit such person as a party to the Scheme Document.

12.6 The rights and obligations of a new Scheme Administrator pursuant to the Scheme Document are effective and binding on and with effect from the later of:

- (a) the date on which it becomes a Party; and
- (b) the date of its designation as a Scheme Administrator under Section 12.3(c).

12.7 Subject to any contrary provision in a modification under Section 12.2, where a new Scheme Administrator is designated to discharge given administration functions, the rights and obligations of the outgoing Scheme Administrator in respect of those functions shall end on the new Scheme Administrator's rights and obligations coming into effect in accordance with Section 12.6 (but without prejudice to the accrued rights and obligations of the outgoing Scheme Administrator).

12.8 This Section 12.8 applies if Xoserve, having discussed the matter with the Secretary of State, reasonably considers and gives notice to the Secretary of State that:

- (a) for reasons not foreseen at the Scheme Start Date, the performance of its functions as Scheme Administrator under the Scheme Document is materially prejudicing the

proper operation of the UNC or the proper performance of its functions as CDSP under the UNC; or

- (b) performing those functions following any proposed modification of the Scheme Document would:
  - (i) materially prejudice the proper operation of the UNC or the proper performance of Xoserve's functions as CDSP under the UNC; or
  - (ii) substantially increase Xoserve's costs of such performance.

12.9 Where Section 12.8 applies:

- (a) in a case within paragraph (a) of that Section; or
- (b) in a case within (b) of that Section:
  - (i) if the Secretary of State proceeds to make the proposed modification; and
  - (ii) in a case within paragraph (b)(ii), unless the Secretary of State agrees to make arrangements for the funding of the increased amount of Xoserve's costs,

Xoserve may on giving not less than six (6) months' notice to the Secretary of State withdraw from its role as Scheme Administrator, subject to Section 12.10.

12.10 Where Xoserve gives notice of withdrawal under Section 12.9, Xoserve shall:

- (a) do all things reasonably requested by the Secretary of State to facilitate a replacement Scheme Administrator to assume the performance of its functions;
- (b) provide to such replacement Scheme Administrator, on a continuing basis, the same data about the quantities of gas supplied to Consumers that Xoserve uses to comply with Schedule 1;
- (c) licence (on a non-exclusive and free-of-charge basis, for the purposes of use by the replacement Scheme Administrator in its Scheme functions) to the Secretary of State or replacement Scheme Administrator the algorithms (and intellectual property in them) developed specifically for the Scheme by which it derives or processes the data in paragraph (b) for use in complying with Schedule 1.

### **13 Modification of the Scheme**

13.1 The Secretary of State may (subject to and in accordance with this Section 13) modify the Scheme Document:

- (a) as provided for under Sections 7.2.3 and 12.2;
- (b) if in the judgement of the Secretary of State the Scheme is failing in a material way to achieve the Object, as appropriate (in the judgement of the Secretary of State) to correct that failure;



- (c) if (in the judgement of the Secretary of State) necessary as a result of or in connection with a modification made or to be made to the UNC or the Supply Licence Conditions;
- (d) if it becomes apparent to the Secretary of State that the Scheme:
  - (i) is resulting in excessive profits for Suppliers; or
  - (ii) is allowing Suppliers to realise a benefit in respect of VAT in relation to supplies to Consumers;
- (e) not used; or
- (f) otherwise where Secretary of State considers it appropriate to do so and provided the modification is not materially adverse to the interests of Suppliers generally or any class of Suppliers.

13.2 No modification of the Scheme Document under this Section 13:

- (a) will modify the Object of the Scheme in such a way as to change fundamentally the nature of the Scheme;
- (b) will have the effect that Suppliers (having complied with the Tariff-Setting Requirements) are unable to recover (as Support Payments) amounts in respect of the Support Rate for quantities of gas supplied to Consumers:
  - (i) prior to the date with effect from which the modification is made; or
  - (ii) (except in the case of a modification pursuant to Section 13.1(d), and except as permitted under Section 7.2.3) within the remaining term of the Support Rate Period which is current when the modification is made or within the term of a Support Rate Period of which notice has been given under 7.1.1.

13.3 Where the Secretary of State proposes to modify the Scheme Document pursuant to Section 13.1:

- (a) the Secretary of State shall give notice to each other Party:
  - (i) setting out the proposed modification, the reasons for it and the date from which it is proposed to be effective; and
  - (ii) inviting representations in respect of the proposal (including the financial impact of the proposal on Suppliers, and the feasibility of its implementation by the proposed effective date) within such period as the Secretary of State (having regard to the urgency of the case and any prior informal consultation on the proposal with Parties) shall decide;
- (b) the Secretary of State may publicise the proposal in such other manner as the Secretary of State decides;
- (c) the Secretary of State shall consider any representations from any Party that are notified to the Secretary of State within the period specified in the notice (as well as representations received from other persons);

- (d) following such consideration, the Secretary of State may modify the Scheme Document on the basis of the original proposal or (subject to paragraph (e)) such variation of it as the Secretary of State decides;
  - (e) if the Secretary of State considers that such a variation of the proposal departs materially from the original proposal, so that Parties should have a further opportunity to make representations in respect of it, the Secretary of State will give a further notice pursuant to paragraph (a).
- 13.4 When (following a notice of proposed modification under Section 13.3(a)) the Secretary of State has decided whether or not to modify the Scheme Document, the Secretary of State shall publish (no later than the notice under Section 13.5, where applicable) the decision together with the reasons for the decision and the conclusions the Secretary of State reached in respect of representations received under Section 13.3(c).
- 13.5 The modification of the Scheme Document shall be made by notice given by the Secretary of State either attaching the modified Scheme Document or setting out the modification of the Scheme Document and stating the date on which it is effective; and the Scheme Document is hereby modified in accordance with such notice.
- 13.6 The Parties shall be bound pursuant to the Scheme Agreement by the Scheme Document as from time to time modified under this Section 13.

## **14 Early end of a Supplier's or Shipper's participation**

### **14.1 Automatic ending**

- 14.1.1 A Supplier's participation in the Scheme will automatically end if the Supplier ceases to hold a Supply Licence.
- 14.1.2 A Shipper's participation in the Scheme will automatically end if the Shipper ceases to hold a Shipper Licence.

### **14.2 Discretionary ending**

14.2.1 Section 14.2.2 shall apply in relation to a Supplier if:

- (a) an Insolvency Event occurs in relation to the Supplier (except where the Supplier is subject to an energy supply company administration order under the Energy Act 2011);
- (b) either:
  - (i) the Supplier commits fraud in connection with the Scheme Document or its performance; or
  - (ii) the Secretary of State has reasonable grounds to suspect that the Supplier has committed fraud in connection with the Scheme Document or its performance; or
- (c) a breach of the Supplier's obligations under the Scheme Document has occurred and remains unremedied, and such breach is of such materiality that it prejudices the Object of the Scheme generally or in relation to that Supplier's Consumers.

14.2.2 Where this Section 14.2.2 applies in relation to a Supplier, the Secretary of State may end the Supplier's participation in the Scheme by serving a notice on it, specifying:

- (a) the relevant event or circumstances under Section 14.2.1 giving rise to the notice; and
- (b) the date on which the Supplier's participation in the Scheme will end.

14.3 Following service of a notice under Section 14.2.2 on a Supplier, that Supplier's participation in the Scheme shall end on the date specified in the notice.

#### **14.4 Effect of early ending**

The consequences of the ending of a Supplier's participation in the Scheme under this Section 14 are provided for in Section 6.3.

### **15 Liability**

#### **15.1 Liability of Scheme Administrator**

15.1.1 Without prejudice to the obligations of the Secretary of State, including under Section 9.1.1, the Scheme Administrator shall (subject to Section 15.1.2) have no liability to any other Party pursuant to the Scheme Document, or otherwise relating to the Scheme, whether in contract, tort (including negligence and/or breach of statutory duty) or otherwise at law.

15.1.2 Section 15.1.1 shall not affect:

- (a) any liability of the Scheme Administrator arising out of Section 10.2; or
- (b) any available remedies of injunction, specific performance or other equitable relief.

#### **15.2 Excluded losses**

15.2.1 Subject to Section 15.2.2, no Party shall be liable to any other Party pursuant to the Scheme Document, in tort (including negligence and/or breach of statutory duty) or otherwise at law for:

- (a) any loss, damage, cost or other expense to the extent that the same does not arise naturally from the breach and cannot reasonably be supposed to have been in the contemplation of the Parties, on the date that Party became a Party, as the probable result of such breach; or
- (b) any special, indirect or consequential loss or any loss which constitutes loss of use, loss of goodwill, loss of profit or loss of revenue, in each case incurred by the other Party in respect of any breach of the terms of the Scheme Document.

15.2.2 Section 15.2.1 shall not operate so as to prejudice or override the express terms of any obligation to pay within the Scheme Document.

#### **15.3 Excluded losses (2)**

Nothing in Sections 15.1 and Section 15.2 is intended to limit liability for:

- (a) personal injury or death caused by negligence; or

- (b) fraud.

## **16 Transfer**

16.1.1 Save as expressly permitted by this Section 16 (*Transfers*), no Party may:

- (a) assign to any person all or any of its rights or benefits under the Scheme Document;
- (b) create any security over the Scheme Document or its rights and benefits pursuant to the Scheme Document;
- (c) make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any person all or any of its rights or benefits under the under the Scheme Document; or
- (d) transfer (whether by way of novation, sub-contract, delegation or otherwise) to any person, or enter into an arrangement whereby any person is to perform, any or all of its obligations under the under the Scheme Document, other than by way of an energy transfer scheme (under and as defined in the Energy Act 2004) approved by the Secretary of State.

16.1.2 Notwithstanding Section 16.1.1:

- (a) the Secretary of State shall be entitled, without the consent of any other Party, to assign to any appropriate public body all or any of the rights or benefits (but may not transfer the obligations) of the Secretary of State under the Scheme Document on such terms as the Secretary of State considers appropriate; and
- (b) the Secretary of State and (with the consent of the Secretary of State) the Scheme Administrator shall be entitled without the consent of any other Party, to sub-contract or delegate to any person, or enter into an arrangement whereby any person is to perform, any or all of their obligations under the Scheme Document, provided that the Secretary of State or Scheme Administrator (as the case may be) shall not be relieved of any of their obligations under the Scheme Document and shall be liable for the acts and omissions of any person to whom they subcontract or delegate or with whom they enter into an arrangement to perform any or all of its obligations under the Scheme Document.

16.1.3 Notwithstanding Section 16.1.1, each Supplier shall be entitled, without the consent of any other Party, to assign its rights to receive payment of Support Payments by way of security to or in favour of:

- (a) a Financial Counterparty; or
- (b) any agent or security trustee on behalf of any Financial Counterparty.

16.1.4 A Supplier shall give the Secretary of State and the Scheme Administrator not less than five (5) Business Days' written notice prior to effecting an assignment pursuant to Section 16.1.3 and shall specify in such notice the identity of the assignee and provide such details in relation to such assignee as the Secretary of State or the Scheme Administrator may reasonably request having received such notification.

## 17 Confidentiality

### 17.1 Duty of Confidentiality

17.1.1 In this Section 17 **Confidential Information** means all information of a confidential nature that a Party (the **receiving** Party) gets from another Party (the **disclosing** Party) as a result of the performance of, or exercise of the receiving Party's rights under, the Scheme Document.

17.1.2 Each receiving Party must, subject to Sections 17.2 and 17.3:

- (a) keep all Confidential Information confidential and not disclose it to any person; and
- (b) (in the case of the Secretary of State) take all reasonable measures to ensure that a nominee under Section 11.1.5 or 11.4.1 does the same.

### 17.2 Allowed disclosures and Freedom of Information

17.2.1 A receiving Party may disclose or allow disclosure of Confidential Information:

- (a) on a confidential basis:
  - (i) to its officers, employees or professional advisers; or
  - (ii) to any of its permitted assignees or transferees; or
  - (i) to any department, non-departmental public body, authority or agency (including the Authority) of the Government of the United Kingdom; and any Secretary of State or any other Minister of the Crown;
- (c) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined;
- (d) when disclosure is required by law; or the rules or any order of any court, tribunal or agency of competent jurisdiction;
- (e) in the case of the Secretary of State, as contemplated in Schedule 5; and
- (f) to the extent the Confidential Information has become publicly available or generally known to the public at the time of the disclosure other than as a result of a breach of this Section 17.

17.2.2 Each Party acknowledges and agrees that the Secretary of State:

- (a) is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (and any subordinate legislation made under, or guidance and/or codes of practice issued in relation to, those Acts) (the **FoIA** and the **EIR** respectively);
- (b) may be obliged under the FoIA or the EIR to disclose Confidential Information:
  - (i) in certain circumstances without consulting or obtaining consent from the disclosing Party; or

- (ii) following consultation with the disclosing Party and having taken their views into account,

provided always that where (i) above applies the Secretary of State shall draw this to the attention of the disclosing Party prior to any disclosure.

- (c) shall be responsible for determining in its absolute discretion, whether the Confidential Information it holds (or that is held on its behalf) that is the subject of a request for information or request that environmental information be made available (each as defined under the FoIA or EIR) or an apparent such request:
  - (i) is exempt or excepted from disclosure pursuant to the FoIA or the EIR; or
  - (ii) is to be disclosed in response to such a request.

### **17.3 Continuation of duties**

The duties in this Section 17 shall continue to apply for three (3) years after the Scheme ends.

## **18 General**

### **18.1 Future regulation**

18.1.1 The Parties acknowledge that the Scheme may be made the subject of:

- (a) a new Supply Licence Condition and/or a new Shipper Licence Condition (pursuant and subject to the provisions of the Gas Act 1986 by which those licence conditions may be modified), and/or
- (b) (subject to the will of Parliament), new legislation.

18.1.2 Unless otherwise provided in or under legislation, the circumstances in Section 18.1.1 shall not operate to end the Scheme Agreement, which shall remain in force.

18.1.3 The Parties acknowledge that the consequences of those circumstances may include that:

- (a) compliance with the Scheme becomes an obligation of Suppliers and/or Shippers in law or under a Supply Licence Condition or Shipper Licence Condition (as well as pursuant to the contract under the Scheme Agreement);
- (b) (to the extent that it would not already be) enforcement of such compliance may (in whole or part) become the responsibility of an authority other than the Secretary of State; and
- (c) modification of the Scheme becomes governed by such legislative provision or Supply Licence Condition and/or Shipper Licence Condition.

### **18.2 Remedies for Supplier breach**

18.2.1 Each Supplier agrees that:

- (a) damages alone would not be an adequate remedy for any breach by it of its obligations in the Scheme Document;

- (b) accordingly, the Secretary of State and the Scheme Administrator will each (as the case may be) be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach by the Supplier of its obligations under the Scheme Document.

18.2.2 Each Supplier acknowledges that a failure by it to comply with the Scheme Document may constitute a contravention by it of its Supply Licence.

### 18.3 Scheme costs

18.3.1 It is acknowledged that the costs incurred by Xoserve (as the Scheme Administrator) in performing its obligations are included in Costs, as defined in, and recovered by it under the Data Services Contract.

18.3.2 Each Party is responsible for its own costs in connection with the negotiation, preparation, execution, perfection and implementation of the Scheme Agreement and Scheme Document.

### 18.4 Effect of Scheme Document

Nothing in the Scheme Document operates:

- (a) to establish any right, obligation or liability:
  - (i) as between Suppliers;
  - (ii) as between Shippers;
  - (iii) as between a Supplier and a Shipper which is not a Relevant Shipper; or
- (b) to modify the UNC, or vary any rights and obligations of Shippers and Xoserve pursuant to the UNC or under the Data Services Contract (but without prejudice to the modification referred to in Section 1.5).

### 18.5 Data Protection

18.5.1 In this Section 18.5:

- (a) **Applicable Data Protection Law** means all applicable legislation, rules, regulations, and governmental requirements relating to the privacy of Personal Data, including, but not limited to, the UK Data Protection Act 2018 and the GDPR as it forms part of the law of any country of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the **UK GDPR**).
- (b) **Personal Data** means all personal data (as defined by UK GDPR) disclosed by or made available by or on behalf of a Party to another Party, or generated by that other Party, for the purposes of the Scheme Document, each of those Parties being a **Relevant Party** in relation to that Personal Data.

18.5.2 In addition to the terms defined above, for the purposes of this Section 18.5, **controller**, **processor**, **processing**, **supervisory authority** and **data subject**, shall have the meanings ascribed to them under the UK GDPR.

18.5.3 Each Party hereby acknowledges that in processing Personal Data that it is either receiving or disclosing in connection with this Scheme Document, it is acting as an independent controller of that Personal Data.

18.5.4 Each Relevant Party shall comply with Applicable Data Protection Law in disclosing, receiving or processing Personal Data, and (without limitation to that) shall:

- (a) implement appropriate technical and organisational measures to ensure the security of the Personal Data in accordance with requirements under Applicable Data Protection Law;
- (b) provide reasonable assistance, information and cooperation at the other Relevant Party's request to the other Relevant Party to comply with all its obligations under Applicable Data Protection Law as it applies to the processing of the Personal Data, including any obligation to: (i) respond to requests for exercising of data subject rights; and (ii) handle any complaints received from a data subject or supervisory authority; and
- (c) from time to time agree in good faith and execute and deliver all such further documents and instruments and do all acts and things as may be reasonably required to enable any sharing of Personal Data anticipated under this Scheme Document is undertaken in accordance with Applicable Data Protection Law.

## **18.6 Supplier and Relevant Shipper the same person**

18.6.1 The Scheme Document is designed to operate where (in relation to a Consumer) the Supplier and Relevant Shipper are not the same person.

18.6.2 Where (in relation to a Consumer) the Supplier and Relevant Shipper are the same person, nothing in the Scheme document is to be taken as:

- (a) requiring that person in the capacity of Supplier or Shipper to give any notice or communication to, or take any other action in relation to, itself in the other capacity;
- (b) relieving that person from any obligation or liability in one such capacity on the grounds of any act or omission of it in the other capacity.

## **18.7 Rights and obligations of Shippers**

A Shipper is a Party to the Scheme Document only for the purposes of being bound by the obligations in Schedule 1 and Section 9.4 relation to the provision of information to Suppliers for which it is Relevant Shipper.

## **18.8 Variation**

Except pursuant to a modification in accordance with Section 13 and subject and without prejudice to any contrary provision of legislation or a licence condition as referred to in Section 18.1.3(c), the terms and conditions of the Scheme Document shall only be varied by an agreement in writing signed by the Parties.



## **18.9 Waiver**

No waiver by any Party of any breach of a provision of the Scheme Document shall be binding unless made expressly and in writing and any such waiver shall relate only to the matter to which it expressly relates and shall not apply to any subsequent or other matter.

## **18.10 Severability**

Each provision contained in the Scheme Document shall be severable and distinct from each other provision and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected.

## **18.11 Rights of Third Parties**

The Parties do not intend that any term of the Scheme Document shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.

## **18.12 Entire Agreement**

18.12.1 Each Party confirms that the Scheme Agreement and Scheme Document represent the entire understanding, and constitutes the whole agreement, in relation to its subject matter (which subject matter does not include matters governed by the UNC or Data Services Contract) 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, usage or course of dealing.

18.12.2 Each Party confirms that:

- (a) in entering into the Scheme Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in the Scheme Agreement); and
- (b) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with the Scheme Agreement, are those pursuant to the Scheme Agreement, and for the avoidance of doubt and without limitation, no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, the Scheme Agreement).

## **18.13 Governing Law**

The Scheme (including the Scheme Agreement and the Scheme Document), any matter, claim or dispute arising out of or in connection with it (including any Dispute), and all non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

## **18.14 Jurisdiction**

18.14.1 The parties irrevocably agree that the English courts have exclusive jurisdiction to settle any Dispute arising out of or in connection with the Scheme Document. Each Party agrees to

waive any objection to the English courts, whether on the grounds of venue or that the forum is not appropriate.

18.14.2 Where a Dispute relates to a matter in which the Scheme Administrator acts as agent of the Secretary of State under the Scheme Document:

- (a) a party to the Dispute may require that the Scheme Administrator is joined in the proceedings relating to such Dispute;
- (b) the Scheme Administrator may elect to join in such proceedings;
- (c) in a case within paragraph (a), the Secretary of State agrees to reimburse the Scheme Administrator for its reasonable expenses (including legal expenses) of participating in such proceedings, subject to the Scheme Administrator complying with any reasonable directions (which may not conflict with any ruling or direction of the court) given by the Secretary of State as to such participation, and except to the extent the court allows recovery of such costs from another Party.

18.14.3 Any Supplier or Shipper which is incorporated in a jurisdiction other than England and Wales shall immediately on the Supplier Scheme Effective Date or (as the case may be) date of accession to the Scheme Agreement provide to the Scheme Administrator and the Secretary of State an address in England and Wales for service of process on its behalf in any proceedings provided that if any such Party fails at any time to provide such address, such Party shall be deemed to have appointed the Scheme Administrator as its agent to accept service of process on its behalf until and unless such Party provides the Scheme Administrator and the Secretary of State with an alternative address in England and Wales for these purposes.

## **18.15 Notices**

18.15.1 Any notice to be given pursuant to the Scheme Document shall be effective only if it is in writing and is in English. Faxes are not permitted and, unless otherwise expressly stated, email is permitted.

18.15.2 The notice details of:

- (a) the Secretary of State and Xoserve, as at the date of the Scheme Agreement, are set out in the Scheme Agreement; and
- (b) each Supplier and each Shipper, as at the date it becomes a Party, shall be in the relevant Accession Agreement.

18.15.3 A Party may change its notice details by giving notice (of not less than three (3) Business Days) of such change:

- (a) in the case of a Supplier, to the Secretary of State, the Scheme Administrator and each Relevant Shipper;
- (b) in the case of a Shipper, to the Secretary of State, the Scheme Administrator and each Supplier for which it is a Relevant Shipper; and

in the case of the Secretary of State or the Scheme Administrator, to each other Party.

18.15.4 Where, at the time a Supplier or Shipper accedes to the Scheme Agreement, the Secretary of State or the Scheme Administrator has changed its notice details from those in the Scheme Agreement, the Scheme Administrator shall notify the changed details to the Supplier or Shipper in, or at the same time as entering into, the Accession Agreement.

18.15.5 Any notice given pursuant to the Scheme Document shall, without evidence of earlier receipt, be deemed to have been received:

- (a) if delivered by hand, on the Business Day of delivery or, if delivered on a day other than a Business Day, on the next Business Day after the date of delivery;
- (b) if sent by first class post within the United Kingdom, on the third (3rd) Business Day after the day of posting;
- (c) if sent from one country to another, on the fifth (5th) Business Day after the day of posting; or
- (d) if sent by email, when sent, except that:
  - (i) subject to paragraph (ii) an email shall be deemed not to have been sent if the sender receives a delivery failure notification, provided that any notice given outside the hours of 0900 to 1700 on a Business Day shall be deemed not to have been given until 0900 on the next Business Day; and
  - (ii) paragraph (i) does not apply in relation to Support Payment Statements and statements provided under Section 9.2.1(d) to the Secretary of State.

18.15.6 Except where expressly stated to the contrary, each notice given by the Parties, pursuant to the Scheme Document must be duly signed (including, in the case of notice by way of email, by Electronic Signature (and "Electronic Signature" shall have the meaning given to that term in the Electronic Communications Act 2000)):

- (a) in the manner, and by the person, specified in the relevant provision of the Scheme Document; or
- (b) (where no such requirement is specified) by an authorised signatory of the relevant Party.

18.15.7 Any notice to be given by the Secretary of State under the Scheme Document to all Suppliers or to all other Parties may be given by the Secretary of State publishing the notice on the Government website or in such other manner as the Secretary of State considers appropriate (and the foregoing requirements of this Section 18.15 do not apply in respect of a notice so given).

## Schedule 1- Scheme Calculations

### 1 Support Amount

1.1 For each Supplier for each day in the Support Payment Period the Support Amount will be calculated as follows:

Total energy (quantity of gas, in kWh) allocated to the Supplier's Relevant Supply Points for the day multiplied by the Support Rate for the day.

1.2 As provided in the Scheme Document, each Support Rate will apply for a period of at least a calendar month, with no changes within a calendar month.

1.3 Daily energy amounts for each End User Category will be rounded to whole kWh. Daily Support Payments will be rounded to whole pence. All rounding will be consistent with the rounding used for the Gas Transporters' Transportation Commodity invoices.

1.4 Relevant Supply Points will be identified by the End User Category of the Supplier's Supply Points each day. Relevant Supply Points comprise Supply Points for which all of the following conditions are met:

- (a) The End User Category of the Supply Point has a suffix of "D" for Domestic
- (b) The Annual Quantity of the Supply Point on the day is 293,000 kWh or less.
- (c) The Supply Point is live (supply meter point status 'Li') with a Shipper and Supplier on the CDSP's systems and is eligible to attract Transportation Commodity charges.

### 2 Supporting Information

2.1 Format of the supporting information to be provided to the Supplier

Supplier Name		Gas Supplier Limited			
Supplier Short code		ABC			
Shipper Name		Gas Supplier Limited			
Shipper Short code		DEF			
Support Payment Period		#			
Week commencing		Xx/xx/xx			
Payment date		Yy/yy/yy			
EUC	Day 1 AQ	Day 1 Energy	Day 2 AQ	Day 2 Energy	Etc
xx:Eyy01BND	kWh	kWh	kWh	kWh	
xx:Eyy01BPD	kWh	kWh	kWh	kWh	
xx:Eyy02BND	kWh	kWh	kWh	kWh	
xx:Eyy02BPD	kWh	kWh	kWh	kWh	
Etc (72 lines in total)	kWh	kWh	kWh	kWh	
Base volume	kWh	kWh	kWh	kWh	
Support rate		a		b	
Support amount		£x		£y	
Base Support Amount for week					£z
Support Reconciliation Amount (separate line for each historic calendar month)					£xx +/-
Error Reconciliation Amount					£yy +/-
Provisional UQB Adjustment Amount					£yy -
Support Payment					£zz

## 2.2 Format of the supporting information to be provided to the Relevant Shipper

Shipper Name		Gas Shipper Limited					
Shipper Short code		DEF					
Support Payment Period		#					
Week commencing		Xx/xx/xx					
Payment date		Yy/yy/yy					
EUC	Day 1 AQ	Day 1 Energy	Day 2 AQ	Day 2 Energy	Etc	Total Energy	
xx:Eyy01BND	kWh	kWh	kWh	kWh			
xx:Eyy01BPD	kWh	kWh	kWh	kWh			
xx:Eyy02BND	kWh	kWh	kWh	kWh			
xx:Eyy02BPD	kWh	kWh	kWh	kWh	Etc		
Etc (72 lines in total)	kWh	kWh	kWh	kWh			
Base volume	kWh	kWh	kWh	kWh		kWh	
Support Reconciliation Volume (itemised)						kWh	
Total upon which Support Payments to be made						kWh	

## 2.3 Format of the information to be provided to the Secretary of State

Support Payment Period		#						
Week commencing		Xx/xx/xx						
Payment date		Yy/yy/xx						
Supplier Name	Supplier Short code	Base Volume for Period	Base Support Amount	Support Reconciliation Amount	RTF Adjustment Amount	Error Reconciliation Amount	Provisional UBQ Adjustment Amount	Support Payment
Gas Supplier Limited	DEF	kWh	£	£	£	£		£xx
Gas Supplier 2 Limited	GHI	kWh	£	£	£	£		£xx
Etc								
Totals		kWh	£	£		£		£yy (= Aggregate Support Amount)
Total number of payments for the Support Payment Period								#

## 3 Payment Retention when Scheme ends or Supplier ceases to participate

3.1 The Scheme Administrator will apply the rules in Section 9.4.

## **4 Calculation of Reconciliation**

### **4.1 The Scheme Administrator will:**

- (a) compare the daily energy used in calculation of the Support Period Payments to the monthly energy on the Gas Transporter's Transportation Commodity invoice, when available; and
- (b) identify the reconciliation energy which relates to the Relevant Supply Points for all months where the Scheme was effective for the Supplier. This energy will be identified from the individual reconciliations on the Amendment Invoice, when the detailed supported information to the invoice is available.

4.2 Where either comparison shows that the energy used in the calculation of one or more Support Period Payments was inaccurate or superseded by Offtake Reconciliation a correction to the Support Period Amounts will be calculated (as Offtake Volume Reconciliation) using the applicable Support Rate for the affected day(s).

4.3 The correction may be an additional payment or a reduction in the payment. The correction will be included in the next available weekly Support Payment Statement and identified within the supporting information.

## **5 Duration of the Reconciliation process**

5.1 In accordance with Section 9.5 (which prevails in case of conflict) the Reconciliation process will continue for fourteen (14) months after the Scheme End Date in order to account for 12 further months of the Amendment invoice. At the end of fourteen (14) months, after analysing the Commodity invoice for the final month of the Scheme and all Amendment Invoices including the invoice for the twelfth (12<sup>th</sup>) calendar month after the end of the Scheme, the Scheme Administrator will make a final payment to the Supplier for any remaining balance on the three (3) retained payments after deduction of the net of all reconciliations for the Supplier for Relevant Supply Points for the Scheme period which were processed in those fourteen (14) months. For each Amendment Invoice issued after the end of the Scheme the Scheme Administrator will issue a summary to each Supplier of its latest position which compares the total Retention to the amount of Reconciliations to date.

5.2 Although reconciliations can appear on the Amendment Invoice for three to four years after the original billing period (in accordance with the Code Cut-off Rules) no further amounts will be calculated or payable under the Scheme, except in respect of an unresolved Statement Error, after the fourteen (14) month date referred to in Section 9.5.

## **6 Information to be provided by the Shipper to the Supplier**

6.1 Each Shipper will provide on request to each Supplier for which it was a Relevant Shipper for any part of a calendar month:

- (a) a full extract of the relevant detailed Commodity Invoice supporting information that relates to the Supplier's Relevant Supply Points for the calendar month
- (b) a full extract of the relevant detailed Amendment Invoice supporting information that relates to reconciliations for any of the Supplier's Relevant Supply Points for any Scheme months which appear on the invoice

6.2 A Shipper is not required (under the Scheme Document) to provide information to a Supplier in relation to reconciliations after fourteen (14) months after the Scheme End Date.

## 7 Scheme Timetable

7.1 Applying the rules in the Scheme Timetable in Schedule 2, the dates under the Scheme Timetable for the period to 31 December 2022 are as follows:

Payment Period number	Support Payment Period start date	Support Payment Period end date	Notification issued to SoS by 12.00 midday	Receipt of Aggregate Support Amount from SoS	Support Payment notification date to Suppliers	Support Payment date
1	01/10/2022	07/10/2022	10/10/2022	13/10/2022	14/10/2022	14/10/2022
2	08/10/2022	14/10/2022	17/10/2022	20/10/2022	21/10/2022	21/10/2022
3	15/10/2022	21/10/2022	24/10/2022	27/10/2022	28/10/2022	28/10/2022
4	22/10/2022	28/10/2022	31/10/2022	03/11/2022	04/11/2022	04/11/2022
5	29/10/2022	04/11/2022	07/11/2022	10/11/2022	11/11/2022	11/11/2022
6	05/11/2022	11/11/2022	14/11/2022	17/11/2022	18/11/2022	18/11/2022
7	12/11/2022	18/11/2022	21/11/2022	24/11/2022	25/11/2022	25/11/2022
8	19/11/2022	25/11/2022	28/11/2022	01/12/2022	02/12/2022	02/12/2022
9	26/11/2022	02/12/2022	05/12/2022	08/12/2022	09/12/2022	09/12/2022
10	03/12/2022	09/12/2022	12/12/2022	15/12/2022	16/12/2022	16/12/2022
11	10/12/2022	16/12/2022	19/12/2022	22/12/2022	23/12/2022	23/12/2022
12	17/12/2022	23/12/2022	28/12/2022	31/12/2022	04/01/2023	04/01/2023
13	24/12/2022	30/12/2022	03/01/2023	06/01/2023	07/01/2023	09/01/2023

7.2 The first monthly Commodity Invoice correction (if required) will be included in the Week 8 payment. The first Monthly Amendment Invoice correction (if required) will be included in the Week 10 payment. Future corrections will be published every four to five weeks, depending on Invoice issue dates.

7.3 If additional Bank Holiday are announced which fall in the initial period the above timetable will change accordingly to the next available business day.

## Schedule 2 – Scheme Timetable

The table below sets out, in relation to each Support Payment Period ending on day D, the time by which the specified actions are to be taken.

Action	Description	Section reference	Specified Time by which action must be taken
1.	Scheme Administrator notifies estimate of Aggregate Support Payment for each of the next following 3 months (where necessary, assuming no change in Support Rate)	9.2.2	By 1 October 2022 and the 5 <sup>th</sup> Business Day of each calendar month
2.	Supplier notifies any RTF Adjustment Amount, Provisional UBQ Adjustment Amount and CPC Adjustment Amount to Scheme Administrator	9.3.4	In accordance with Section 9.3.4, 9.6 and 9.8
3.	Scheme Administrator determines Support Payments for all Suppliers and issues Support Payment Statement and statement to the Secretary of State	9.2.1	12:00 hours on the 8 <sup>th</sup> day after day D or the next Business Day where day D is not Business Date
4.	the Secretary of State pays Aggregate Support Amount to Scheme Administrator	10.3.1	3 <sup>rd</sup> Business Day after Action 3 was taken
5.	Scheme Administrator pays (positive) Support Payment to Suppliers	10.3.2(b)(i)	1 <sup>st</sup> Business Day after Action 4 was taken
6.	Supplier pays (negative) Support Payment to Scheme Administrator	10.3.3(b)	2 <sup>nd</sup> Business Day after Action 3 was taken
7.	Scheme Administrator pays negative Aggregate Support Amount to the Secretary of State	10.3.5	2 <sup>nd</sup> Business Day after Action 6 was taken





**Schedule 3 – Certificate of Compliance**

[Company Name] (the **Company**)

SCHEME DOCUMENT – CERTIFICATE OF COMPLIANCE

Relating to the period from [●] to [●] (the **Relevant Period**) [*Note: insert the period in respect of which, under Section 14 of the Scheme Document, the Supplier must provide this Certificate of Compliance*]

To: [The Secretary of State] (**the Secretary of State**)

I, [●], being the Finance Director of the [x] (the **Supplier**), refer:

- (a) to the Scheme Agreement entered into inter alia, by [*the Supplier, Xoserve Limited and the Secretary of State on [●] / [inter alia, Xoserve Limited, the Secretary of State and various gas suppliers, and acceded to by the Supplier pursuant to an accession agreement dated [●]*] (the “Agreement”); and
- (b) the Scheme Document incorporated into the Scheme Agreement

Terms defined in or incorporated into the Scheme Document have the same meanings when used in this Certificate.

I hereby certify, having made all reasonable enquiries, that to the best of my knowledge and belief:

- (a) the Supplier has complied with the Tariff-Setting Requirements pursuant to the Scheme Document so far as they relate to the Relevant Period [other than the following instance(s) of non-compliance: XXX] [*delete these words or set out in detail any non-compliance which is to be disclosed*]; and
- (b) the information in this Certificate is in all material respects true, complete, accurate and not misleading.

This Certificate is governed by and construed in accordance with English law.

.....

Name: [●]

Position: Director

Dated: [●]

.....

Witness’s name: [●]

Occupation: [●]

Address: [●]

Dated: [●]

## Schedule 4 – Form of Accession Agreement

### Dated

### Between

- (1) *[Insert name of Scheme Administrator authorised under Scheme Document to enter into the Accession Agreement on behalf of Parties]* registered in England with number {\*\* } whose registered office is at {\*\* } [a corporation organised and existing under the laws of {\*\* } on its own behalf and on behalf of all the other parties to the Scheme Agreement (the **Scheme Administrator**); and
- (2) *[Insert name of Applicant Party or new Scheme Administrator (as applicable) to be admitted to the Scheme Document]* [registered in [England] with number {\*\* } whose registered office is at {\*\* }] [a corporation organised and existing under the laws of {\*\* } (**New Party**)

### Recitals

- A By the Scheme Agreement dated *[insert]* made between the Initial Parties named therein and as now in force between the Parties by virtue of any Accession Agreement entered into by any new Party before the date of this Accession Agreement (the **Scheme Agreement**), the Parties agreed to give effect to and be bound by the Scheme Document.
- B The New Party complies with the requirements of the Scheme Document, is authorised and wishes to be admitted as a Party to the Scheme Agreement.
- C [The New Party is a Supplier and has indicated to the Scheme Administrator and the Secretary of State that its participation in the Scheme requires Financial Counterparty Approval and provided to the Secretary of State an explanation of that requirement.] [*Delete where not applicable*]

### It is agreed:

#### 1 Accession of new Party

- 1.1 In this Accession Agreement, words and expressions defined in or for the purposes of the Scheme Agreement (including the term Scheme Document) and the Scheme Document that are not otherwise defined herein shall have the meanings ascribed thereto under the Scheme Agreement or Scheme Document, as applicable.
- 1.2 The Scheme Administrator (acting on its own behalf and on behalf of each of the other Parties) hereby admits the New Party as an additional party under the Scheme Agreement with effect from the date of this Accession Agreement on the terms and conditions hereof.
- 1.3 The New Party hereby accepts its admission as a party and undertakes with the Scheme Administrator (acting on its own behalf and on behalf of each of the other Parties) to perform and to be bound by the Scheme Agreement as a Party as from the date hereof.
- 1.4 For all purposes in connection with the Scheme Agreement the New Party shall as from the date hereof be treated as if it has been a signatory of the Scheme Agreement from the date hereof, and as if this Accession Agreement were part of the Scheme Agreement from the date hereof, and the rights and obligations of the Parties shall be construed accordingly.

**2 New Party notice details**

2.1 For the purposes of Section 18.15.2 of the Scheme Document the notice details of the New Party are as follows:

[Address:	**
Attention:	**
Email:	**
[Copy to:]	**

**3 Miscellaneous**

3.1 This Accession Agreement and the Scheme Agreement shall be read and construed as one document and references (in or pursuant to the Scheme Agreement) to the Scheme Agreement (howsoever expressed) should be read and construed as reference to the Scheme Agreement and this Accession Agreement.

3.2 Each provision contained in this Accession Agreement shall be severable and distinct from each other provision and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected.

3.3 This Accession Agreement may be executed in counterparts.

3.4 This Accession Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the courts of England and Wales only.

3.5 If the New Party is incorporated in a jurisdiction other than England and Wales shall immediately provide to the Scheme Administrator and the Secretary of State an address in England and Wales for service of process on its behalf in any proceedings provided that if the New Party fails at any time to provide such address, the New Party shall be deemed to have appointed the Scheme Administrator as its agent to accept service of process on its behalf until and unless such New Party provides the Scheme Administrator and the Secretary of State with an alternative address in England and Wales for these purposes.

Signed by the parties or their authorised representatives.



## **Schedule 5 – Energy Price Guarantee Assurance Programme (EPGAP)**

In this Schedule 'Party' means each Supplier and the Scheme Administrator; 'we', 'us' and 'our' refers to the Secretary of State; and 'you' and 'your' refers to each Supplier and the Scheme Administrator.

Each Party may be required to provide the Secretary of State (the data controller) and any nominated public body or a suitably qualified professional (as per Section 11.1.5) data with information relating to consumer supplies for the purpose of monitoring performance, and conducting compliance checks with the Scheme. The Secretary of State reserves the right to audit Parties and to conduct compliance checks. This Schedule 5 does not apply to information which a Party does not (and is not required by the Scheme or law or regulation to) hold or have access to. Data collected will be used in the following circumstances:

- to analyse and review the take up, impact, performance and costs of the Scheme;
- to research the effectiveness of the Scheme and support future policy development;
- to prevent and detect crime; including the use of fraud analytics to look for unknown or undetected criminal patterns and behaviour;
- to prevent and detect error; including use of analytics to identify anomalies in payments and settlements;
- to take action to mitigate the risk of loss in relation to fraud against a Party including:
  - preventing, detecting, investigating and prosecuting fraud;
  - bringing civil proceedings as a result of fraud;
  - taking administrative action in connection with fraud.
- to take action to mitigate the risk of loss in relation to error (including overpayments) against a Party including:
  - preventing, detecting and investigation error;
  - bringing civil proceedings as a result of errors;
  - taking administrative action in connection with errors (including recovery action).

As a Party within the Scheme you may be required to submit data for the purposes stated above.

A standard data schema will include, but is not limited to, tariffs and the EPG discount applied to tariffs, meter point and customer accounts, energy consumption data, billing data and account position and postcodes. The Secretary of State will ensure that consumers' privacy is safeguarded, whilst enabling proportionate access to energy consumption data. Any changes to how consumer data is used will be communicated via a privacy notice on gov.uk which is kept under regular review. The data shall be submitted to the Secretary of State and nominated qualified professionals via a secure file transfer process as required by the Secretary of State.

The data schema will be subject to change from time to time as required by BEIS. We will give reasonable notice of any changes, to allow Suppliers / Scheme Administrator to comply with obligations.

We will, in some circumstances and where the law allows, share your data with third parties, such as other government departments and regulatory bodies.

We will share your information with third parties where:

- required or allowed by law;
- it is in the public interest to do so;
- you authorise us to do so;
- it is necessary for the performance of our functions as a government department or a function of the Crown, another government department or another public authority.

#### **Schedule 6– RTF estimation methodology**

1. The estimate of the RTF Adjustment Amount is calculated by the following formula, subject to paragraph 2:

$$\left( \frac{\mu_{RTF}}{\mu_{BSA}} - 4\sigma \right) \times BSA$$

where

$\mu_{RTF}$  = Average of the negative RTF Adjustment Amounts notified by the Supplier to the Scheme Administrator from the Scheme Commencement Date to the time at which the Scheme Administrator makes the estimate. RTF Adjustment Amounts notified as described in Section 9.3.5(f) are counted in the average. Positive RTF Adjustment Amounts are not counted in the average.

$\mu_{BSA}$  = Average of Base Support Amounts the Supplier for Support Payment Periods (**relevant** Support Payment Periods) in respect of which RTF Adjustment Amounts were counted in  $\mu_{RTF}$ .

BSA = Base Support Amount for the Support Payment Period for which the estimate is to be made

$$\sigma = \sqrt{\frac{\sum(x_i - \mu)^2}{N}} \text{ [Standard Deviation]}$$

where

$\sum$  is the sum over relevant Support Payment Periods

$i$  denotes a relevant Support Payment Period

$N$  = Number of relevant Support Payment Periods

$$\mu = \frac{\mu_{RTF}}{\mu_{BSA}}$$

$$x_i = \frac{RTF_i}{BSA_i}$$

where

“BSA<sub>*i*</sub>” is the Base Support Amount for relevant Support Payment Period  $i$

“RTF” is the RTF Adjustment Amount in respect of relevant Support Payment Period  $i$

and where, for the avoidance of doubt, RTF Adjustment Amounts are those determined in respect of Support Payment Periods in accordance with Section 9.3.1.

In the above formula, the term  $\frac{\mu_{RTF}}{\mu_{BSA}}$  has negative sign and accordingly the estimate of RTF Adjustment Amount has negative sign.

2. If the magnitude of the estimate applying the formula in paragraph 1 would exceed BSA, the estimate shall be

(– BSA)



## Schedule 7 – Supplier Payment Reserve

### 1 Introduction

- 1.1 This Schedule applies, with effect from the Schedule Effective Date, for the purposes of ensuring that, for each Supplier and each Support Rate Period (starting with the First Support Rate Period), there is a Supplier Payment Reserve equal to the Payment Threshold Amount, to provide assurance to the Secretary of State of payment of amounts becoming due (in respect of Support Payments) from the Supplier during or after that Support Rate Period.
- 1.2 This Schedule applies in respect of each Supplier.

### 2 Interpretation

- 2.1 In this Schedule:

**Base Minimum Threshold Amount** in respect of a Supplier and a Support Rate Period means the amount calculated under paragraph 5.1(a);

**First Support Rate Period** means the Support Rate Period that starts on 1 July 2023;

**Last Prior Period** in relation to a Support Rate Period means the last Support Payment Period to start before the start of the Support Rate Period;

**Minimum Threshold Amount** in respect of a Supplier and a Support Payment Period means:

- (a) subject to paragraph (b), the Base Minimum Threshold Amount;
- (b) if (at the last day of the Support Payment Period) an Unremedied Non-Compliance Notice has been given to the Supplier under paragraph 5.2(d), and has not been withdrawn, the amount set out in paragraph 5.3;

**Outstanding Overpayment Amount** in respect of a Supplier and a Support Payment Period, means the Overpayment Amount for the Support Rate Period in which that Support Payment Period starts, reduced by the amounts (if any) in respect of Prior Support Payment Periods that have been treated as paid by application of the Supplier Payment Reserve under paragraph 4.2;

**Overpayment Amount** in respect of a Supplier and a Support Rate Period means the amount that it is estimated, at the start of that Support Rate Period, in accordance with Annex 1 to this Schedule, will become payable (both during and after the Support Rate Period) by the Supplier to the Secretary of State, as a result of any of the following in respect of all preceding Support Payment Periods up to and including the Last Prior Period (**preceding** Support Payment Periods):

- (c) the overestimation, by the application of the procedures in Schedule 1, of Support Period Quantity and Base Support Amounts, to the extent not corrected by Quantity Reconciliation Amounts in respect of any preceding Support Payment Period;
- (d) RTF Adjustment Amounts that have not been notified or otherwise counted in Support Payments in respect of any preceding Support Payment Period;

- (e) Unbilled Quantity, to the extent not adjusted by Provisional UBV Adjustment Amounts in respect of any preceding Support Payment Period;

**Payment Threshold Amount** in respect of a Supplier and a Support Payment Period means the greater of the Outstanding Overpayment Amount and the Minimum Threshold Amount;

**Prior Support Payment Period** in relation to a Support Payment Period (P) means any Support Payment Period from and including the first Support Payment Period that starts in the First Support Rate Period to but not including Support Payment Period P;

**Schedule Effective Date** means 24th May 2023;

**Supplier Payment Reserve** in respect of a Supplier means a reserve, for the benefit of the Secretary of State, representing the amounts that have been withheld from payment (as Support Payments) to the Supplier or have been paid by the Supplier to the Secretary of State as provided in paragraphs 3.1, 3.2 and 3.3(a), reduced by the amounts to which the reserve is applied in accordance with paragraph 4.2, and otherwise adjusted as provided in paragraph 4.1;

### **3 Establishing and maintaining the Supplier Payment Reserve**

- 3.1 Subject to paragraph 3.2, no amount (that would otherwise be payable) is to be paid under the Scheme Document to a Supplier in respect of any of the following Support Payment Periods:
  - (a) each Support Payment Period ending before the Schedule Effective Date for which a Support Payment Statement has not been issued at the Schedule Effective Date;
  - (b) each later Support Payment Period up to and including the Last Prior Period for the First Support Rate Period.
- 3.2 The Secretary of State may decide that all or part of an amount referred to in paragraph 3.1 in respect of a Support Payment Period shall be paid to a Supplier, if the Secretary of State considers:
  - (a) that (on the basis of amounts already withheld from payment in respect of earlier Support Payment Periods) the Supplier Payment Reserve is likely to exceed the Payment Threshold Amount;
  - (b) that the Supplier is in compliance with its obligations under Section 11.1; and
  - (c) that the withholding of payment of that amount would be likely materially to affect the solvency of the Supplier.
- 3.3 With effect from the first Support Payment Period that starts in the First Support Rate Period, no amount (that would otherwise be payable) is to be paid under the Scheme Document to a Supplier in respect of a Support Payment Period if or to the extent that the Supplier Payment Reserve is, or would as a result of such payment become, less than the Payment Threshold Amount.
- 3.4 If, in respect of the first Support Payment Period that starts in a Support Rate Period:

- (a) the Supplier Payment Reserve is less than the Payment Threshold Amount, the Supplier must pay to the Secretary of State the amount by which the Supplier Payment Reserve is less than the Payment Threshold Amount;
- (b) the Supplier Payment Reserve is greater than the Payment Threshold Amount, the Secretary of State must pay to the Supplier the amount by which the Supplier Payment Reserve is greater than the Payment Threshold Amount.

#### **4 Supplier Payment Reserve**

- 4.1 The amount of the Supplier Payment Reserve in respect of a Support Payment Period is determined as:

$$A + B - C - D + E$$

where

- A is the amount of all Support Payments otherwise payable to the Supplier in respect of Prior Support Payment Periods which, in accordance with paragraph 3.1 or 3.2, have not been paid to the Supplier;
- B is the sum of the amounts (if any) paid by the Supplier to the Secretary of State under paragraph 3.3(a);
- C is the sum of the amounts (if any) paid by the Secretary of State to the Supplier under paragraph 3.3(b);
- D is the sum of the amount of all Support Payments payable by the Supplier to the Secretary of State in respect of Prior Support Payment Periods;
- E is the sum of the amounts (if any) in respect of Support Payments in respect of Prior Support Payment Periods which have been paid by the Supplier to the Secretary of State under Section 10.3.3(b);

and where each of those terms is deemed to have positive sign.

- 4.2 If and to the extent that, in respect of a Support Payment Period:

- (a) the Supplier Payment Reserve is greater than the Minimum Threshold Amount, and
- (b) the Support Payment is an amount is payable by the Supplier to the Secretary of State

the amount standing to the credit of the Supplier Payment Reserve is applied in or towards payment by the Supplier to the Secretary of State of that Support Payment (which is treated as paid accordingly);

- 4.3 The Supplier is required to make payment of a Support Payment under Section 10.3.3(b) if and to the extent that the Supplier Payment Reserve is, or would (but for such payment) be less than the Minimum Threshold Amount.

#### **5 Minimum Threshold Amount**

- 5.1 The Base Minimum Threshold Amount in respect of a Support Rate Period is calculated as:

$$F * \sum SP / N$$

where

F is one, or such lower factor (not less than zero) as the Secretary of State may, in the absolute discretion of the Secretary of State, decide and notify to Suppliers

$\sum$  is the sum over all relevant Support Payment Periods

SP is the Support Payment in respect of a relevant Support Payment Period

N is the number of relevant Support Payment Periods

and where a **relevant** Support Payment Period is a Support Payment Period from and including the period that started on the Scheme Commencement Date to and including the Last Prior Period for that Support Rate Period, excluding any Support Payment Period that starts in a Support Rate Period for which the Support Rate is zero.

5.2 If at any time the Secretary of State considers that a Supplier has not materially complied with its obligations under Section 11.1:

(a) the Secretary of State may give notice to that effect to the Supplier, setting out what has not been complied with and in respect of which month or months (collectively, the **non-compliance**);

(b) if the Supplier disagrees with what is stated in the notice, the Supplier may, within 5 Business Days after the date when the notice was given, send a reply to the Secretary of State setting out what it disagrees with and why;

(c) if the Supplier sends such a reply:

(i) the Secretary of State will consider such reply and may (for such period and to such extent as the Secretary of State considers reasonable) communicate further with the Supplier about the matters in the reply;

(ii) following such consideration and any further such communication, the Secretary of State will send a further notice to the Supplier:

(A) stating that the original notice remains in place; or

(B) withdrawing the original notice; or

(C) revising the original notice (in which case the non-compliance is as set out in such revised notice);

(d) if, within 10 Business Days after:

(i) the date when the Secretary of State's notice under paragraph 5.2(a) was given, or

(ii) if the Supplier send a reply under paragraph 5.2(b), the date when the Secretary of State's notice under paragraph 5.2(c)(ii) was given

the Supplier has not remedied the non-compliance to the reasonable satisfaction of the Secretary of State, the Secretary of State may give notice (**Unremedied Non-Compliance Notice**) to that effect to the Supplier and the Scheme Administrator;

- (e) if the Secretary of State gives an Unremedied Non-Compliance Notice to the Supplier, and the Supplier subsequently remedies the non-compliance to the reasonable satisfaction of the Secretary of State, the Secretary of State will withdraw the Unremedied Non-Compliance Notice by notice to the Supplier and the Scheme Administrator.

5.3 Where the Secretary of State has given and not withdrawn Unremedied Non-Compliance Notice, the Minimum Threshold Amount in respect of a Support Payment Period is:

- (a) the greater of the Outstanding Overpayment Amount and the Supplier Payment Reserve; or
- (b) such lesser amount as the Secretary of State may, in the absolute discretion of the Secretary of State, decide and specify in the Unremedied Non-Compliance Notice.

5.4 Paragraph 5.2 is without prejudice to Section 14.2.

## **6 End of Scheme**

6.1 At a date to be determined by the Secretary of State in respect of a Supplier (or some or all Suppliers collectively), and notified to the Supplier or Suppliers, but not later than the day on which the Final Reconciliation Amount is paid, the Base Minimum Threshold Amount is set to zero (0).

## **7 Statements and Support Payment Statements**

7.1 The Scheme Administrator or (if the Secretary of State so decides) the Secretary of State shall, as soon as reasonably practicable after the start of each Support Rate Period, determine for each Supplier and notify to the Supplier and (as the case may be) the Secretary of State or the Scheme Administrator:

- (a) the Overpayment Amount; and
- (b) the Base Minimum Threshold.

7.2 For each Support Payment Period, starting with the first Support Payment Period that starts in the First Support Rate Period:

- (a) the Scheme Administrator shall determine and include in each Support Payment Statement, for each Supplier:
  - (i) the amount of the Supplier Payment Reserve;
  - (ii) the amounts added to or deducted from the Supplier Payment Reserve since the preceding Support Payment Statement;
  - (iii) the following amounts:
    - (A) any amount which (in accordance with paragraph 3.4(a)) is payable by the Supplier to the Secretary of State;

- (B) any amount which (in accordance with paragraph 3.4(b)) is payable by the Secretary of State to the Supplier;
  - (C) any amount that (after applying paragraph 3.3) is to be paid to the Supplier;
  - (D) any amount that is to be paid by the Supplier in accordance with paragraph 4.3;
- (b) the Aggregate Support Amount shall be determined on the basis that, for each Supplier, the Support Payment for each Supplier is the amount or the sum of the amounts in paragraph (a)(ii);
- (c) Sections **Error! Reference source not found.** and **Error! Reference source not found.** shall apply as if references to the Support Payment for a Supplier were to the amount or the sum of the amounts in paragraph (a)(ii).

## Annex

### Overpayment Amount: Estimation Methodology [Gas]

1. The overpayment amount is equal to:  $(E_{Vol} + E_{RTF} + E_{UBV}) \times 1.1$ 
  - a. Where  $E_{Vol}$  is an estimate of the (£) amount will not yet have been paid by/to the Secretary of State in Volume Reconciliation Amounts.
  - b. Where  $E_{RTF}$  is an estimate of the (£) amount that will not yet have been paid to the Secretary of State in Reduced Tariff Floor Amounts.
  - c. Where  $E_{UBV}$  is an estimate of the (£) amount that will not yet have been paid to the Secretary of State in Unbilled Volume Amounts.

$$E_{Vol}$$

2.  $E_{Vol}$  is a supplier-specific forecast of future volume reconciliation amounts based on past reconciliation data. If the estimation methodology described below results in a  $E_{Vol}$  below zero, the  $E_{Vol}$  will be zero.
3. **In the EPG process each gas settlement runs occurs monthly. Energy consumed in Month 'M' is first reconciled in the following month 'M+1'. It is then subsequently reconciled in later months; 'M+2', 'M+3' and so on.**
4. Settlement runs are assumed to follow the average of previous settlement runs where full data is available. The formula for calculating any given month's settlement run is:

$$\left( \frac{\mu SR}{\mu BSA} \right) \times BSA$$

Where:

$\mu SR$  = Average of the Settlement Runs of the type that is being estimated (one of M+1, M+2, M+3, M+4, ...) for which full data is available.

$\mu BSA$  = Average of Base Support Amounts of the Supplier for Support Payment Periods in respect of which Settlement Runs were counted in  $\mu SR$ .

$BSA$  = Base Support Amount for the Support Payment Period(s) for which the estimate is to be made.

5. In some case the value of the  $BSA$  will not yet be known, as the relevant Support Payment Period has not yet started (or ended). In this case the Scheme Administrator should use the last available  $BSA$  for that supplier (i.e., from the previous week).
6. In some cases, a settlement run will not yet have occurred for any month of 'EPG' consumption (i.e., M+10 will not happen until 10 months after consumption in month M, so will not have occurred for any EPG consumption when an estimate is first undertaking in July 2023). In these cases, the formula for calculating any given settlement run is:

$$M_1 \times OHPR$$

Where:

$M_1$  = The value of the 'M+1' settlement run for the energy consumed in month 'M'.

$OHPR$  = The relevant Observed Historic Proportion of Reconciliation for the settlement run being calculated as set out in the table below.

Settlement Run	Observed Historic Proportion of Reconciliation observed in later months compared to Month 1
----------------	---

M+7	7.4%
M+8	5.1%
M+9	4.3%
M+10	4.1%
M+11	0.1%
M+12	0.0%

$$E_{RTF}$$

6. The estimate of the RTF Adjustment Amount is calculated by the following formula:

$$\left( \frac{\mu_{RTF}}{\mu_{BSA}} + \sigma \right) \times BSA$$

Where:

$\mu_{RTF}$  = Average of the RTF Adjustment Amounts notified by the Supplier to the Scheme Administrator from the Scheme Commencement Date to the time at which the Scheme Administrator makes the estimate. RTF Adjustment Amounts notified as described in Section **Error! Reference source not found.** are counted in the average. Positive RTF Adjustment Amounts are not counted in the average.

$\mu_{BSA}$  = Average of Base Support Amounts the Supplier for Support Payment Periods (**relevant** Support Payment Periods) in respect of which RTF Adjustment Amounts were counted in  $\mu_{RTF}$ .

$BSA$  = Base Support Amount for the Support Payment Period for which the estimate is to be made

$$\sigma = \sqrt{\frac{\sum(x_i - \mu)^2}{N}} \text{ [Standard Deviation]}$$

Where:

$\sum$  is the sum over relevant Support Payment Periods

$i$  denotes a relevant Support Payment Period

$N$  = Number of relevant Support Payment Periods

$$\mu = \frac{\mu_{RTF}}{\mu_{BSA}}$$

$$x_i = \frac{RTF_i}{BSA_i}$$

Where:

$BSA_i$  is the Base Support Amount for relevant Support Payment Period  $i$

$RTF_i$  is the RTF Adjustment Amount in respect of relevant Support Payment Period  $i$



7. If the magnitude of the estimate applying the formula in paragraph 1 would exceed BSA, the estimate shall be: (BSA)

$$E_{UBV}$$

8. The estimate of the UBV Adjustment Amount is calculated as follow:

$$EUVP_l \times ASPM_e$$

Where:

EUVP<sub>l</sub> is:

- (i) the most recent estimate of Unbilled Volume Proportion provided by the Supplier
- (ii) if the Supplier has failed to provide such an estimate, five (5) percent or such lower proportion as the Secretary of State shall (in its absolute discretion) determine and notify the Scheme Administrator.

ASPM<sub>e</sub> is:

- (i) the aggregate of the Support Payments paid or payable to the Supplier for each Support Payment Period that commenced during that Scheme Month, adding back any Provisional UBQ Adjustment Amounts taken into account in those Support Payments.
- (ii) If the Scheme Month has not yet started/finished then ASPM<sub>e</sub> will be:

$$\mu SP \times 4.5$$

Where:

$\mu SP$  is the average of the most recent 4 support payments adding back any Provisional UBQ Adjustment Amounts taken into account in those Support Payments.