Part 7: Cost Recovery

7.1 Scope

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

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

7.2 Annual CMA Budget and CMA Charges Process

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

(i) all proposed operating costs of the CMA (including costs for the Scottish Landlord Portal, but excluding those costs provided for by the payment of an Additional Service Charge); and

(ii) any other proposed costs of the CMA, including any proposed capital expenditure and any finance costs, but excluding any costs of development projects funded from income from Performance Standard Charges, which in each case the CMA anticipates will be incurred in the following Year in carrying out its duties under the Market Code (together the “Total Costs”). The draft CMA Budget will also set out the aggregate CMA Charges which the CMA proposes to charge to Trading Parties during the relevant Year, being an amount no greater than the Total Costs. Notwithstanding the foregoing, the first draft CMA Budget shall cover the Transitional Charging Period.

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

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

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

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

(i) the CMA may adjust the profile of recovery of CMA Charges in accordance with Section 7.2.6(ii);

(ii) such profile will be recognised by applying factors other than one twelfth (1/12) in relation to all or certain Months for the calculation of CMA Charges; and

(iii) the CMA shall inform Scottish Water and Licensed Providers of such factors (and the month(s) to which each such factor applies) as soon as they have been approved by the CMA.

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

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

7.3 Recovering the CMA Charges and Other Charges

7.3.1 Transitional Charging Period

Deleted September 2018
Following finalisation of the CMA Budget and the CMA Charges for any Year, the CMA shall be entitled to recover the CMA Charges and any Default CMA Charges in respect of that Year on the following basis:

(i) Scottish Water shall pay one third (⅓) of the CMA Charges ("Scottish Water CMA Charges") and any Default CMA Charges in respect of that Year; and

(ii) Licensed Providers shall pay two thirds (⅔) of the CMA Charges ("Licensed Provider CMA Charges") and any Default CMA Charges in respect of that Year.

Each Licensed Provider's share of the Licensed Provider CMA Charges for the first Month following the Go Live Date and all subsequent Months shall be calculated in accordance with Schedule 21.

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

7.3.6 All CMA Charges, Default CMA Charges and Performance Standard Charges are exclusive of United Kingdom value added tax which shall be added to such CMA Charges, Default CMA Charges and Performance Standard Charges, if applicable.

7.4 Payment of CMA Charges

7.4.1 Following finalisation of the CMA Budget and the CMA Charges, the CMA shall:

(a) notify Scottish Water of the initial amount of the Scottish Water CMA Charges and shall allocate the Scottish Water CMA Charges into Monthly instalments; and
(b) notify all Licensed Providers of the initial aggregate Licensed Provider CMA Charges for the Year.

7.4.2 The CMA shall prepare for each Month an invoice for Scottish Water detailing the following invoices to Scottish Water as required:

- the amount of the Scottish Water CMA Charges and any Default CMA Charges payable by Scottish Water in respect of that Month. An annualised invoice for Scottish Water CMA Charges including a schedule of monthly tax dates and payment dates;

- A monthly invoice for any Additional Service Charge payable by Scottish Water in terms of Section 7.3.5 which will be issued as set out in Clause 7.4.3 (vii);

- A quarterly invoice for any Performance Standard Charges payable by Scottish Water for the preceding calendar quarter (April to June, July to September, October to December and January to March) which will be issued as out in Clause 7.4.3(vii);

- A monthly invoice for any interest payable by Scottish Water under Section 7.7; and

- the total amount payable by Scottish Water and any value added tax payable thereon A monthly invoice for any Default CMA Charges payable by Scottish Water in respect of that month.

7.4.3 The CMA shall prepare for each Month an invoice for each Licensed Provider detailing the following invoices to each Licensed Provider as required:

- A monthly invoice for the amount of the Licensed Provider's share of the Licensed Provider CMA Charges and any Default CMA Charges payable in respect of that Month and the basis of calculation of such share;

- A monthly invoice for any Additional Service Charge payable by that Licensed Provider in terms of Section 7.3.5;

- A quarterly invoice for any Performance Standard Charges payable by the Licensed Provider for the preceding calendar quarter (April to June, July to September, October to December and January to March):
A monthly invoice for any interest payable by the Licensed Provider under Section 7.7; and

the total amount payable by the Licensed Provider and any value added tax payable thereon.

A monthly invoice for the Licensed Provider’s share of any Default CMA Charges payable in respect of that month and the basis of calculation of such share.

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

CMA invoices will be despatched by email as follows:

(i) Monthly invoices on or before the 10th of the following month;

(ii) Quarterly invoices on or before the 15th last working day of the month following the end of the quarter.

7.5 Due Date For Payment

Each Trading Party shall:

(i) pay monthly invoices issued by CMA not later than the 22nd of the month in which the invoice is issued by the CMA; CMA Charges, any Default CMA Charges and any Performance Standard Charges for any Month not later than ten (10) Business Days prior to the start of the Month; and

(ii) pay quarterly invoices issued by the CMA not later than the 22nd of the month following the month in which the invoice is issued by the CMA.

(iii) in respect of reconciliation payments payable under Section 7.11 each Trading Party shall make any payment not later than five (5) Business Days after the date of any invoice issued to a Trading Party under Section 7.11.6;

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

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

7.7 Interest Late Payment

If any amount due to the CMA in terms of the Market Code is not received on or before the invoice due date (which in the case of the Transitional Charges shall be ten (10) Business Days after receipt by Scottish Water of any request by CMA pursuant to Section 7.3.1), the Trading Party will, subject to a de minimis test, be required to pay interest to the CMA on any such amount paid late at the rate which is four per cent (4%) per annum over the published base lending rate from time to time of Bank of Scotland, such interest to be calculated from (but excluding) the date of default to the date of actual payment (whether after or before judgement), calculated on a daily basis and compounded annually.

The CMA will maintain a record of late payments which will be presented at each TP meeting.

7.8 Failure to pay

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

(i) the CMA shall promptly notify all Trading Parties, the TP and the Commission of such failure within two (2) Business Days of such failure, and Section 7.8.2 shall apply; and

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

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7.8.2 Scottish Water shall pay one third (⅓) of any Default CMA Charges and Licensed Providers shall pay two thirds (⅔) of any Default CMA Charges. Each Licensed Provider's share of any unpaid CMA Charges to be paid as Default CMA Charges shall be calculated in accordance with that Licensed Provider’s Market Share calculated as at the most recent Month in relation to which the CMA has submitted an invoice for CMA Charges to such Licensed Party (the “relevant Month”) where Market Share shall be calculated as follows:

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

7.8.3 Where an amount is unpaid in respect of CMA Charges as described in Section 7.8.1 the CMA shall take reasonable steps (including court proceedings if appropriate but will not include the need to send notices under this Market Code other than those anticipated in Section 10.7.1(i)) to pursue and recover the unpaid amount from the non-paying Trading Party.

7.8.3.A Where the CMA has issued a notice to a Licensed Provider in terms of Clause 10.7.1(i)(b), and the amount invoiced has not been paid by the expiry of the further period of Business Days specified in the notice, then the CMA shall inform the Commission within two (2) Business Days after such expiry that the Licensed Provider can be classed as a Defaulting Trading Party.

7.8.4 If the CMA subsequently recovers any amount from the non-paying Trading Party in respect of the unpaid CMA Charges the amount recovered will be taken into account in determining under Section 7.3 and Schedule 21 the amounts payable in subsequent months by Trading Parties in respect of CMA Charges.

7.8.5 Without prejudice to the CMA’s continuing entitlement to payment by a non-paying Trading Party in respect of the CMA Charges, a non-paying Trading Party shall indemnify and keep indemnified each other Trading Party on demand in respect of all amounts paid by such other Trading Party to CMA in respect of its liability under Section 7.8.1(ii).
7.8.6 While any amount is outstanding from the non-paying Trading Party in respect of CMA Charges, the CMA will be entitled to withhold any payments which may be due to that Trading Party from the CMA.

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

7.10 Minimum Level of CMA Charges
Deleted 24 March 2009.

7.11 Reconciliation

7.11.1 In relation to each Year the CMA shall, not later than twenty five (25) Business Days after publication of its audited accounts for that Year, make a final determination and adjustment in respect of the amounts payable by each Trading Party by way of CMA Charges for that Year or any amount payable by the CMA in respect of excessive recovery of CMA Charges for that Year. The adjustment in respect of the amounts payable by each Trading party, and their liability for any shortfall, or subject to Section 7.11.4 entitlement to any surplus shall be calculated in accordance with Schedule 21.

7.11.2 Deleted 1 August 2008.

7.11.3 Deleted 1 August 2008.

7.11.4 Subject to the CMA receiving satisfactory confirmation of recipient bank account details, the CMA shall pay any sums due to Trading Parties in accordance with this Section 7.11 within five (5) Business Days of the date of its final determination under Section 7.11.1 provided that no such reimbursement shall be made:

(i) to Scottish Water where the sum in question is less than £10,000; or
(ii) to any Licensed Provider where the sum due to that Licensed Provider is less than five per cent (5%) of the CMA Charges paid or payable by that Licensed Provider in the final Month of the Year to which such sum due relates.
in which case such sum shall be deducted from the next invoice for CMA Charges
submitted to the relevant Trading Party under Section 7.4.

7.11.5 The CMA shall use only actual data and shall not (unless any actual data remains unavailable
to it at the time of such determination) use estimated data in calculating any payments due
under this Section.

7.11.6 The CMA shall invoice any amounts determined to be payable by Trading Parties in the
relevant Year under this Section 7.11 and such amounts shall be payable in accordance with
Section 7.5(iii).

7.11.7 Subject only to Section 7.11.8, the CMA's determination of CMA Charges for any Year (or the
Transitional Charging Period) shall be final and binding and no further adjustment shall be
made.

7.11.8 If, after the final determination under Section 7.11 the CMA determines that there are
exceptional circumstances which justify an adjustment in respect of an extraordinary error in
the determination of, or in data used in the determination of CMA Charges for any Year, the
CMA may in its discretion direct, and Trading Parties shall be bound by, and the CMA shall
give effect to, such adjustments in respect of CMA Charges (payable by and to Trading
Parties) in that Year as appears to the CMA to be appropriate.

7.12 Charging Disputes

7.12.1 If a Trading Party disputes any amount shown in any Relevant Invoice, that Trading Party
shall nevertheless pay the amount shown in full and may not withhold payment of such
amount or any part thereof. A Trading Party shall only be entitled to dispute any amount
shown in any Relevant Invoice provided it has notified the CMA of such dispute within one (1)
Month of the date on which such Relevant Invoice was issued.

7.12.2 Where a Trading Party notifies the CMA of any dispute or query as to the amount shown in
any Relevant Invoice, the CMA shall as soon as is reasonably practicable (but not necessarily
before the due date for payment) investigate the matter and inform the Trading Party of the
outcome of its investigation.

7.12.3 Where (pursuant to paragraph 7.12.2 or otherwise) the CMA establishes that, or it is
determined by any Expert appointed under Part 9 Section 9.4 that, any error has been made
in the determination of the amounts payable by any Trading Party in respect of any Relevant Invoice (whether such error resulted in over-payments or in under-payment by any such Trading Party), the CMA will make such adjustments, in respect of the subsequent Relevant Invoice (following such establishment or determination) payable in accordance with this Market Code by or to such Trading Party or Trading Parties, as will ensure that the correct amounts have been so paid.

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

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

7.13 Treatment of Performance Standard Charges

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