

SECTION C: BSCCO AND ITS SUBSIDIARIES**1. GENERAL****1.1 Introduction**

1.1.1 This Section C sets out:

- (a) provisions as to the constitution of BSCCo and the obligations of the BSCCo Shareholder;
- (b) the powers, functions and responsibilities of BSCCo;
- (c) provisions as to the management of BSCCo;
- (d) provisions as to the relationship between BSCCo and Parties;
- (e) arrangements for establishing a Business Strategy and Annual Budget for BSCCo; and
- (f) provisions relating to Subsidiaries of BSCCo.

1.1.2 In this Section C references to a Party do not include BSCCo or the BSC Clearer.

1.2 Role and powers, functions and responsibilities of BSCCo

1.2.1 The principal role of BSCCo (but subject as provided in this paragraph 1.2) is to provide and procure facilities, resources and services (including providing or procuring resources required by the Panel and Panel Committees, and procuring services under BSC Service Descriptions) required for the proper, effective and efficient implementation of the Code.

1.2.1A Without prejudice to paragraph 1.2.1, a BSC Company (directly or through any agent) may discharge the functions and responsibilities of the WHD Operator as set out in the Warm Home Discount (Reconciliation) Regulations 2011 subject to the following:

- (a) the appointed BSC Company may discharge the functions and responsibilities of the WHD Operator in accordance with any of the provisions, powers and mechanisms set out in the Code and the Code shall be construed accordingly;
- (b) each Party and the Panel shall not (whether by action, omission or withholding of consent) prevent or restrict such BSC Company from discharging the functions and responsibilities of the WHD Operator and shall (where applicable) co-operate with all requests for information and payment made by such BSC Company in discharging those functions and responsibilities;
- (c) each Party (to the fullest extent permitted by law) waives any claim in damages or any other claim of a financial nature (other than for death or personal injury as a result of negligence or for an equitable remedy) against any BSC Company and releases each BSC Company from any such liability in respect of any breach by such BSC Company in connection with its discharge of the functions and responsibilities of the WHD Operator;
- (d) Parties shall have no liability or obligation to provide financial support to the appointed BSC Company in respect of its discharge of the functions and responsibilities of the WHD Operator;

- (e) the appointed BSC Company shall account for all costs, expenses, liabilities and resources (incurred or used) and for payments (received and made) in the discharge of the WHD Operator's functions and responsibilities separately from BSC Costs and Trading Charges respectively;
 - (f) the appointed BSC Company shall provide all information requested by the Authority or Secretary of State in relation to its discharge of the WHD Operator's functions and responsibilities;
 - (g) the appointed BSC Company shall provide the Panel with reports from time to time in relation to its discharge of the WHD Operator's functions and responsibilities, provided that such BSC Company shall not be required to disclose to the Panel any information that the Secretary of State or the Authority expressly request such BSC Company to keep confidential;
 - (h) in discharging the WHD Operator's functions and responsibilities, the appointed BSC Company has the objective of the efficient and economic discharge of the functions and responsibilities under the Warm Home Discount (Reconciliation) Regulations 2011 and paragraph 1.3.1 shall accordingly not apply to this paragraph 1.2.1A;
 - (i) paragraphs 3.4.5(b), 5.1, 5.2 and 7 shall not apply to this paragraph 1.2.1A;
 - (j) notwithstanding Section F2, this paragraph 1.2.1A and paragraphs 3.1.2A and 3.1.2B of Section B may not be amended without the prior written consent of the Secretary of State or the Authority; and
 - (k) for the purposes of the Code, this paragraph 1.2.1A shall cease to have effect upon the termination of the appointment of a BSC Company as the WHD Operator, save for paragraphs (c), (d), (e), (f), (g) and (i) which shall continue to apply to the extent and for such period as is necessary.
- 1.2.1B Without prejudice to paragraphs 1.2.1 and 1.2.1A, and subject to the provisions of paragraphs 3.4, 3.5 and 10, the activities set out in Annex C-1 (the "**Permissible Activities**") may be undertaken by an Affiliate (or Affiliates) of BSCCo established to undertake those Permissible Activities ("**Permitted Affiliate**").
- 1.2.2 Subject to the further provisions of this Section C, BSCCo shall have the powers, functions and responsibilities set out in or assigned to it pursuant to the Code, and shall not undertake any business or activity other than as provided for in the Code.
- 1.2.3 Without prejudice to the generality of paragraph 1.2.2, BSCCo shall have the powers, functions and responsibilities set out in paragraph 3.
- 1.2.4 Subject to the further provisions of this Section C, BSCCo may do anything necessary for or reasonably incidental to the discharge of the functions and responsibilities assigned to it in the Code or by the Panel pursuant to the Code.
- 1.2.5 The powers of BSCCo shall be subject to the restrictions and limits set out in or imposed pursuant to the Code.
- 1.2.6 Subject always to Section H1.5.1, BSCCo shall, in the exercise of its powers, functions and responsibilities, have regard to and, to the extent they are relevant, act consistently with the Code Administration Code of Practice Principles.

1.3 Objectives

- 1.3.1 BSCCo shall exercise its powers and discharge its functions and responsibilities with a view to achieving the objectives set out in Section B1.2.1 (construed as though references to the Panel were to BSCCo).
- 1.3.2 As provided in paragraph 5.1, BSCCo is not intended to make a profit or loss in any BSC Year.

2. CONSTITUTION OF BSCCO AND OBLIGATIONS OF THENETSO AS BSCCO SHAREHOLDER

2.1 Constitution of BSCCo

- 2.1.1 Subject to paragraph 2.1.2, the Memorandum and Articles of Association of BSCCo shall be in the form designated pursuant to the Implementation Scheme.
- 2.1.2 The form of the Memorandum and Articles of Association of BSCCo (as amended by paragraphs 2.1.4 and 2.1.5) shall be treated as incorporated in and forming part of the Code for the purposes of enabling such form to be modified, and such form shall accordingly be capable of being modified, by way of Code Modification made pursuant to a Modification Proposal and otherwise in accordance with Section F; and the Memorandum and Articles of Association of BSCCo shall be amended so as to be in any such modified form.
- 2.1.3 The authorised and issued share capital and accounting reference date of BSCCo shall be those prevailing at the Code Effective Date.
- 2.1.4 All references to "England and Wales" in the Memorandum and Articles of Association of BSCCo shall be deemed to be references to "Great Britain and Offshore".
- 2.1.5 For the purposes of the Articles of Association of BSCCo, the terms "NETSO" and "Transmission Licence" shall have the meaning given to those terms in Annex X-1 of the Code.

2.2 Share capital of BSCCo

- 2.2.1 Subject to paragraph 2.2.3, the NETSO shall be the registered holder of all of the issued share capital of BSCCo.
- 2.2.2 The NETSO shall not do or authorise or agree to or take any step with a view to any of the following:
- (a) any increase in the authorised share capital of BSCCo, or the issue of any share capital or the issue or grant of any option, warrant or other instrument, security or right to subscribe for, or which is convertible into or exchangeable for, any shares of BSCCo;
 - (b) except pursuant to paragraph 2.2.3, the transfer of any of the issued shares of BSCCo;
 - (c) the creation of or allowing to subsist any pledge, mortgage, charge or other encumbrance over any of the shares of BSCCo.
- 2.2.3 If directed to do so by the Authority, the NETSO shall execute and deliver a transfer of the shares of BSCCo to such person as the Authority considers appropriate to succeed to the

NETSO in the capacity of BSCCo Shareholder for the purposes of the Code, upon payment by or on behalf of such person of an amount equal to the par value of such share or shares; and upon such transfer taking effect the NETSO shall be released from all future obligations as BSCCo Shareholder.

- 2.2.4 Modification Proposal P369, including any modifications to Code Subsidiary Documents or any other document maintained under the Code made pursuant to Modification Proposal P369, shall take effect from 00:00 hours on 1 April 2019.

2.3 Further undertakings of NETSO

- 2.3.1 The NETSO shall at all times exercise its rights, and take all available steps, as BSCCo Shareholder, and shall only exercise any such right or take any such step, so as to give effect to the provisions of the Code, or any direction of the Panel consistent with the provisions of the Code, as to the matters set out in paragraph 2.3.2.

- 2.3.2 The matters referred to in paragraph 2.3.1 are:

- (a) the amendment of the Memorandum or Articles of Association of BSCCo so that they are in any modified form from time to time pursuant to paragraph 2.1.2;
- (b) the appointment, re-appointment or removal of any Director (in accordance with a nomination under or otherwise as required in accordance with paragraph 4) or the secretary or auditors of BSCCo, provided that (in the case of an appointment or reappointment) the consent of the person to be appointed or reappointed has been obtained;
- (c) the approval of the annual accounts (as defined in the Companies Act 2006) of BSCCo; and
- (d) any other act of or in relation to BSCCo which can, or under any Legal Requirement must, be done by a vote or resolution or other assent of the BSCCo Shareholder.

- 2.3.3 Without prejudice to the generality of paragraph 2.3.1, the steps which the NETSO may be required to take pursuant to paragraph 2.3.2 include:

- (a) the convening of an annual or extraordinary general meeting of BSCCo;
- (b) the waiving of notice or agreeing to short notice of such meeting;
- (c) the passing of any shareholders resolution of BSCCo including as a written resolution.

- 2.3.4 The NETSO shall not consolidate the financial results of BSCCo or any Subsidiary of BSCCo with those of the NETSO or any Affiliate of the NETSO unless required to do so by a Legal Requirement.

2.4 No obligation to finance

- 2.4.1 The NETSO as BSCCo Shareholder shall have no liability or obligation to provide any finance or financial support to BSCCo or any Subsidiary of BSCCo and shall have no obligation to Parties as BSCCo Shareholder other than as expressly provided in the Code.

2.5 Winding-up of BSCCo

2.5.1 The principles which are to apply in the event of the winding-up of BSCCo are that, so far as is lawful:

- (a) the assets and resources of BSCCo should be transferred (for value or otherwise as may be lawful) to any successor under the Code to BSCCo;
- (b) subject to paragraph (c), and after payment or settlement of all liabilities of BSCCo, any amount which would otherwise be available for distribution to the shareholder(s) of BSCCo should be paid (or an equivalent amount shall be paid by the NETSO) to Trading Parties in their Annual Funding Shares or such other proportions as the Authority may decide;
- (c) the NETSO shall be entitled to be paid out of any such amount as is referred to in paragraph (b) the amount of any taxation for which it is liable in connection with such winding up and/or the giving effect to such principles;

and BSCCo, the NETSO and the other Parties shall take such steps as are available and lawful to secure that these principles are given effect.

2.6 Legal Requirements relating to the NETSO

2.6.1 It is recognised that, by reason of the NETSO being BSCCo Shareholder, it is possible that certain steps which might be taken by BSCCo or a Subsidiary of BSCCo could result in the NETSO or an Affiliate of the NETSO being in breach of, or being required to take action under or make a payment under, or incurring a liability under, a Legal Requirement (or being or doing so in the absence of a notification to or approval of a Competent Authority) (any such step which would have such result being a "**relevant step**").

2.6.2 The NETSO may from time to time notify to BSCCo particular Legal Requirements, applying to the NETSO or its Affiliates, which the NETSO reasonably considers may fall within paragraph 2.6.1, provided that the NETSO shall at the same time provide such details of such Legal Requirement as are reasonably necessary to enable BSCCo to determine whether any step which it might take would be a relevant step in relation to such Legal Requirement.

2.6.3 Where the NETSO has for the time being notified BSCCo of a particular Legal Requirement pursuant to paragraph 2.6.2, BSCCo will take all reasonable measures to ensure that it and its Subsidiaries do not take any relevant step in relation to that Legal Requirement unless:

- (a) BSCCo has first notified and consulted with the NETSO in relation to such step, and
- (b) either the NETSO has approved the taking of such step or BSCCo is required to take such step for the purposes of discharging its functions and responsibilities under the Code (but subject always to any Code Modification made following a proposal by any person entitled to do so).

2.6.4 For the purposes of this paragraph 2.6:

- (a) Legal Requirement shall be construed:
 - (i) as including a requirement of any stock exchange in any country or of the Panel on Takeovers and Mergers or any body in any country

having equivalent functions to those of that panel where compliance with the requirements of such body is customary; and

(ii) in accordance with paragraph (b);

(b) Competent Authority shall be construed as though the reference to the United Kingdom in the definition thereof included any country or state to the jurisdiction of which the NETSO or any of its Affiliates is subject by reason of having a presence in such country or state.

2.6.5 BSCCo agrees not (unless required to do so by a Legal Requirement) to represent that it is a Subsidiary of the NETSO.

2.7 Taxation and other payments

2.7.1 BSCCo covenants to pay to the NETSO an amount equal to any liability to corporation tax on chargeable gains for which BSCCo or any of its Subsidiaries is primarily liable for which the NETSO or any of its Subsidiaries is liable for which any of them would not have been liable but for being treated as being or having been a member of the same group as BSCCo or any of its Subsidiaries for the purposes of corporation tax on chargeable gains.

2.7.2 The NETSO covenants to pay to BSCCo an amount equal to any liability for corporation tax on chargeable gains for which the NETSO or any of its Subsidiaries is primarily liable for which BSCCo or any of its Subsidiaries is liable but for which it would not have been liable but for being treated as being or having been a member of the same group as the NETSO for the purposes of corporation tax on chargeable gains.

3. POWERS AND FUNCTIONS OF BSCCO

3.1 General

3.1.1 Without prejudice to paragraph 1.2.2, BSCCo shall have the following powers, functions and responsibilities:

(a) to enter into, manage and enforce contracts with service providers (as BSC Agents) for the supply of the services required by BSC Service Descriptions, and negotiate and agree amendments to such contracts, as further provided in Section E and, where relevant, paragraph 10.1.5;

(b) to advise the Panel and keep it advised as to and in respect of the matters which it is necessary or appropriate that the Panel should consider in order to discharge the Panel's functions and responsibilities in accordance with the Code;

(c) to provide or arrange the provision of such facilities, resources and other support as may be required by the Panel to enable the Panel or any Panel Committee or Workgroup to discharge its functions and responsibilities under the Code;

(d) to provide secretarial and administrative services in connection with meetings of the Panel and Panel Committees and Workgroups, including the convening and holding of such meetings, and taking and circulation of minutes;

- (e) to provide and make available to Parties such facilities, services and information in connection with the implementation of the Code as the Code may provide or the Panel may require;
- (f) to provide or arrange the provision of facilities, resources and other support in connection with the procedures for modification of the Code in accordance with Section F;
- (g) to enter into contracts (in terms complying with any applicable provisions of Section B) of employment or other engagement with persons from time to time to be appointed as Panel Chairman or Panel Members under Section B2.5;
- (h) to indemnify against liability and, if relevant, to reimburse the expenses of, Panel Members, members of Panel Committees, members of Workgroups and others as provided in the Code or as otherwise required in BSCCo's discretion in connection with any BSC Agent Contract;
- (i) to enter on behalf of all Parties into Accession Agreements with new Parties in accordance with Section A2.2, and to enter on behalf of all Parties into Novation Agreements with Novation Applicants and Transferring Parties in accordance with Section A2.7;
- (j) not used;
- (k) to act as shareholder of the BSC Clearer in accordance with paragraph 7;
- (l) to receive, collect and hold such data and information, and to prepare and maintain such books and records, as may be required under the Code or reasonably necessary to enable BSCCo to comply with its functions and responsibilities under the Code; and to provide data and information held by it to the Panel upon request and to other persons in accordance with any express provision of the Code;
- (m) without prejudice to the generality of paragraph (l), where it is not the function of a BSC Agent to do so, to maintain records of the extent to which Parties have satisfied requirements of the kind referred to in Section A4.5.3, and to provide details thereof to BSC Agents and other persons as required for the purposes of the Code;
- (n) to monitor whether any Party is, or with the lapse of time or giving of notice would be, in Default (in accordance with Section H3), and to give to any Party any notice the giving of which will result in that Party being in Default (but not for the avoidance of doubt to give any notice consequent upon a Party's being in Default unless expressly authorised to do so by the Panel or by a provision of the Code);
- (o) to act as the Performance Assurance Administrator;
- (p) to prepare and/or (as the Panel may require) assist the Panel to prepare the Annual BSC Report for each BSC Year in accordance with Section B6.1;
- (q) to make recommendations to the Panel as to possible Modification Proposals in the circumstances mentioned in paragraph 3.8.8 and Section F2.1.1(d)(ii) and (iii);
- (r) to the extent provided in and in accordance with the policy from time to time established by the Panel, to act as a point of contact for persons from other

countries interested in, and to explain to such persons, the arrangements for and developments in wholesale trading of electricity in Great Britain and/or Offshore, and to participate in institutional comparative discussions of such arrangements and developments in other countries;

- (s) to provide Profile Administration Services (with the consent of the Panel) and to enter into, manage and (subject to the Code) enforce contracts with service providers for the supply of Profile Administration Services in accordance with Section C9;
- (t) in conjunction with the other code administrators identified in the Code Administration Code of Practice, to maintain, publish, review and where appropriate (but subject always to the approval of the Authority) amend the Code Administration Code of Practice;
- (u) to delegate responsibility for performance of the powers, functions and responsibilities specified in this paragraph 3.1.1 and otherwise provided for in the Code, to the BSC Services Manager (save in respect of paragraph (k) and its obligations and responsibilities under Section E, paragraph 4); and
- (v) to provide Market-wide Half Hourly Settlement Implementation Management services in accordance with Section C12.

3.1.1A BSCCo shall obtain the Panel's consent prior to raising any potential amendments to the Code Administration Code of Practice.

3.1.2 To the extent to which the terms of reference (pursuant to Section B5.3.2) of a Panel Committee or Workgroup authorise the Panel Committee itself to request from BSCCo facilities, resources or other support (falling within paragraph 3.1.1(c)), BSCCo shall provide or arrange the provision of such facilities, resources or other support as may be so requested.

3.1.3 The facilities, resources and other support which BSCCo may be required to provide to or arrange for the Panel or a Panel Committee or Workgroup include:

- (a) facilities for holding meetings;
- (b) the provision of advice and expertise in connection with any matter which (pursuant to the Code) is to be considered by the Panel or Panel Committee or Workgroup;
- (c) the preparation of draft and final working papers, reports and other documents; and
- (d) where BSCCo so decides or the Panel specifically so requests, the services of external firms of advisers and consultants or the attendance at meetings of experts (and paying the fees and expenses of such advisers, consultants and experts).

3.1.4 BSCCo shall have the powers, functions and responsibilities assigned to it in the Implementation Scheme (including without limitation those provided in connection with the Pooling and Settlement Agreement).

3.2 Panel Secretary

3.2.1 BSCCo shall at all times provide a person approved by the Panel to be the Panel Secretary (and shall whenever required to fill a vacancy nominate a person to that position).

3.3 Enforcement of Code

3.3.1 If:

- (a) a Party is or may be in breach of any provision of the Code, and
- (b) the Panel is of the opinion that the breach or continuance of the breach has or will have a material adverse effect on the operation of the Code consistent with the objectives in Section B1.2.1, as a result of which it is appropriate that proceedings should be commenced for the enforcement of such provision against such Party

then the Panel may instruct BSCCo to take proceedings against such Party.

3.3.2 Where the Panel has instructed BSCCo to take proceedings against a Party in breach pursuant to paragraph 3.3.1:

- (a) BSCCo shall commence and with reasonable diligence continue such proceedings, for such remedy or remedies as the Panel shall have decided, subject to paragraph (b);
- (b) BSCCo shall act in such proceedings (including without limitation any discontinuance or settlement thereof) in accordance with such terms of reference and reporting requirements, and subject to such supervision or instruction, as may be stipulated or provided by the Panel (or where the Panel has established any Panel Committee for that purpose, by that committee in accordance with its terms of reference);
- (c) each Party (other than the Party in breach) hereby appoints BSCCo as agent in its name and on its behalf to commence and take such proceedings, and agrees that BSCCo and/or the Panel and/or any Panel Committee (in accordance with arrangements made for the purposes of paragraph (b)) shall exclusively have the conduct of the proceedings;
- (d) all costs and expenses incurred by BSCCo in the proceedings (including any amounts awarded to the Party in breach) shall be BSC Costs;
- (e) where any amount is recovered from the Party in breach pursuant to such proceedings, such amount shall be paid to Parties in their Annual Funding Shares (as at the time of the breach) or such other proportions and otherwise on such basis as the Panel shall consider fair and reasonable in all the circumstances;
- (f) subject to paragraph 3.3.4, a Party shall not commence proceedings directly against the Party in breach without the prior approval of the Panel.

3.3.3 Except pursuant to paragraph 3.3.2, and subject as set out below, BSCCo shall not commence any proceedings against a Party in respect of breach of any provision of the Code.

3.3.4 Paragraph 3.3.2(f) shall not prevent a Party from taking any proceedings for interim relief or other steps against a Party which is or may be in breach of the Code where the first Party reasonably believes that such proceedings or steps need to be taken as a matter of urgency in order to protect its interests.

3.3.5 Except as provided in paragraph 3.3.2, nothing in this paragraph 3.3 shall prevent a Party from itself taking any steps to enforce against any other Party any provision of the Code.

- 3.3.6 Where:
- (a) a Party is or may be in breach of the Code, and
 - (b) it appears to BSCCo that any proceedings for interim relief or other step should be taken, as a matter of urgency, in relation to that Party, in order to protect the interests of BSCCo and/or other Parties (or classes of Parties) pending such instructions from the Panel

BSCCo may take or arrange for the taking of such interim proceedings or step, after consulting where time permits with the Panel Chairman.

- 3.3.7 In any case where paragraph 3.3.2 does not apply, BSCCo may with the approval of the Panel agree with any Parties to take proceedings on behalf of and at the cost of those Parties against a Party in breach of the Code.

- 3.3.8 This paragraph 3.3 does not apply in relation to any breach by a Party of any payment obligation under Section D or N.

3.4 Restrictions on powers of BSCCo

- 3.4.1 Subject to any contrary provision of the Code, any instructions (pursuant to any provision of the Code expressly providing for such instructions to be given to BSCCo) of the Panel, and the objectives referred to in paragraph 1.3.1, BSCCo shall have discretion as to the means by which it discharges, and the manner in which it is managerially organised so as to discharge, its functions and responsibilities under the Code.

- 3.4.2 In the discharge of its functions and responsibilities and the exercise of its powers, BSCCo will comply with applicable law.

- 3.4.3 BSCCo shall not, without the prior approval of the Panel:

- (a) enter into any borrowings in a cumulative aggregate principal amount exceeding £10,000,000;
- (b) make loans or grant any credit to any person, other than to a Subsidiary of BSCCo or in the ordinary course of business or as required or expressly permitted by the Code;
- (c) mortgage, charge, assign by way of security, pledge or otherwise encumber any property of BSCCo or enter into any transaction which has a financial effect similar to a secured borrowing, other than:
 - (i) by way of lien or set-off arising by operation of law and in the ordinary course of trading; or
 - (ii) by way of reservation of title by the supplier of any property (other than real property) to BSCCo in the normal course of such supplier's business;
- (d) except pursuant to any provision of the Code:
 - (i) dispose (by way of licence, charge, sale or otherwise, other than by way of licence to a BSC Agent in connection with a BSC Agent Contract) of any Intellectual Property Rights or other rights held by BSCCo in or in respect of any BSC Systems, or

- (ii) (where any BSC Agent Contract prohibits such disposal without BSCCo's authority or consent) authorise or consent to any such disposal by a BSC Agent of any such rights held by that BSC Agent;
 - (e) commence any proceedings against any person, or grant a waiver of any claim against any person, or settle any dispute, proceedings or claim brought by or against BSCCo or any other BSC Company, where the amount of such dispute or claim or subject to such proceedings exceeds (or in BSCCo's reasonable opinion is likely to exceed) such threshold amount as the Panel may from time to time specify for the purposes of this paragraph (e); provided that (without prejudice to the further provisions of the Code) this paragraph (e) does not apply in relation to claims, disputes and proceedings against or with Parties or BSC Agents or Market Index Data Providers.
- 3.4.4 For the purposes of paragraph 3.4.3, "**borrowing**" means any obligation (whether present or future, actual or contingent, as principal or surety) for the payment or repayment of money (whether in respect of interest, principal or otherwise) of BSCCo and any Subsidiary of BSCCo (other than the BSC Clearer) incurred in respect of:
- (a) moneys borrowed or raised;
 - (b) any bond, note, loan stock, debenture or similar instrument;
 - (c) any acceptance credit, bill discounting, note purchase, factoring or documentary credit facility;
 - (d) any hire purchase agreement, conditional sale agreement or lease, where that agreement has been entered into primarily as a method of raising finance or financing the acquisition of an asset;
 - (e) any guarantee, bond, stand-by letter of credit or other similar instrument issued in connection with the performance of contracts;
 - (f) any interest rate or currency swap agreement or any other hedging or derivatives instrument or agreement; or
 - (g) any guarantee, indemnity or similar insurance against financial loss given in respect of the obligation of any person.
- 3.4.5 BSCCo shall not and shall not offer or agree to:
- (a) issue, or grant any option, warrant or other instrument, security or right to subscribe for, or which is convertible into or exchangeable for, any shares of BSCCo;
 - (b) subscribe for, acquire or hold any share or other security in any company other than:
 - (i) shares in the BSC Clearer; or
 - (ii) any shares acquired pursuant to the Implementation Scheme;
 - (c) dispose of any legal or beneficial interest in any shares in the BSC Clearer or any other Subsidiary of BSCCo.
- 3.4.6 Except where expressly provided for in the Code, BSCCo shall not give any cross-subsidy to, or receive any cross-subsidy from, a Permitted Affiliate.

3.5 BSCCo resources

- 3.5.1 If at any time the resources (which in this paragraph 3.5 does not mean financial resources) of BSCCo are inadequate to enable it to perform any particular requirement of the Code (including a requirement specified by the Panel or a Panel Committee or Workgroup pursuant to paragraph 3.1.1), BSCCo shall promptly so notify the Panel and discuss the matter with the Panel, and following such discussion shall take such steps and procure such resources as are necessary to enable BSCCo to meet such requirement (as it may have been modified following such discussion) as soon as is reasonably practicable.

3.6 Provision of information to the Authority, etc

- 3.6.1 If at any time or from time to time requested by the Authority, BSCCo shall:
- (a) collect and provide to the Authority all such relevant information as the Authority may specify;
 - (b) where necessary in order to comply with such a request, subject to paragraph 3.6.3, procure the relevant information from the BSC Agent or Market Index Data Provider which holds such information;
 - (c) undertake and provide to the Authority such analysis of relevant information (but not in whole or in part of information other than relevant information) as the Authority may so request.
- 3.6.2 A request by the Authority for the purposes of paragraph 3.6.1 may be made on a particular occasion or on a standing basis.
- 3.6.3 BSCCo shall not be in breach of this paragraph 3.6 by reason of any failure of any BSC Agent or Market Index Data Provider to provide any information which BSCCo has requested from it, provided that BSCCo is reasonably diligent in pursuing such request.
- 3.6.4 For the purposes of this paragraph 3.6, "**relevant information**" is information which is or is to be provided to BSCCo or the Panel or to any BSC Agent by or on behalf of any Party pursuant to the Code, or is derived from any such information pursuant to the Code or is otherwise produced or created pursuant to the Code.
- 3.6.5 Where BSCCo receives a request from the Authority for the purposes of paragraph 3.6.1, BSCCo will so notify all Parties, unless the Authority has requested BSCCo to notify only the Party to whom such information relates, in which case BSCCo will so notify that Party.

3.7 Matters relating to the Transmission Licence

- 3.7.1 If the Authority issues a direction pursuant to the Transmission Licence to the NETSO to secure compliance with any relevant provision of the Code:
- (a) BSCCo shall provide all such assistance and take all such steps as the NETSO may reasonably require to comply or secure compliance with the relevant provision;
 - (b) without limitation of paragraph (a), BSCCo hereby appoints and authorises the NETSO to make any request of or issue any instruction to any BSC Agent or Market Index Data Provider on behalf of and in the name of BSCCo;
 - (c) the NETSO is hereby authorised by all Parties to provide to the Authority or (where the relevant provision of the Code so requires) place on the BSC Website or otherwise publish the information in question;

- (d) the reasonable costs of the NETSO properly incurred in complying with such direction shall be paid by BSCCo to the NETSO.

3.7.2 For the purposes of paragraph 3.7.1 the relevant provisions of the Code are the provisions of paragraph 3.6.1 (subject to paragraph 3.6.3) and any provision of the Code which provides for any information to be placed on the BSC Website or otherwise published.

3.8 Reviews of the Code

3.8.1 BSCCo shall carry out:

- (a) periodic reviews of the Code and its implementation and of operations under the Code, and
- (b) upon the request of the Authority, a review of any particular aspect (as specified by the Authority) of the Code or its implementation or of operations under the Code

in order to evaluate whether the Code (or such aspect of the Code) continues to facilitate achievement of the Applicable BSC Objectives and to do so in the most effective way.

3.8.2 Reviews under paragraph 3.8.1(a) shall take place at least once every 2 years and not more often than once every year.

3.8.3 BSCCo shall notify all Parties and the Authority of the start of each review under paragraph 3.8.1, and shall endeavour to complete each review within a period of 3 months, or such other period as the Authority may specify in a case under paragraph 3.8.1(b).

3.8.4 In order to assist BSCCo to carry out any review under paragraph 3.8.1, the NETSO shall, at BSCCo's request, provide to BSCCo an assessment of the effect of the Code (or any aspect of the Code specified by BSCCo) on the matters referred to in Condition C3(3)(a) and (b) of the Transmission Licence.

3.8.5 For the purposes of paragraph 3.8.4:

- (a) the analysis provided by the NETSO shall be prepared with the exercise of reasonable skill and care, and shall include sufficient detail and reasoning to enable a proper understanding of the relevant issues, and the NETSO shall provide any further explanation thereof reasonably requested by BSCCo;
- (b) such analysis shall be provided within such period as BSCCo may reasonably request;
- (c) the NETSO shall not be required to provide any information of a confidential nature which it is not otherwise obliged to make available to Parties.

3.8.6 Upon completion of each review under paragraph 3.8.1, BSCCo shall:

- (a) prepare a report in respect of the review and its conclusions (including any analysis by the NETSO under paragraph 3.8.4);
- (b) provide a copy of such report to the Authority; and
- (c) subject to paragraph 3.8.7, provide a copy of such report to each Party and place a copy of the report on the BSC Website.

- 3.8.7 In a case under paragraph 3.8.1(b), if the Authority so requests or approves, the version of the report which is provided to Parties and placed on the BSC Website shall be amended so as to exclude such material, relating to particular Parties or persons, as the Authority shall so request or approve.
- 3.8.8 In addition to the foregoing, BSCCo shall keep under review whether any possible modification of the Code from time to time would better facilitate the objective in Condition C3(3)(d) of the Transmission Licence, and shall recommend to the Panel any particular such modification which in BSCCo's opinion would do so.
- 3.9 Not used**
- 3.10 Summary of Code**
- 3.10.1 BSCCo shall prepare and from time to time update a useful summary of the Code, and separately of the Code Subsidiary Documents, and shall provide a copy of each summary to the Panel and the Authority and (upon payment of an amount not exceeding the reasonable costs of making such a copy) to any person who requests such a copy.
- 3.10.2 The summary of the Code shall include (as a separate document) a summary and explanation of the basis of calculation of System Buy Price and System Sell Price pursuant to Section T.
- 3.10.3 No person shall be entitled to rely on such summaries for any purpose.

4. GOVERNANCE OF BSCCO

4.1 Appointment of Board of Directors and Chairman

- 4.1.1 The size and composition of the Board shall be determined by the Board's Nomination Committee but shall reflect the requirements set out in paragraph 4.1.3.
- 4.1.2 The Board shall establish a Nomination Committee which shall be responsible for:
- (a) evaluating the balance of skills, experience, independence and knowledge on the Board; and
 - (b) leading the process for Board appointments including:
 - (i) preparing a description of the role and capabilities required for a particular appointment; and
 - (ii) making appointment recommendations to the Board.
- 4.1.3 The Board shall provide written terms of reference for the Nomination Committee which shall, inter alia, specify that:
- (a) the Nomination Committee shall, in recommending appointments to the Board, have appropriate regard to reflecting different classes of, or categories of, industry participants on the Board;
 - (b) a majority of the Directors (excluding the BSCCo Chairman) and Directors appointed under Section C4.1.3(d) but including the Panel Chairman shall have relevant electricity industry experience;

- (c) at least two Directors shall be, in the Nomination Committee's reasonable opinion (having regard, among other things, to any present or future business interests disclosed by those individuals), suitably independent from the electricity industry;
 - (d) not more than two Directors may be employees of BSCCo, and if any employees are appointed as Directors one of those must be the Chief Executive, provided that in the event that a person ceases to be an employee of BSCCo that person shall immediately cease to be a Director; and
 - (e) the Panel Chairman from time to time shall be appointed as a Director provided that, if that Panel Chairman is subsequently removed as a Director pursuant to Section C4.1.9 or Section C4.10.1, another Panel Member recommended by the Panel shall be appointed as a Director during the remainder of the term of that Panel Chairman.
- 4.1.3A Paragraph 4.1.3(d) shall not apply in respect of the BSCCo Chairman to the extent and for such period as the person appointed to that role is an employee of BSCCo.
- 4.1.4 The Board shall publish the terms of reference on the BSC Website.
- 4.1.5 Not used.
- 4.1.6 Not used.
- 4.1.7 Not used.
- 4.1.8 The Board may, based on the recommendation of the Nomination Committee:
- (a) appoint a Director as chairman of its meetings (the "BSCCo Chairman"); and
 - (b) subject to paragraph 4.2.1(a), determine the period for which the BSCCo Chairman is to hold office.
- 4.1.9 BSCCo shall, when Directors have been appointed or re-appointed (in that capacity) since the last Annual BSC Meeting following the Relevant Implementation Date of Modification Proposal P324, prepare and circulate to all Parties not later than 28 days prior to an Annual BSC Meeting the text of a resolution for Voting Parties to approve that appointment or re-appointment ("**Appointment Resolution**") at the next Annual BSC Meeting in accordance with the relevant provisions of Annex C-2. If an Appointment Resolution is rejected by Voting Parties at a vote then the relevant person shall cease to be a Director either:
- (a) five (5) Working Days after results are published under paragraph 4.2.2(b) of Annex C-2; or
 - (b) if an audit has been commissioned under paragraph 4.3 of Annex C-2, promptly after that audit's confirmation, if it occurs, of the published results.
- 4.2 Directors**
- 4.2.1 A person appointed as Director under paragraph 4.1:
- (a) shall hold office for a term not exceeding three years, but shall be eligible for re-appointment on expiry of such term;
 - (b) may resign or be removed from office in accordance with the provisions of the Articles of Association of BSCCo;

- (c) not used;
- (d) shall, if also a Panel Member, cease to hold office if he also ceases to hold office as a Panel Member pursuant to Section B2.7.4(d); and
- (e) shall cease to hold office if removed in accordance with the provisions of paragraphs 4.1.9 or 4.10.1.

4.3 Not used.

4.4 Expenses and remuneration

- 4.4.1 Each Director shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such Director in attending meetings of or otherwise in the conduct of the business of the Board.
- 4.4.2 In addition to reimbursement under paragraph 4.4.1, any Director, other than a Director appointed under paragraph 4.1.3(d) (without prejudice to the remuneration and benefits payable to such Director under a contract of employment with BSCCo), shall be entitled to be paid by BSCCo such remuneration and benefits for the role of Director as may, subject to Section B2.11.8, be determined by Board.
- 4.4.3 Not used.
- 4.4.4 The secretary of BSCCo shall not be entitled to remuneration in that capacity, but without prejudice to the terms on which he is employed by BSCCo.
- 4.4.5 The remuneration and benefits payable to a Director for the role of Director pursuant to paragraph 4.4.2 shall be disclosed in the Annual BSC Report.

4.5 Indemnity

- 4.5.1 The Directors of BSCCo shall be indemnified by BSCCo as and to the extent provided in the Articles of Association of BSCCo.

4.6 Chief Executive

- 4.6.1 After consultation with the Panel, the Board may appoint, and may from time to time remove, reappoint or replace, a person to be the Chief Executive of BSCCo.
- 4.6.2 Subject to paragraph 4.6.1, the person appointed as Chief Executive shall be employed or otherwise engaged by BSCCo on such terms as the Board shall decide.
- 4.6.3 The Chief Executive may be a Director, but if they are not a Director they shall be entitled to receive notices of and to attend and speak (but not to vote) at all meetings of the Board, and (if requested by the Chairman of the Board) shall be required to attend such meetings, provided that the Board may require him to be absent from any part of a meeting at which any matter concerned with his employment or engagement by BSCCo is to be considered.
- 4.6.4 The Board shall delegate to the Chief Executive authority to conduct the day to day business of BSCCo.

4.7 Proceedings of the Board

- 4.7.1 Subject to the provisions of the Code, proceedings of the Board shall be conducted and governed in accordance with the requirements contained in the Articles of Association of BSCCo.

4.8 General Meetings

- 4.8.1 The Directors of BSCCo may call a General Meeting.
- 4.8.2 Voting Parties may require the Directors of BSCCo to call a General Meeting.
- 4.8.3 The Directors of BSCCo shall be required to call a General Meeting in accordance with Annex C-2 once BSCCo has received a request for a Resolution to be voted on from Voting Parties with a combined Actual Voting Share (as published on the BSC Website on the day such request is received) of at least five (5) per cent (%).
- 4.8.4 A request from a Voting Party:
- (a) must state the nature of the business to be dealt with at the General Meeting;
 - (b) must include the Voting Party's rationale and any supporting documentation; and
 - (b) may include the text of a Resolution that is intended to be moved at the General Meeting.
- 4.8.5 A request:
- (a) may be in hard copy form or in electronic form; and
 - (b) must be authenticated by the Authorised Signatory of the Voting Party or Voting Parties making it.
- 4.8.6 A vote on a Resolution at any General Meeting or the Annual BSC Meeting shall be conducted in accordance with the provisions of Annex C-2.

4.9 Non-Binding Resolutions

- 4.9.1 In respect of any General Meeting or the Annual BSC Meeting, one or more Voting Parties may, subject to paragraph 4.8, propose a vote on a non-binding resolution in relation to any matter related to the activities of the Board ("**Non-Binding Resolution**").

4.10 Binding Resolutions

- 4.10.1 In respect of any General Meeting or the Annual BSC Meeting, one or more Voting Parties may, subject to paragraph 4.8, propose a vote on a binding resolution to remove one or more Directors from the Board ("**Binding Resolution**"). If the Binding Resolution is approved by Voting Parties at a vote then the relevant person shall immediately cease to be a Director. either:
- (a) five (5) Working Days after results are published under paragraph 4.2.2(b) of Annex C-2; or
 - (b) if an audit has been commissioned under paragraph 4.3 of Annex C-2, promptly after that audit's confirmation, if it occurs, of the published results.

5. RELATIONSHIP BETWEEN PARTIES AND BSCCO

5.1 Liability of BSCCo

5.1.1 It is acknowledged that, by virtue of the arrangements for funding BSCCo set out in Section D:

- (a) BSCCo is not intended to make profits or losses in any BSC Year; and
- (b) if any Party or Parties were to make any claim against any BSC Company the financial consequences of such claim would be borne by the Trading Parties themselves.

5.1.2 Accordingly, subject to the further provisions of this paragraph 5.1 and paragraph 5.2, the Parties agree that they do not intend that any Party or Parties should be able to make any claim in damages or any other claim of a financial nature against any BSC Company; and each Party (to the fullest extent permitted by law) waives any such claims against any BSC Company and releases each BSC Company from any such liability in respect of any breach by such BSC Company of any provision of the Code or in tort (including negligence) or otherwise.

5.1.3 The obligations of each Trading Party in respect of the funding of BSCCo pursuant to Section D shall not be prejudiced, qualified or affected in any way by any breach by any BSC Company of any provision of the Code, or any other act or omission of any BSC Company.

5.1.4 Nothing in paragraph 5.1.2 shall exclude or limit the liability of a BSC Company for death or personal injury resulting from the negligence of such BSC Company or the ability of any Party to seek any equitable remedy against a BSC Company.

5.1.5 Paragraph 5.1.2 is without prejudice to:

- (a) the obligations of BSC Clearer to Trading Parties pursuant to Section N;
- (b) any provision of the Code which may provide for an indemnity by BSCCo in favour of any Party or other person, or which provides for BSCCo to make a payment to any Party;

and nothing in paragraph 5.1.2 shall prevent any Party from or restrict it in enforcing any obligation by way of debt owed by BSCCo or the BSC Clearer pursuant to any provision of the Code.

5.1.6 No Party shall take any step in relation to a BSC Company which (if Section H3 were expressed to apply in respect of such BSC Company) would or might result in such BSC Company being in Default pursuant to Section H3.1.1(g); provided that this shall not prevent a Party from notifying any BSC Company that such Party requires payment of any amount which is due for payment by such BSC Company to such Party.

5.1.7 Each Party acknowledges and agrees that the provisions of this paragraph 5.1 have been the subject of discussion and are fair and reasonable having regard to the circumstances at the Code Effective Date.

5.2 Party particularly prejudiced by BSCCo breach

5.2.1 Subject to the further provisions of this paragraph 5.2, where:

- (a) BSCCo is in breach of a provision of the Code, other than any provision specified in paragraph 5.2.2; and
- (b) a Party (the "**claimant Party**") was unfairly and particularly prejudiced by the breach, and in particular the circumstances in which such breach occurred, and in which loss was suffered by the claimant Party as a result of such breach, were not such as to result in some loss being suffered by all Parties or by all Trading Parties

then paragraph 5.1 and Section H6.2.2(a) shall not exclude or limit the liability of BSCCo in damages to the claimant Party in respect of such breach (an "**actionable breach**"), but without prejudice to Section H6.2.2(b).

5.2.2 Paragraph 5.2.1 shall not apply in respect of a breach by BSCCo:

- (a) of any of its obligations as, or provision of the Code relating to, the Performance Assurance Administrator; or
- (b) of any provision of Section M; or
- (c) of paragraph 2.6; or
- (d) of any provision of Section F.

5.2.3 A Party may not bring a claim or commence any proceedings against BSCCo in respect of an actionable breach more than 6 months after the date on which the breach occurred or commenced or (if later) more than 3 months after the Party became or could reasonably be expected to have become aware of the breach.

5.2.4 A Party may not make a claim against BSCCo in respect of an actionable breach if the amount of the Party's loss resulting from such breach is less than £50,000.

5.2.5 The aggregate cumulative amount payable by BSCCo to all Parties in respect of actionable breaches under this paragraph 5.2 for which payments (of damages or otherwise) fall to be made by BSCCo in any BSC Year shall not exceed £3,000,000.

5.2.6 If the aggregate amount so payable by BSCCo in a BSC Year would otherwise exceed the amount specified in paragraph 5.2.5:

- (a) the amounts for which BSCCo is liable to each relevant Party shall be reduced pro rata (and if unpaid, BSCCo shall pay such reduced amounts);
- (b) where BSCCo has already paid any such amount to a Party, BSCCo shall require and each relevant Party shall make and pay such adjustment amounts as the Panel shall approve for the purposes of giving effect to paragraph (a).

5.3 Capacity of BSCCo

5.3.1 Subject to paragraph 5.3.2, BSCCo shall act as principal and not as agent of Parties in the exercise and discharge of its powers, functions and responsibilities.

5.3.2 Where the Code so provides, BSCCo shall, or (if the Code so provides) may, act as agent for and on behalf of, or as trustee for, Parties or particular Parties.

5.3.3 Except as provided by the Code, BSCCo shall not, and is not authorised to, enter into any commitment or incur any liability as agent for or in the name of any Party (but without prejudice to Parties' funding obligations under Section D).

6. BUSINESS STRATEGY AND ANNUAL BUDGET

6.1 Introduction

6.1.1 For each BSC Year (the "**Plan Year**") BSCCo shall have:

- (a) a Business Strategy, setting out the principal activities which BSCCo expects to be carrying out in the Plan Year and each of the two following BSC Years, on the basis of the functions and responsibilities which are or have been assigned to BSCCo under or pursuant to the Code but excluding the activities of Permitted Affiliates, except as contemplated in paragraph 1.3.1 of Annex C-1;
- (b) an Annual Budget, setting out the expenditure which BSCCo considers reasonably necessary in order to carry out such activities in the Plan Year,

each established and from time to time amended in accordance with this paragraph 6.

6.1.2 The Panel and all Parties shall be invited to comment prior to finalisation of the Business Strategy for each BSC Year in accordance with paragraph 6.3.

6.1.3 BSCCo shall provide a copy of each Business Strategy and Annual Budget, and each revision thereof, to the Authority, the Panel and each Party, promptly after adopting or making any revision to such Business Strategy or Annual Budget.

6.2 Scope of Business Strategy and Annual Budget

6.2.1 BSCCo will discuss with the Panel the scope and format from time to time of the Business Strategy and Annual Budget.

6.3 Business Strategy

6.3.1 For each BSC Year, BSCCo shall:

- (a) not used;
- (b) not later than 1 January in the preceding BSC Year, prepare an initial draft Business Strategy, provide a copy to the Panel and to all Parties, and invite comments from persons eligible to propose Code Modifications thereon;
- (c) not later than 20 February in the preceding BSC Year publish a summary of the comments received on the initial draft; and
- (d) not later than 15 March in the preceding BSC Year, after considering all comments received by BSCCo, make such further revisions to the draft Business Strategy as BSCCo may consider appropriate having regard to the functions and responsibilities of BSCCo and the objectives in Section B1.2.1, and finalise and adopt the Business Strategy.

6.3.2 Where BSCCo considers that there are options or alternatives as to any activity which BSCCo may carry out in the Plan Year, which or the costs of which are materially different from each other, the initial draft Business Strategy provided under paragraph 6.3.1(b) shall set out such options or alternatives.

6.3.3 With the consent of the Panel, BSCCo may vary the times by which the steps in paragraph 6.3.1 are to be taken.

- 6.3.4 After adopting the Business Strategy, BSCCo shall keep the Business Strategy (so far as it relates to the Plan Year) under review and shall make any revision to the Business Strategy which appears requisite after seeking such further comments from the Panel and all Parties as the Board considers necessary.

6.4 Annual Budget

- 6.4.1 At the same time as preparing each draft of the Business Strategy under paragraph 6.3, BSCCo shall prepare or revise, and submit to the persons to whom each draft Business Strategy is submitted, a draft Annual Budget for the Plan Year.
- 6.4.2 Following finalisation of the Business Strategy, BSCCo shall finalise and adopt the Annual Budget.
- 6.4.3 Following any revision of the Business Strategy, BSCCo shall review and if appropriate revise the Annual Budget.
- 6.4.4 The Annual Budget for each BSC Year and any revision (including under paragraph 6.5) of such Annual Budget shall be approved by the Board.

6.5 Budget overspend

- 6.5.1 If the aggregate amount of BSCCo's expenditure in any BSC Year exceeds, or BSCCo anticipates that it may exceed, the amount contained in the Annual Budget, BSCCo shall promptly:
- (a) notify the Panel and all Parties, giving details of the excess expenditure and an explanation of the reasons therefor; and
 - (b) submit to the Panel and all Parties a draft revision of the Annual Budget, together with its proposal for modifying the Business Strategy if BSCCo considers it appropriate to modify the Business Strategy so as to reduce or limit its expenditure in the relevant BSC Year.
- 6.5.2 After seeking such further comments from the Panel and Parties as the Board considers necessary, but taking account of any consequent revision of the Business Strategy BSCCo shall revise the Annual Budget.

6.6 MHHS Implementation Management First Year Budget

- 6.6.1 Each Party acknowledges that the commencement of the MHHS Implementation is unlikely to coincide with the adoption of the Annual Budget pursuant to paragraph 6.4 and consequently, in order to recover the costs relating to MHHS Implementation Management, it may be necessary for BSCCo to develop and adopt an amendment to the Annual Budget for the BSC Year in which the MHHS Implementation commences, in which case BSCCo shall:
- (a) notify the Panel and all Parties, giving details of the MHHS Implementation additional expenditure; and
 - (b) submit to the Panel and all Parties a draft revision of the Annual Budget.
- 6.6.2 After seeking such further comments from the Panel and Parties as the Board considers necessary, BSCCo shall revise the Annual Budget.

7. BSC COMPANIES

7.1 General

7.1.1 BSCCo may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) a Subsidiary in which BSCCo is permitted to hold shares in accordance with paragraph 3.4.5(b)(ii) (and in particular may hold any BSC Agent Contract through such a Subsidiary); but only to the extent to which the powers, functions or responsibilities relate to activities which were carried out, or which are equivalent to or developed from activities which were carried out, by the relevant company before it became a Subsidiary pursuant to the Implementation Scheme on the Code Effective Date.

7.1.2 No Subsidiary of BSCCo shall, and BSCCo shall procure that any Subsidiary shall not:

- (a) have or exercise any powers or functions beyond the powers and functions of BSCCo; or
- (b) otherwise do anything which pursuant to the Code may not be done by BSCCo, or may not be done without the consent or approval of the Panel.

7.1.3 For the purposes of paragraph 3.4.3(a) the reference to borrowings in that paragraph shall be to the borrowings of BSCCo and all of its Subsidiaries in aggregate.

7.1.4 Reference in this paragraph 7.1 to Subsidiaries of BSCCo do not include the BSC Clearer.

7.1.5 Without prejudice to the generality of paragraph 7.1.1, a Subsidiary in which BSCCo is permitted to hold shares in accordance with paragraph 3.4.5(b)(ii) may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) the BSC Services Manager.

7.2 BSC Clearer

7.2.1 The BSC Clearer shall fulfil the role provided in Section N, and shall have the duties, powers and functions set out in that Section.

7.2.2 The BSC Clearer shall not undertake any business or activity, and shall not take any step or incur any commitment or liability, other than pursuant to and in accordance with Section N and this paragraph 7.

7.3 Duties of BSCCo

7.3.1 BSCCo shall at all times be the registered holder of all of the issued share capital of each of its Subsidiaries.

7.3.2 Neither BSCCo nor any of its Subsidiaries shall authorise or agree to, or permit or take any step for or with a view to, any of the following:

- (a) any change in the authorised share capital of any Subsidiary;
- (b) the issue of any share capital, or issue or grant of any option, warrant or other instrument, security or right to subscribe for or which is convertible into shares of any Subsidiary;
- (c) any transfer of any shares of any Subsidiary;
- (d) the creation of any pledge, mortgage, charge or other encumbrance over any shares of any Subsidiary.

7.3.3 BSCCo shall act, and exercise its rights, as shareholder of each Subsidiary so as and only so as to secure that the provisions of the Code are given effect in relation to such Subsidiary.

7.4 Constitution, etc

7.4.1 Subject to paragraph 7.4.2, the Memorandum and Articles of Association of the BSC Clearer shall be in the form designated pursuant to the Implementation Scheme.

7.4.2 The form of the Memorandum and Articles of Association of the BSC Clearer shall be treated as incorporated in and forming part of the Code for the purposes of enabling such form to be modified, and such form shall accordingly be capable of being modified, by way of Code Modification made pursuant to a Modification Proposal and otherwise in accordance with Section F; and the Memorandum and Articles of Association of the BSC Clearer shall be amended so as to be in any such modified form.

7.4.3 The Memorandum and Articles of Association of each other Subsidiary of BSCCo shall be in the same form as nearly as practicable as those of BSCCo (but with any differences consequent on its being such a Subsidiary).

7.4.4 The registered office, accounting reference date and statutory auditors of each Subsidiary of BSCCo shall be the same as those of BSCCo.

7.5 Directors and secretary

7.5.1 Subject to paragraph 7.5.1A, the board of directors of each Subsidiary of BSCCo shall at all times comprise the persons who are for the time being Directors of BSCCo, and the company secretary of such Subsidiary shall be the person who is for the time being company secretary of BSCCo.

7.5.1A Where any Subsidiary of BSCCo is a Dormant Subsidiary then it shall not be necessary for all of the persons who are for the time being Directors of BSCCo to also be Directors of each Dormant Subsidiary, provided that the chairman of BSCCo shall at all times be a Director of each Subsidiary.

7.5.2 Subject to paragraph 7.5.1A, any person who is appointed or re-appointed as, or who resigns or is removed as, Director or company secretary of BSCCo shall be appointed or re-appointed, or shall resign or be removed, as a director or (as the case may be) the company secretary of each Subsidiary of BSCCo; and a director or the company secretary of such a Subsidiary shall not resign as such unless he resigns at the same time as a Director or (as the case may be) the company secretary of BSCCo.

7.5.3 Subject to paragraph 4.6.1, the person who is for the time being Chief Executive of BSCCo shall act as chief executive of each Subsidiary of BSCCo, under such terms of reference as the board of directors of such Subsidiary may determine.

7.5.4 Each director of a Subsidiary shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such director in attending meetings or otherwise in the conduct of the business of the board of directors of the Subsidiary and not otherwise reimbursed under paragraph 4.4.1.

7.5.5 No director of a Subsidiary shall be entitled (in that capacity) to be paid any remuneration or benefits other than his costs and expenses in accordance with paragraph 7.5.4.

7.6 BSCCo services

- 7.6.1 BSCCo shall provide to each of its Subsidiaries such administrative, support and other services, and may make such other arrangements with such Subsidiaries, as may be required to enable the Subsidiary to perform its functions.
- 7.6.2 The arrangements made by BSCCo under paragraph 7.6.1 shall include arrangements which ensure that each Subsidiary has funds sufficient to meet its costs, expenses and other outgoings.
- 7.6.3 In the case of the BSC Clearer, the services to be provided by BSCCo under paragraph 7.6.1 include, without limitation, to the extent to which (under the Code and the relevant BSC Service Description) the FAA is to provide services to or for the benefit of the BSC Clearer, entering into and managing the relevant BSC Agent Contract with the FAA.
- 7.6.4 The BSC Clearer and BSCCo will make such further arrangements (including the conferring of appropriate authorities on BSCCo) as are requisite in connection with the provision of services by BSCCo under paragraph 7.6.1.

8. BSCCO INVOLVEMENT IN BETTA

8.1 BETTA Support Work

- 8.1.1 Subject to the further provisions of this paragraph 8, and without prejudice to the discharge of its other functions and responsibilities in accordance with paragraph 1.3.1 and any other provisions of the Code, BSCCo may undertake work (**BETTA Support Work**) by way of the provision to the Authority of facilities, resources and other services and support in connection with the development and implementation of BETTA, including in particular:
- (a) the identification and development of the changes which would be required to the Code and Code Subsidiary Documents to enable them to serve as a balancing and settlement code for Great Britain (**GB BSC**) and its subsidiary documents for BETTA;
 - (b) the identification, impact assessment, design, development, testing and trialling of the changes which would be required to BSC Agent Systems, BSC Service Descriptions and BSC Agent Contracts and the systems, service descriptions and contracts of other service providers to enable them to serve as systems, service descriptions and contracts for BETTA;
 - (c) planning and preparation for the introduction of, and the transition from the arrangements subsisting pursuant to the Code and the Settlement Agreement for Scotland to those subsisting under, a GB BSC; and
 - (d) the implementation of BETTA during the Transition Period.
- 8.1.2 BSCCo shall not undertake any BETTA Support Work unless BSCCo has proposed to the Authority a work specification (in such form and detail as the Authority may require) for such BETTA Support Work and the Authority has approved such work specification.
- 8.1.3 If the Transmission Licence is modified so as to exclude Standard Condition C3.3(e), with effect from the effective date of such modification, BSCCo's authority to conduct BETTA Support Work shall lapse, without prejudice to the BETTA Support Work undertaken by BSCCo before such date, and to BSCCo's authority to satisfy any commitment entered into in the course of undertaking BETTA Support Work (pursuant to a work specification approved pursuant to paragraph 8.1.2) before such date.

8.2 Further provisions

- 8.2.1 In the course of undertaking BETTA Support Work pursuant to a work specification approved pursuant to paragraph 8.1.2 BSCCo may (without limitation):
- (a) procure advice, impact assessments and other services (as required for the purposes of paragraph 8.1.1(b), (c) or (d)) from BSC Agents and other service providers;
 - (b) prior to BETTA Go Active negotiate amendments with BSC Agents and other service providers (as to such additions and changes as are described in paragraph 8.1.1(b)) to BSC Agent Contracts, BSC Service Descriptions and other service provider contracts and service descriptions, or with the approval of the Authority procure and/or negotiate an offer from a person not being the existing BSC Agent to enter into such an additional or amended BSC Agent Contract, provided that any such amendment (or acceptance of any such offer) shall be expressed to be conditional and contingent upon the decision (which BSCCo will not, until BETTA Go Active and in accordance with paragraph 8.2.6, be authorised to take) that the relevant BSC Agent or other person is to be appointed in an equivalent capacity under the GB BSC;
 - (c) subsequent to BETTA Go Active, negotiate and agree additions or changes to existing BSC Agent Contracts, BSC Service Descriptions and other service provider contracts and service descriptions and negotiate, agree and enter into new BSC Agent Contracts, BSC Service Descriptions and other contracts, or in each case negotiate offers for the same;
 - (d) liaise, cooperate and exchange information with Core Industry Document Owners;
 - (e) consult with Parties and others in relation to the matters in paragraphs 8.1.1(a), (b), (c) and (d);
 - (f) for the purposes of any such consultation required by paragraph 8.2.1(e), disclose or publish any relevant information (as defined in paragraph 3.6.4), excluding any information which relates to the affairs of an individual Party and is in BSCCo's opinion commercially sensitive, or the disclosure or publication of which would in BSCCo's opinion substantially prejudice the interests of all or a class of Parties collectively, unless the Authority notifies BSCCo that the Authority has determined that such disclosure or publication is requisite for the purposes of the undertaking of the BETTA Support Work;
 - (g) procure such further resources and services as it may reasonably require to enable it to undertake such BETTA Support Work.
- 8.2.2 The costs, expenses and liabilities incurred by BSCCo in the undertaking of BETTA Support Work shall be BSC Costs, but BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.
- 8.2.3 BSCCo shall prepare and make available to the Panel and to Parties regular reports in respect of BETTA Support Work, and the costs, expenses and liabilities incurred in undertaking such work, but BSCCo shall not be required to disclose to Parties or the Panel any information relating to BETTA which the Authority expressly requests BSCCo to keep confidential.
- 8.2.4 The functions of, and the things done by, BSCCo under and pursuant to this paragraph 8 shall be considered to be functions under and things done pursuant to the Code for the purposes of paragraphs 3.4.1, 3.4.2, 4.4, 4.5, 4.6, 5.1 and 5.3 and Sections D2, H4.2 and

H4.3 (but subject to paragraph 8.2.1(f) above), H4.5, H4.6, H4.7 (for the purposes of which BSCCo Materials and BSC Systems shall be construed taking account of BETTA Support Work), H4.9, H4.10.2, H6, H7 and H9 but not for the purposes of any other provision of the Code (including paragraph 1.3) which applies or refers directly or indirectly to the functions of BSCCo; and the Panel shall have no duties or responsibilities in relation to BETTA Support Work and (except as provided in paragraph 8.2.3) BSCCo shall owe no duties to the Panel or to any Party or Parties generally in the carrying out of such functions.

8.2.5 Without prejudice to what may be provided in the relevant work specification pursuant to paragraph 8.1.2, Section E2.7 shall not apply in relation to anything done by BSCCo pursuant to paragraph 8.2.1(b) and (c).

8.2.6 BSCCo shall on and from BETTA Go Active be authorised and entitled to:

- (a) waive or treat as satisfied any condition or contingency to which any change, addition or amendment to an existing BSC Agent Contract, BSC Service Description or other service provider contractor or service description, or to which any new BSC Agent Contract, BSC Service Description, service provider contract or service description, is expressed as being subject to or contingent on; and
- (b) make the decision referred to in paragraph 8.2.1(b) that the relevant BSC Agent or other person is to be appointed in an equivalent capacity under the GB BSC.

9. PROVISION OF PROFILE ADMINISTRATION SERVICES BY BSCCO

9.1 Provision of Profile Administration Services in certain circumstances

9.1.1 Subject to the further provisions of this paragraph 9, BSCCo shall where the Panel's prior consent has been obtained, provide (directly and/or via a service provider) the services set out in Section S4.2 (the "**Profile Administration Services**").

9.1.2 Where the Panel's prior consent to BSCCo providing the Profile Administration Services has not been obtained, a Profile Administrator shall be appointed in accordance with Section E.

9.1.3 BSCCo shall obtain further Panel consent to continue to provide the Profile Administration Services if a material change occurs in BSCCo's provision of the Profile Administration Services and in any event not less than once every five years.

9.1.4 A "**material change**" for the purposes of this paragraph 9 means a change to BSCCo's systems, processes or resources which is of such a type or magnitude as to raise the reasonable expectation of an impact on BSCCo's ability to efficiently meet its obligations to deliver the Profile Administration Services.

9.2 BSCCo's capacity and obligations

9.2.1 Where the Profile Administration Services are provided by BSCCo, they are provided in its capacity as BSCCo and not as a BSC Agent.

9.2.2 For the duration of any period where BSCCo provides the Profile Administration Services, Section E shall not apply in respect of the provision of those services.

9.2.3 Subject to paragraphs 9.2.1 and 9.2.2, BSCCo shall provide the Profile Administration Services in accordance with the Code.

- 9.2.4 Where the Profile Administration Services are provided by BSCCo, all obligations and requirements on Parties and other persons in the Code with respect to Profile Administration Services and/or the Profile Administrator shall continue unaltered (*mutatis mutandis*) notwithstanding that the Profile Administration Services shall be provided by BSCCo.
- 9.2.5 For the duration of any period where BSCCo provides the Profile Administration Services, the following provisions of Section S4 shall be deemed to have been amended as follows:
- (a) Section S4.2.1(f) shall not apply;
- (b) Section S4.2.2 shall read:
- BSCCo shall prepare a set of Regression Coefficients, Group Average Annual Consumption values and Profile Coefficients for each BSC Year on or before 30th November before the beginning of the relevant BSC Year, using data collected from the load research programme carried out by it or its appointee, augmented with data provided by Suppliers which is consistent with the overall sample design;*
- (c) Section S4.2.3 shall read:
- BSCCo shall prepare:*
- (a) *on a quarterly basis, a breakdown by GSP Group of each Profile Class sample, together with a statement of the daily average number of customers for which monitoring equipment has been successfully installed and commissioned for each Profile Class in respect of the previous quarter (a quarter being a period of 3 months commencing on 1st January, 1st April, 1st July and 1st October in any year); and*
- (b) *an annual report and data analysis plan (in such form as may be specified by the Panel) setting out what load research data it proposes to use, together with a load research plan (in such form as the Panel shall specify) setting out the proposed sample design and sample sizes in respect of the following BSC Year.*
- (d) for the purposes of Sections S4.2.4, S4.2.5, S4.2.6, S4.2.7 and S4.2.8 “*Profile Administrator*” shall be read as “*BSCCo*”.

9.3 Contracts for Profile Administration Services

- 9.3.1 Where BSCCo provides the Profile Administration Services, in whole or in part, via a service provider(s), BSCCo shall enter into each contract for the provision of Profile Administration Services in accordance with this paragraph 9.3 (a "**Profile Administration Services Contract**") and for these purposes:
- (a) a service provider providing Profile Administration Services shall not be considered to be a 'BSC Agent' under the Code; and
- (b) notwithstanding paragraphs 9.2.2 and 9.3.1(a), the provisions of Section E2.4 and Section E3 shall apply to each Profile Administration Services Contract as if references to a BSC Agent included the service provider and references to a BSC Agent Contract included all Profile Administration Services Contracts subject to the provisions of Section E3.2 applying to a service provider of Profile Administration Services in its capacity as such and not in any other capacity which it may have under the Code.

- 9.3.2 Each Profile Administration Services Contract shall contain terms which provide that the service provider shall make provision for the BSC Auditor to access those things required by Section H5.5.2.
- 9.3.3 It is recognised that where paragraph 9.3.1 applies, a service provider of Profile Administration Services may be a Party. Where a service provider of Profile Administration Services is a Party:
- (a) such Party shall have no rights, benefits, obligations or liability in its capacity as a service provider to or against any other Party under the Code, but without prejudice to its rights and obligations:
 - (i) as service provider under its Profile Administration Services Contract; and
 - (ii) in any other capacity under the Code;
 - (b) references to a Party or Parties in the Code shall be construed as excluding any service provider of Profile Administration Services (which is a Party) in its capacity as a service provider (but as including such person in any other capacity it may have under the Code); and
 - (c) the provision, disclosure and use of any data relating to a Party which is used in or in connection with the Profile Administration Services by a service provider shall not be considered or construed as being made pursuant to any provision of the Code.
- 9.3.4 Notwithstanding paragraph 9.3.1(a):
- (a) Section H4.6 shall apply to service providers of Profile Administration Services as if references to BSC Agents included service providers and references to BSC Agent Contracts included Profile Administration Services Contracts;
 - (b) references to BSC Agents and BSC Agent Contracts in Section W shall be deemed to include, respectively, service providers referred to in paragraph C9.3.1 and Profile Administration Services Contracts; and
 - (c) references to BSC Agents in Section W1.4.1 shall be deemed to include BSCCo.

10. PERMISSIBLE ACTIVITIES UNDERTAKEN BY PERMITTED AFFILIATES

10.1 General

10.1.1 In respect of each Permitted Affiliate:

- (a) BSCCo shall be entitled to subscribe for, acquire or hold any share or other security in a Permitted Affiliate and paragraph 3.4.5(b) shall not apply;
- (b) BSCCo shall not dispose of any legal or beneficial interest in any shares or other security in a Permitted Affiliate undertaking activities and functions specified in paragraph 1 of Annex C-1 except:

(i) to the CfD Counterparty and/or the CM Settlement Body and/or to any nominees of the CfD Counterparty and/or the CM Settlement Body; or

(ii) where otherwise directed to do so by the Secretary of State,

in which case paragraph 3.4.5(c) shall not apply;

(c) the Panel shall have no rights of approval or disapproval in respect of claims or proceedings by or against a Permitted Affiliate, or waivers or settlements of such claims, and paragraph 3.4.3(e) shall not apply; and

(d) paragraph 7 shall not apply.

10.1.2 Each Party and the Panel shall not (whether by action, omission or withholding of consent) prevent or restrict a Permitted Affiliate from performing all activities and functions and assuming all responsibilities and duties set out in Annex C-1.

10.1.3 Paragraphs 5.1. and 5.2 shall not apply to a Permitted Affiliate and, subject to paragraph 10.1.4, each Party (to the fullest extent permitted by law) waives any claim in damages or any other claim of a financial nature against a Permitted Affiliate and releases each Permitted Affiliate from any liability in respect of any breach by such Permitted Affiliate of any provision of the Code or in tort (including negligence) or otherwise.

10.1.4 Nothing in paragraph 10.1.3 shall exclude or limit the liability of a Permitted Affiliate for:

(a) death or personal injury resulting from the negligence of such Permitted Affiliate; or

(b) fraud or fraudulent misrepresentation; or

(c) any claim against that Permitted Affiliate brought by a Party (acting in a capacity other than as a Party) solely to the extent that such Party has a right to bring a claim under an EMR Legal Requirement.

10.1.5 BSCCo may amend any BSC Agent Contract to include the supply of services to support Permissible Activities.

10.1.6 Nothing in this paragraph 10 shall affect or limit BSCCo's obligation to discharge its functions and responsibilities pursuant to the Code.

10.2 Ring-Fencing of Permitted Affiliates

10.2.1 Without prejudice to paragraphs 3.4 and 3.5, but subject to paragraph 10.1, the following provisions shall apply (as relevant) to BSCCo and to each Permitted Affiliate:

(a) without prejudice to paragraph 3, BSCCo shall not transfer, lease, licence, or lend any sum or sums, asset (including non-financial resources), right, or benefit to a Permitted Affiliate except by way of:

(i) a payment properly due for any goods, services, data, information, or assets provided on an arm's length basis and on normal commercial terms; or

(ii) a transfer, lease, licence, or loan of any sum or sums, data, information, asset, right, or benefit that is on an arm's length basis and on normal commercial terms;

- (b) except as permitted in paragraph 10.2.1(a), BSCCo shall not enter into any borrowing for or on behalf of a Permitted Affiliate where the term "borrowing" has the same meaning as that term in accordance with paragraph 3.4.4;
- (c) BSCCo and each Permitted Affiliate shall implement agreed contractual arrangements to ensure that:
 - (i) where any common or shared costs between BSCCo and a Permitted Affiliate are incurred these costs are allocated reasonably and equitably, provided that in determining such allocation a Permitted Affiliate shall not be obliged to pay in excess of the established market rate, if applicable; and
 - (ii) where BSCCo incurs any costs (including costs in respect of any liabilities incurred by BSCCo) that arise as a consequence of services provided by BSCCo, or on BSCCo's behalf by a BSC Agent, to a Permitted Affiliate, such costs shall be recoverable from the Permitted Affiliate on a cost recovery basis; and
- (d) Parties shall have no liability or obligation to provide financial support to a Permitted Affiliate in respect of its performance of Permissible Activities.

11. PROVISION OF SUPPORT TO EMR SETTLEMENT SERVICES PROVIDERS

11.1 Provision of Support to EMR Settlement Services Providers

11.1.1 Without prejudice to paragraph 10, BSCCo may, in its discretion, provide (directly and/or via a BSC Agent) to an EMR Settlement Services Provider such support services (including the provision of assurance services) as may be reasonably incidental to supporting that EMR Settlement Services Provider in discharging its EMR Settlement Functions.

11.2 Agreement between BSCCo and EMR Settlement Services Providers

11.2.1 Subject to the disclosure obligations in Section V5, BSCCo shall enter into an agreement or agreements with any CFD Settlement Services Provider and any CM Settlement Services Provider including, inter alia, terms relating to the provision of Relevant EMR Settlement Data in accordance with Section V5, and terms that:

- (a) restrict the use of the Relevant EMR Settlement Data to the extent necessary to enable any CFD Settlement Services Provider and/or any CM Settlement Services Provider (and their service providers) to discharge their EMR Settlement Functions;
- (b) are consistent with the terms (as to availability and reliability of data) contained in agreements entered into by BSCCo pursuant to Section V3.2.7;
- (c) in respect of the CFD Settlement Data, impose restrictions on the use of CFD Settlement Data equivalent to the restrictions on the use of Confidential Information in Section H4 provided that a CFD Settlement Services Provider shall be entitled to share CFD Settlement Data with any CfD Counterparty, and otherwise in accordance with the EMR Legal Requirements;
- (d) in respect of the CM Settlement Data, reflect the provisions on the use of protected information contained in the EMR Legal Requirements;

- (e) where EMR Settlement Data is to be disclosed to a service provider of an EMR Settlement Services Provider, provide that such EMR Settlement Data shall only be disclosed on a "need-to-know" basis and requiring such service providers to enter into a confidentiality agreement with the relevant EMR Settlement Services Provider on terms equivalent to those contained in an EMR Legal Requirement or, if there is no applicable EMR Legal Requirement, Section H4;
- (f) allow for the provision of support services in accordance with paragraph 11.1.1 and which, to the fullest extent permitted by law, restrict BSCCo's liability to the EMR Settlement Services Provider for any claim in damages or any other claim of a financial nature relating to the supply of services to the EMR Settlement Services Provider to the amounts payable under the agreement for those services; and
- (g) provide for the payment by any CFD Settlement Services Provider of CFD Settlement Services Provider Costs and by any CM Settlement Services Provider of CM Settlement Services Provider Costs, as appropriate to the relevant agreement, in each case in accordance with Section D7.

12. MARKET-WIDE HALF HOURLY SETTLEMENT IMPLEMENTATION MANAGEMENT

12.1 MHHS Implementation Management

12.1.1 For the purposes of the Code:

- (a) "**MHHS Implementation**" means the implementation of the systems and processes that will enable market-wide Settlement on a half hourly basis;
- (b) "**MHHS Implementation Assurance Provider**" has the meaning given to that term in paragraph 12.3.1;
- (c) "**MHHS Implementation Manager**" means BSCCo to the extent that BSCCo is responsible for, and/or has been appointed to provide, some or all of the MHHS Implementation Management services pursuant to this paragraph 12 (or any part thereof); and
- (d) "**Market-wide Half Hourly Settlement Implementation Management**" or "**MHHS Implementation Management**" shall have the meaning given to that term in paragraph 12.1.3.

12.1.2 The provisions of this paragraph 12 shall apply to the extent, and for the duration that, BSCCo is responsible for, and/or has been appointed to provide, the MHHS Implementation Management services or any part thereof.

12.1.3 Subject to the further provisions of this paragraph 12, BSCCo shall provide (either itself or through service provider(s)) the activities and functions, and shall assume the responsibilities and duties, in connection with the management of the MHHS Implementation which may include:

- (a) programme management which shall include responsibility, amongst other things, for managing the delivery of the MHHS Implementation including mobilisation, design, build, test, integration and go-live;

- (b) system integration which shall include, amongst other things, supporting the programme's system design and build phases, and planning, co-ordinating and managing programme parties' activities and resources during the programme's system test and integration phases;
- (c) programme party coordination including, amongst other things, assessing programme party readiness during the build, and before each test and integration milestone to ensure programme parties are ready to meet programme milestones; and/or
- (d) such other roles as may be necessary for or reasonably ancillary to the delivery of MHHS Implementation Management,

(collectively "**MHHS Implementation Management**"), in each case in accordance with the specification for such roles as is set out in a Code Subsidiary Document or as has otherwise been approved by the Authority from time to time. As regards each of the roles which comprise MHHS Implementation Management, BSCCo shall publish a statement on the BSC Website providing an explanation of its decision as to whether to appoint a service provider to perform such role.

- 12.1.4 BSCCo shall provide (without prejudice to paragraph 3.6) such reporting and information to the Authority, and shall attend such boards, steering groups and meetings, in each case in connection with the MHHS Implementation as the Authority may specify.
- 12.1.5 The costs, expenses and liabilities incurred by BSCCo in undertaking MHHS Implementation Management (including such additional expenses and liabilities as BSCCo may incur, including with respect to service providers, in the event that BSCCo's appointment or responsibilities pursuant to this paragraph 12 cease prior to the completion of the MHHS Implementation) shall be BSC Costs, but BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs (including separately from any costs incurred by BSCCo in changing BSC Systems, documentation and processes in order to implement MHHS).
- 12.1.6 BSCCo shall prepare and make available to the Panel and to Parties regular reports in respect of its MHHS Implementation Management work, and the costs, expenses and liabilities incurred in undertaking such work, but BSCCo shall not be required to disclose to Parties or the Panel any information relating to the MHHS Implementation which the Authority expressly requests BSCCo to keep confidential.
- 12.1.7 The functions of, and the things done by, BSCCo under and pursuant to this paragraph 12 shall be considered to be functions under and things done pursuant to the Code provided that, if and to the extent so specified by the Authority:
 - (a) other than as provided in paragraph 3 of Annex D-3, the Panel shall have no duties or responsibilities in relation to MHHS Implementation Management; and
 - (b) other than as provided in paragraphs 6.3.1, 12.1.6, 12.2.1 and Section D4, BSCCo shall owe no duties to the Panel in the carrying out of such functions.
- 12.1.8 In the event that BSCCo's appointment or responsibilities pursuant to this paragraph 12 cease prior to the completion of the MHHS Implementation, BSCCo shall provide such reasonable co-operation to a replacement MHHS Implementation Manager (including the provision of materials and information relating to the MHHS Implementation) as may be reasonably necessary.

12.2 Tendering for the MHHS Implementation Manager Role

12.2.1 In the event that the appointment of the MHHS Implementation Manager is undertaken through a competitive tender process then BSCCo may participate in that process provided that:

- (a) the maximum amount that BSCCo may incur in participating in such process shall not in any event exceed the sum of one hundred thousand pounds sterling (£100,000.00) in connection with:
 - (i) its third party costs (including in respect of professional advisors), expenses, other outgoings and liabilities incurred in connection with the planning, preparation, negotiation and award (or any other process leading to an award), of the proposed MHHS Implementation Manager role; and
 - (ii) its overhead costs (including, without limitation, personnel costs), and any such costs, expenses and liabilities shall be BSC Costs;
- (b) BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs; and
- (c) BSCCo shall ensure that such costs are subject to a statutory audit and the findings of such audit are reported to the Panel and Parties.

12.3 MHHS Independent Assurance

12.3.1 BSCCo may, and shall if requested by the Authority (subject to approval by the Authority), appoint a person to provide assurance that the implementation of Market-wide Half Hourly Settlement is being performed effectively (the "**MHHS Implementation Assurance Provider**").

12.3.2 BSCCo shall:

- (a) in appointing the MHHS Implementation Assurance Provider, put such measures in place as may be necessary, including any measures specified by the Authority, to ensure the independence of the MHHS Implementation Assurance Provider from the MHHS Implementation Manager; and
- (b) if directed to do so by the Authority, remove any person appointed as MHHS Implementation Assurance Provider from time to time.

12.3.3 The costs, expenses and liabilities incurred by BSCCo in respect of the MHHS Implementation Assurance Provider shall be BSC Costs, but BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.

ANNEX C-1: PERMISSIBLE ACTIVITIES

1 Activities performed pursuant to the Energy Act 2013

1.1 Settlement Services Provider for Feed in Tariff Contracts for Difference

1.1.1 A Permitted Affiliate may, for the duration of its appointment as a CFD Settlement Services Provider, perform (either itself or through a service provider) all activities and functions and assume all responsibilities and duties relating to, or otherwise (whether specified in any EMR Legal Requirement or in a contract between a Permitted Affiliate and a CfD Counterparty) in connection with:

- (a) the calculation, invoicing, reconciliation and, where applicable, settlement of amounts payable or arising under:
 - (i) Contracts for Difference; and
 - (ii) the Contracts for Difference Supplier Obligation;
- (b) the calculation, collection, administration and enforcement of financial collateral pursuant to Chapter 2 of Part 2 of the Energy Act 2013 and as set out in:
 - (i) contracts for difference entered into by a CfD Counterparty pursuant to Chapter 2 of Part 2 of the Energy Act 2013; and
 - (ii) the Contracts for Difference Supplier Obligation; and
- (c) any other matters pursuant to Chapter 2 of Part 2 of the Energy Act 2013.

1.2 Settlement Services Provider for Capacity Agreements

1.2.1 A Permitted Affiliate may, for the duration of its appointment as a CM Settlement Services Provider, perform (either itself or through a service provider) all activities and functions and assume all responsibilities and duties relating to, or otherwise (whether specified in any EMR Legal Requirement or in a contract between a Permitted Affiliate and the CM Settlement Body) in connection with:

- (a) the calculation, administration and, where applicable, settlement of amounts payable or arising under Chapter 3 of Part 2 of the Energy Act 2013 and set out in:
 - (i) the Electricity Capacity Regulations 2014;
 - (ii) any other regulations made under Chapter 3 of Part 2 of the Energy Act 2013 which are in force from time to time;
 - (iii) the Capacity Market Rules; and
- (b) the calculation, collection, administration and enforcement of financial collateral pursuant to Chapter 3 of Part 2 of the Energy Act 2013 and set out in:
 - (i) the Electricity Capacity Regulations 2014;
 - (ii) any other regulations made under Chapter 3 of Part 2 of the Energy Act 2013 which are in force from time to time;

- (iii) the Capacity Market Rules; and
- (c) any other matters pursuant to Chapter 3 of Part 2 of the Energy Act 2013.

1.3 EMR Tender Activities

- 1.3.1 A Permitted Affiliate may prepare for and participate in the process for the award of the activities referred to in paragraphs 1.1 and 1.2 and if such preparation and participation has been included in a Business Strategy and an Annual Budget which have been approved and adopted under paragraph 6, the costs thereof shall be BSC Costs and Sections C10.2.1(d) and D7.3.1 shall not apply in respect of such BSC Costs.

2. Uniform Network Code Gas Performance Assurance Framework Administrator (PAFA) role

2.1 General

- 2.1.1 BSCCo shall be entitled to establish or acquire PAFACo for the purpose of investigating and, if the Board of PAFACo decides to do so, participating in a PAFA Tender, and if successful in such PAFA Tender, performing the functions and responsibilities of the PAFA Role, provided that the total consideration for the payment in respect of all of the allotted shares of PAFACo shall not exceed £1.00.

2.2 PAFA tender

- 2.2.1 Subject to paragraphs 2.2.3 and 2.3, BSCCo may provide a loan or grant credit to PAFACo on such terms as the Board may approve, from time to time, provided always that the maximum amount of the loan or credit granted shall not in any event exceed the total aggregate sum of one hundred thousand pounds sterling (£100,000.00) to enable PAFACo to pay, in aggregate in connection with a PAFA Tender:

- (a) its third party costs (including in respect of professional advisors), expenses, other outgoings and liabilities incurred in connection with the planning, preparation, negotiation and award (or any other process leading to an award), of the PAFA Role; and
- (b) its overhead costs (including, without limitation, personnel costs), provided that such costs shall in the first instance be incurred by BSCCo on behalf of PAFACo,

(together, "**PAFA Tender Costs**").

- 2.2.2 Subject to paragraph 2.2.1, PAFA Tender Costs may be incurred over successive BSC Years.
- 2.2.3 PAFA Tender Costs shall be BSC Costs and BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.
- 2.2.4 BSCCo shall submit any report it receives from PAFACo pursuant to paragraph 2.4.6(c) to the Panel at its next available meeting and every quarter thereafter until repayment of the Aggregate PAFA Tender Costs or the loan is written off in accordance with paragraph 2.3.6 (as the case may be).
- 2.2.5 BSCCo shall ensure that PAFA Tender Costs are subject to a statutory audit and such findings are reported to the Panel and Parties.

2.3 Reimbursement of PAFA Tender Costs to Trading Parties

- 2.3.1 The amounts recoverable by BSCCo as PAFA Tender Costs are amounts expended or funded by or on behalf of Trading Parties pursuant to paragraph 2.2 and any amounts which are otherwise described in the Code as PAFA Tender Costs.
- 2.3.2 BSCCo shall procure the agreement of PAFACo that in the event PAFACo is successful in a PAFA Tender exercise PAFACo shall repay Aggregate PAFA Tender Costs to BSCCo within the PAFA Tender Recovery Period.
- 2.3.3 Subject to paragraphs 2.3.2, 2.3.5 and 2.3.6, Trading Parties shall be entitled to recover Aggregate PAFA Tender Costs in accordance with their respective Main Funding Shares at that time.
- 2.3.4 As soon as reasonably practicable after receipt of the statement referred to in paragraph 2.4.5(c), BSCCo shall determine the Aggregate PAFA Tender Costs and the recovery share for each Trading Party and provide its own statement of account to the Panel, the Authority and all Parties (excluding commercially sensitive information). Subject to the Panel's approval, such statement of account shall be final and binding in the absence of manifest error (provided that such error must be notified no later than six months following receipt of the statement of account, failing which the statement of account shall be a final determination for the purposes of the Code).
- 2.3.5 Subject to paragraph 2.3.6 it is acknowledged that:
- (a) in the event PAFACo is unsuccessful in a PAFA Tender exercise, it is unlikely that BSCCo will be able to recover Aggregate PAFA Tender Costs (in whole or in part) from PAFACo; and
 - (b) if BSCCo were obliged to reimburse Aggregate PAFA Tender Costs to Trading Parties the financial consequences of such reimbursement would be borne by Trading Parties themselves.
- 2.3.6 Notwithstanding Section C3.4.6, in accordance with paragraph 2.3.5, the Parties agree that:
- (a) subject to paragraph 2.3.6(b), any loan arrangements agreed pursuant to this paragraph 2 may provide that the Board may, in its absolute discretion, resolve to write off any loan or credit provided to PAFACo for PAFA Tender Costs which relates to an unsuccessful PAFA Tender exercise, provided the amount written off shall not exceed the total cumulative amount of £100,000.00 plus any interest agreed to have been paid in the agreement documenting that loan or credit which would otherwise have been receivable; and
 - (b) for the purposes of the Code, such loan arrangements as referred to in paragraph 2.3.6(a) which permit the Board to write off a loan or credit to PAFACo shall be treated as arrangements concluded at arm's length and on normal commercial terms.
- 2.3.7 For the avoidance of doubt, BSCCo shall procure that any PAFA Tender Costs provided pursuant to paragraph 2.2.1(a) which are underspent shall be refunded to BSCCo.

2.4 Shareholder arrangements with PAFACo

- 2.4.1 At all times BSCCo shall be the registered holder of all of the issued share capital in PAFACo.

- 2.4.2 For the avoidance of doubt, the form of the Memorandum and Articles of Association of PAFACo shall not form part of the Code, but shall be subject to Board approval.
- 2.4.3 Subject to the provision of PAFA Tender Costs, but without limitation to paragraph 2.4.4, BSCCo shall not provide any finance or financial support to PAFACo.
- 2.4.4 BSCCo agrees and undertakes that it shall not cause PAFACo to be in default of the Legal Requirements of the PAFA Role by reason of any act or omission in connection with its capacity as the PAFACo Shareholder, and each Party agrees that BSCCo may contract or otherwise put in place arrangements with PAFACo on such basis, unless:
- (a) BSCCo is required to take such step by reason of a Legal Requirement and/or the Code; and
 - (b) BSCCo has first notified and, where practicable, consulted with PAFACo in relation to such step.
- 2.4.5 In its capacity as the PAFACo Shareholder, BSCCo shall ensure PAFACo's contractual agreement, that:
- (a) subject always to paragraph 2.4.4:
 - (i) the Board shall appoint the chairman of the PAFACo Board from time to time;
 - (ii) the initial chairman of the PAFACo Board shall, in consultation with the Panel, appoint the other initial directors of PAFACo;
 - (iii) BSCCo, in its capacity as PAFACo Shareholder, shall have the power to appoint or remove directors of PAFACo; and
 - (iv) BSCCo, in its capacity as PAFACo Shareholder, shall approve or reject the appointment of directors of PAFACo;
 - (b) PAFACo shall provide a quarterly summary of PAFA Tender Costs to BSCCo, provided that PAFACo shall:
 - (i) ensure that it reports on total costs and, subject to paragraph 2.4.5(b)(ii), provides in sufficient detail a breakdown of the costs such as to provide BSC Parties with a reasonable level transparency in respect of the scope and level of expenditure; and
 - (ii) be entitled to exclude any information from the breakdown of costs provided to Parties which relates to the affairs of PAFACo, a BSC Company or any other third party and is in PAFACo's reasonable opinion confidential and/or commercially sensitive in connection with a PAFA Tender; and
 - (c) without prejudice to paragraph 2.4.5(b), PAFACo shall, as soon as reasonable practicable after it is notified of its success or not (as the case may be) in a PAFA Tender exercise, submit a statement of its costs incurred in accordance with paragraph 2.2.1(b) to BSCCo.

3. Retail Energy Code (REC) Administrative Services (RECAS) Role

3.1 General

3.1.1 BSCCo shall be entitled to establish or acquire RECASCo for the purpose of:

- (a) investigating and, if the Board of RECASCo decides to do so, participating in a RECAS Tender; and
- (b) performing the functions and responsibilities of the RECAS Role,

provided that the total consideration for the payment in respect of all of the allotted shares of RECASCo shall not exceed £1.00.

3.2 RECAS Tender

3.2.1 Subject to paragraphs 3.2.3 and 3.3, BSCCo may provide a loan or grant credit to RECASCo on such terms as the Board may approve, from time to time, provided always that the maximum amount of the loan or credit granted shall not in any event exceed the total aggregate sum of one hundred thousand pounds sterling (£100,000.00) to enable RECASCo to pay, in aggregate in connection with a RECAS Tender:

- (a) its third party costs (including in respect of professional advisors), expenses, other outgoings and liabilities incurred in connection with the planning, preparation, negotiation and award (or any other process leading to an award), of the RECAS Role; and
- (b) its overhead costs (including, without limitation, personnel costs), provided that such costs shall in the first instance be incurred by BSCCo on behalf of RECASCo,

(together, "**RECAS Tender Costs**").

3.2.2 Subject to paragraph 3.2.1, RECAS Tender Costs may be incurred over successive BSC Years.

3.2.3 RECAS Tender Costs shall be BSC Costs and BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.

3.2.4 BSCCo shall submit any report it receives from RECASCo pursuant to paragraph 3.4.6(c) to the Panel at its next available meeting and every quarter thereafter until repayment of the Aggregate RECAS Tender Costs or the loan is written off in accordance with paragraph 3.3.6 (as the case may be).

3.2.5 BSCCo shall ensure that RECAS Tender Costs are subject to a statutory audit and such findings are reported to the Panel and Parties.

3.3 Reimbursement of RECAS Tender Costs to Trading Parties

3.3.1 The amounts recoverable by BSCCo as RECAS Tender Costs are amounts expended or funded by or on behalf of Trading Parties pursuant to paragraph 3.2 and any amounts which are otherwise described in the Code as RECAS Tender Costs.

3.3.2 BSCCo shall procure the agreement of RECASCo that in the event RECASCo is successful in a RECAS Tender exercise RECASCo shall repay Aggregate RECAS Tender Costs to BSCCo within the RECAS Tender Recovery Period.

- 3.3.3 Subject to paragraphs 3.3.2, 3.3.5 and 3.3.6, Trading Parties shall be entitled to recover Aggregate RECAS Tender Costs in accordance with their respective Main Funding Shares at that time.
- 3.3.4 As soon as reasonably practicable after receipt of the statement referred to in paragraph 3.4.5(c), BSCCo shall determine the Aggregate RECAS Tender Costs and the recovery share for each Trading Party and provide its own statement of account to the Panel, the Authority and all Parties (excluding commercially sensitive information). Subject to the Panel's approval, such statement of account shall be final and binding in the absence of manifest error (provided that such error must be notified no later than six months following receipt of the statement of account, failing which the statement of account shall be a final determination for the purposes of the Code).
- 3.3.5 Subject to paragraph 3.3.6 it is acknowledged that:
- (a) in the event RECASCo is unsuccessful in a RECAS Tender exercise, it is unlikely that BSCCo will be able to recover Aggregate RECAS Tender Costs (in whole or in part) from RECASCo; and
 - (b) if BSCCo were obliged to reimburse Aggregate RECAS Tender Costs to Trading Parties the financial consequences of such reimbursement would be borne by Trading Parties themselves.
- 3.3.6 Notwithstanding Section C3.4.6, in accordance with paragraph 3.3.5, the Parties agree that:
- (a) subject to paragraph 3.3.6(b), any loan arrangements agreed pursuant to this paragraph 3 may provide that the Board may, in its absolute discretion, resolve to write off any loan or credit provided to RECASCo for RECAS Tender Costs which relates to an unsuccessful RECAS Tender exercise, provided the amount written off shall not exceed the total cumulative amount of £100,000.00 plus any interest agreed to have been paid in the agreement documenting that loan or credit which would otherwise have been receivable; and
 - (b) for the purposes of the Code, such loan arrangements as referred to in paragraph 3.3.6(a) which permit the Board to write off a loan or credit to RECASCo shall be treated as arrangements concluded at arm's length and on normal commercial terms.
- 3.3.7 For the avoidance of doubt, BSCCo shall procure that any RECAS Tender Costs provided pursuant to paragraph 3.2.1(a) which are not spent shall be refunded to BSCCo.

3.4 Shareholder arrangements with RECASCo

- 3.4.1 At all times BSCCo shall be the registered holder of all of the issued share capital in RECASCo.
- 3.4.2 For the avoidance of doubt, the form of the Memorandum and Articles of Association of RECASCo shall not form part of the Code, but shall be subject to Board approval.
- 3.4.3 Subject to the provision of RECAS Tender Costs, but without limitation to paragraph 3.4.4, BSCCo shall not provide any finance or financial support to RECASCo.
- 3.4.4 BSCCo agrees and undertakes that it shall not cause RECASCo to be in default of the Legal Requirements of the RECAS Role by reason of any act or omission in connection with its capacity as the RECASCo Shareholder, and each Party agrees that BSCCo may contract or otherwise put in place arrangements with RECASCo on such basis, unless:

- (a) such act or omission is required by reason of a Legal Requirement and/or the Code; and
- (b) BSCCo has first notified and, where practicable, consulted with RECASCo in relation to such act or omission.

3.4.5 In its capacity as the RECASCo Shareholder, BSCCo shall:

- (a) subject always to paragraph 3.4.4:
 - (i) appoint the chairman of the RECASCo Board from time to time
 - (ii) ensure that the initial chairman of the RECASCo Board, in consultation with the Panel, appoints the other initial directors of RECASCo;
 - (iii) have the power to appoint or remove directors of RECASCo; and
 - (iv) approve or reject the appointment of directors of RECASCo;
- (b) ensure that RECASCo provides a quarterly summary of RECAS Tender Costs to BSCCo, provided that RECASCo shall:
 - (i) ensure that it reports on total costs and, subject to paragraph 3.4.5(b)(ii), provides in sufficient detail a breakdown of the costs such as to provide BSC Parties with a reasonable level transparency in respect of the scope and level of expenditure; and
 - (ii) be entitled to exclude any information from the breakdown of costs provided to Parties which relates to the affairs of RECASCo, a BSC Company or any other third party and is in RECASCo's reasonable opinion confidential and/or commercially sensitive in connection with a RECAS Tender; and
- (c) without prejudice to paragraph 3.4.5(b), ensure that RECASCo submits, as soon as reasonable practicable after it is notified of its success or not (as the case may be) in a RECAS Tender exercise, a statement of its costs incurred in accordance with paragraph 3.2.1(b) to BSCCo.

4. Other Permitted Activities

4.1 General

4.1.1 Subject to paragraph 4.1.2, 4.1.3 and 4.1.4, BSCCo shall be entitled to establish or acquire a company or companies, either solely or together with a third party, to become a Permitted Affiliate carrying out Permissible Activities ("**PACo**") for the purpose of:

- (a) investigating and, if the Board of PACo decides to do so, participating in a Permissible Activity Tender; and
- (b) performing the functions and responsibilities of the proposed PACo Role,

provided that the total consideration for the payment in respect of all of the allotted shares of PACo shall not exceed £1.00.

- 4.1.2 Prior to commencing a tender for a Permissible Activity, BSCCo shall satisfy itself that the proposed PACo Role meets the following conditions:
- (a) that the proposed PACo Role relates to the UK and/or the Republic of Ireland;
 - (b) that the proposed PACo Role relates to the gas, electricity, heat and/or transport sector;
 - (c) that the proposed PACo Role is linked to BSCCo core competencies;
 - (d) BSC Parties shall benefit BSCCo undertaking the proposed PACo Role;
 - (e) that BSCCo undertaking the proposed PACo Role shall not place disproportionate risk on BSC Parties;
 - (f) that BSCCo undertaking the proposed PACo Role shall not prevent standards of service under the Code from being maintained by BSCCo; and
 - (g) that BSCCo's role given to it under the Code shall not give it any undue competitive advantage in a tendering for the proposed PACo Role.
- 4.1.3 For the avoidance of doubt, if BSCCo is not satisfied that the conditions in paragraph 4.1.2 have been met it shall not pursue the proposed PACo Role.
- 4.1.4 At any point prior to undertaking substantive work on a formal offer by the Permitted Affiliate for the provision of the proposed PACo Role, BSCCo shall seek the views of Parties, the Panel and interested third parties in accordance with paragraphs 4.1.5, 4.1.6 and 4.1.7.4.1.5 Where it is reasonably practicable to do so, BSCCo shall notify the persons referred to in paragraph 4.1.4 that it intends to, or may intend to, seek comments under paragraph 4.1.4.
- 4.1.6 BSCCo shall send out a notice to the persons referred to in paragraph 4.1.4 inviting them to provide comments on BSCCo's potential participation in one or more Permissible Activity Tenders within such period as the Board may determine (and in any event, no less than 10 Business Days from the date of the notice) ("**Tender Notice**"). The Tender Notice shall contain information on the nature and scope of the proposed PACo Role which BSCCo is interested in but shall not include any information that is confidential to third parties or which BSCCo reasonably regards as being commercially sensitive.
- 4.1.7 As soon as reasonably practicable after receipt of the comments referred to in paragraph 4.1.6, BSCCo shall:
- (a) publish a summary of the comments received by the persons referred to in paragraph 4.1.4;
 - (b) send to the Authority:
 - (i) a copy of the comments received by the persons referred to in paragraph 4.1.4; and
 - (ii) a summary of BSCCo's assessment against the conditions referred to in paragraph 4.1.2
- together with an invitation to consider PACo's proposed Permissible Activity Tender for the proposed PACo role ("**Request for Permissible Activity Consent**").

- 4.1.8 The Authority may no later than 15 Business Days after receipt of the Request for Permissible Activity Consent:
- (a) reject BSCCo's Request for Permissible Activity Consent; or
 - (b) inform BSCCo that it will communicate its decision and, having regard for the timelines applicable to the Permissible Activity Tender, provide a date by when such decision will be made;
 - (c) if no response is received by BSCCo pursuant to paragraph 4.1.8(a) or (b) the Authority shall be deemed for the purposes of the Code to have provided its consent to PACo's proposed Permissible Activity Tender.

4.2 PACo Tender

4.2.1 Subject to paragraphs 4.2.2, 4.2.4, 4.3 and notwithstanding Section C10.2, BSCCo may provide a loan or grant credit to PACo (interest or non-interest bearing) on such terms as the Board may approve, from time to time, provided always that the maximum amount of the loan or credit granted shall not in any event exceed the sum of one hundred thousand pounds sterling (£100,000.00) per each Permissible Activity Tender with this amount linked to the Retail Price Index to account for inflation ("**Total Amount Lent**") to enable PACo to pay, in aggregate in connection with a Permissible Activity Tender:

- (a) its third party costs (including in respect of professional advisors), expenses, other outgoings and liabilities incurred in connection with the planning, preparation, negotiation and award (or any other process leading to an award), of the proposed Permissible Activity Role; and
 - (b) its overhead costs (including, without limitation, personnel costs), provided that such costs shall in the first instance be incurred by BSCCo on behalf of PACo,
- (together, "**PACo Tender Costs**").

4.2.2 The total aggregate PACo Tender Costs in any given BSC Year shall in no event exceed 1% of that year's Annual Budget.

4.2.3 Subject to paragraphs 4.2.1 and 4.2.2 and in relation to each Permissible Activity Tender, PACo Tender Costs may be incurred over successive BSC Years.

4.2.4 PACo Tender Costs shall be BSC Costs and BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.

4.2.5 BSCCo shall notify the Panel, the Authority and Parties whether or not it has been successful in a tender exercise as soon as reasonably practicable after the PACo is entitled to publish that information.

4.3 Reimbursement of PACo Tender Costs to Trading Parties

4.3.1 The amounts recoverable by BSCCo as PACo Tender Costs are amounts expended or funded by or on behalf of Trading Parties pursuant to paragraph 4.2 and any amounts which are otherwise described in the Code as PACo Tender Costs.

4.3.2 BSCCo shall procure the agreement of PACo that in the event PACo is successful in a PACo Tender exercise PACo shall repay Aggregate PACo Tender Costs to BSCCo within the PACo Tender Recovery Period.

- 4.3.3 Subject to paragraphs 4.3.2, 4.3.5 and 4.3.6, Trading Parties shall be entitled to recover Aggregate PACo Tender Costs in accordance with their respective Main Funding Shares at that time.
- 4.3.4 Subject to paragraph 4.3.5 it is acknowledged that:
- (a) in the event PACo is unsuccessful in a PACo Tender exercise, it is unlikely that BSCCo will be able to recover Aggregate PACo Tender Costs (in whole or in part) from PACo; and
 - (b) if BSCCo were obliged to reimburse Aggregate PACo Tender Costs to Trading Parties the financial consequences of such reimbursement would be borne by Trading Parties themselves.
- 4.3.5 Notwithstanding Section C3.4.6, in accordance with paragraph 4.3.4, the Parties agree that:
- (a) subject to paragraph 4.3.5(b), any loan arrangements agreed pursuant to this paragraph 4 may provide that the Board may, in its absolute discretion, resolve to write off any loan or credit provided to PACo for PACo Tender Costs in the event of:
 - (i) an unsuccessful PACo Tender exercise; or
 - (ii) a successful PACo Tender where PACo has subsequently ceased performing the PACo Role prior to the end of the PACo Tender Recovery Period,

provided the amount written off shall not exceed the Total Amount Lent which would otherwise have been receivable and shall in no event exceed 1% of the Annual Budget of the BSC Year in which the loan or credit was granted; and
 - (b) for the purposes of the Code, such loan arrangements as referred to in paragraph 4.3.6(a) which permit the Board to write off a loan or credit to PACo shall be treated as arrangements concluded at arm's length and on normal commercial terms.
- 4.3.6 For the avoidance of doubt, BSCCo shall procure that any PACo Tender Costs provided pursuant to paragraph 4.2.1(a) which are not spent shall be refunded to BSCCo.

4.4 Shareholder arrangements with PACo

- 4.4.1 For the avoidance of doubt, the form of the Memorandum and Articles of Association of PACo shall not form part of the Code, but shall be subject to Board approval.
- 4.4.2 BSCCo shall approve a dividend policy issued by PACo from time to time and, notwithstanding Section C3.4.6, any dividend payable to BSCCo shall be subject to that dividend policy.
- 4.4.3 In its capacity as the PACo Shareholder, BSCCo shall:
- (a) appoint the chairman of the PACo Board from time to time;
 - (b) ensure that the initial chairman of the PACo Board appoints the other initial directors of PACo;
 - (c) have the power to appoint or remove directors of PACo; and

- (d) approve or reject the appointment of directors of PACo.

4.5 Financial Reporting4.5.1 BSCCo shall:

- (a) ensure that PACo submits, as soon as reasonably practicable after it is notified of its success or not (as the case may be) in a PACo Tender exercise and every year thereafter until repayment of the Aggregate PACo Tender Costs or the loan is written off in accordance with paragraph 4.3.5 (as the case may be), a statement of its costs incurred in accordance with paragraph 4.2.1 to BSCCo;
- (b) submit any summary it receives from PACo pursuant to paragraph 4.5.1(a) to the Panel at its next available meeting and every year thereafter until repayment of the Aggregate PACo Tender Costs or the loan is written off in accordance with paragraph 4.3.5 (as the case may be);
- (c) as soon as reasonably practicable after receipt of the statement referred to in paragraph 4.5.1(a), determine the Aggregate PACo Tender Costs and the recovery share for each Trading Party and provide its own statement of account to the Panel, the Authority and all Parties (excluding commercially sensitive information). Subject to the Panel's approval, such statement of account shall be final and binding in the absence of manifest error (provided that such error must be notified no later than six months following receipt of the statement of account, failing which the statement of account shall be a final determination for the purposes of the Code); and
- (d) BSCCo shall ensure that PACo Tender Costs are subject to a statutory audit and such findings are reported to the Panel and Parties.

ANNEX C-2: VOTING PROCEDURES FOR BINDING RESOLUTIONS, NON-BINDING RESOLUTIONS AND APPOINTMENT RESOLUTIONS

1 GENERAL

1.1 Introduction

1.1.1 This Annex C-2 sets out the basis and procedures which should be used for the raising of and voting on Resolutions by Voting Parties (as described in paragraph 2) at General Meetings or BSC Annual General Meetings in accordance with Section C4.1.9, Section C4.8, Section C4.9.1 or Section C4.10.1 (as appropriate).

1.1.2 For the purposes of this Annex C-2:

- (a) "**Authorised Signatory**" means a person authorised by a BSC Party in writing to act for it in accordance with paragraph 1.2.1 of this Annex C-2;
- (b) "**Provisional Voting Share**" has the meaning given to that term in paragraph 2.1.2 of this Annex C-2;
- (c) "**Voting Party Resolution**" means a Binding Resolution or a Non-Binding Resolution;
- (d) "**Voting Share Cap**" has the meaning given to that term in paragraph 2.1.2 of this Annex C-2; and
- (e) "**Quorum Requirements**" means the quorum requirements set out in paragraph 3.1 of this Annex C-2.

1.1.3 Each Party shall procure that BSCCo is notified of the persons it authorises as Authorised Signatory from time to time to:

- (a) notify a Trading Party Group or Distribution Business Group;
- (b) require the Directors of BSCCo to call a General Meeting; or
- (c) propose Resolutions and vote on Resolutions under this Annex C-2,

in accordance with the requirements of BSCP38. If for any reason it is unclear which person is the Authorised Signatory for a Voting Party Group for any of the above purposes, the Authorised Signatory shall be determined at random by BSCCo.

1.2 Resolutions raised by Parties (Binding Resolutions and Non-Binding Resolutions)

1.2.1 An Authorised Signatory may require BSCCo to raise a Non-Binding Resolution or Binding Resolution ("Voting Party Resolution") by following the process set out in Section C4.8.

1.2.2 BSCCo shall, (with reference to the process set out in paragraph 2):

- (a) within two (2) Working Days of receipt of a proposed Voting Party Resolution, notify an affected Director (in the case of a Binding Resolution) and the Board (in the case of all Resolutions) that a Resolution has been raised; and
- (b) within fifteen (15) Working Days of receipt of a proposed Voting Party Resolution, send a notice to all Parties, the Board and the Authority informing them of the details of a General Meeting to be held not earlier than twenty (20)

Working Days and not later than thirty (30) Working Days following the date of the notice, and including the information set out in paragraph 1.2.3 together with, in the case of Voting Parties, their Actual Voting Share.

- 1.2.3 Every notice calling a General Meeting shall specify the place, date and time of the meeting, and include a statement that a Voting Party entitled to attend and vote is entitled to appoint a proxy. The notice shall specify the general nature of the business to be transacted at the meeting, shall set out the text of all resolutions to be considered by the meeting, together with any rationale or supporting documentation provided by the proposer, and may include information provided by the Board or a Director in response to a Resolution.
- 1.2.4 Voting Parties (other than the NETSO) wishing to appoint a proxy shall notify BSCCo via their Authorised Signatory of the details of that proxy not less than two (2) Working Days prior to the relevant General Meeting. In order to accept the appointment of a proxy BSCCo may require:
- (a) such details as it may determine concerning the identity of the proxy; and
 - (b) the Authorised Signatory's instructions as to how the proxy is to vote.

1.3 Resolutions raised by BSCCo (Appointment Resolutions)

- 1.3.1 Where BSCCo wishes to raise an Appointment Resolution in accordance with Section C4.1.9, not later than 28 days prior to an Annual BSC Meeting, it shall prepare and circulate to all Parties, the Board and the Authority a notice including the text of the Resolution and explanatory notes as to how a Voting Party may appoint a proxy or vote in person on the Appointment Resolution at the Annual BSC Meeting, together with a request to Parties to declare any Trading Party Group or Distribution Party Group.
- 1.3.2 Voting Parties (other than the NETSO) wishing to appoint a proxy shall notify BSCCo via their Authorised Signatory of the details of that proxy not less than two (2) Working Days prior to the relevant Annual BSC Meeting. In order to accept the appointment of a proxy BSCCo may require:
- (a) such details as it may determine concerning the identity of the proxy; and
 - (b) the Authorised Signatory's instructions as to how the proxy is to vote.

1.4 Distribution Business Groups and Trading Party Groups

- 1.4.1 Each Party shall notify BSCCo via its Authorised Signatory of its Voting Party Group by 1 June in each year.
- 1.4.2 Each Party shall promptly notify BSCCo via its Authorised Signatory of any amendment to its Voting Party Group.
- 1.4.3 Voting Parties for the purposes of voting on a Resolution shall be published on the BSC Website from time to time. Voting Parties Groups shall initially be those most recently published on the BSC Website for the purposes of Panel elections. The register of Voting Parties shall be adjusted and re-published:
- (a) annually, within five (5) Working Days of Parties' provisions of revised information under paragraph 1.4.1; and
 - (b) at any time, within five (5) Working Days of BSCCo's receipt of a notification under paragraph 1.4.2.

2. VOTE ALLOCATION MECHANISM

2.1.1 The base number of votes allocated to eligible voting parties (as described in this paragraph 2) shall be 10,000 votes which shall be allocated on the basis set out in this paragraph 2. Eligible voting parties for the purposes of this Annex C-2 means:

- (a) the NETSO;
- (b) each Trading Party and/or each Distribution System Operator; and
- (c) for Authorised Signatory purposes only, where a Trading Party or a Distribution System Operator is Affiliated to any other Trading Party or Distribution System Operator, the largest aggregation of such Parties that are Affiliated to each other ("**Voting Party Group**"),

each being referred to in the Code as a "**Voting Party**".

2.1.2 For the purposes of this Annex C-2:

Defined Term	Acronym	Definition
"Actual Voting Share"	VSA _v	The voting share allocated to a Voting Party v for the purpose of voting on a Resolution following the application of the Voting Share Cap;
"Provisional Voting Share"	VSP _v	The voting share allocated to a Voting Party before the application of the Voting Share Cap.
"Voting Party"	v	Has the meaning given to that term in paragraph 2.1.1 and in respect of whom votes will be allocated in accordance with paragraph 2.1.5;
"Voting Share Cap"	VSC	The cap applied to a Voting Party's Provisional Voting Share in order to determine that Voting Party's Actual Voting Share. The Voting Share Cap is six (6) per cent;

2.1.3 The Actual Voting Share for each Voting Party shall be calculated by BSCCo and published on the BSC Website within 5 Working Days of:

- (a) the monthly publication of the Annual Funding Share values for that month; or
- (b) BSCCo's receipt at any time of updated Trading Party Group or Distribution Business Group information from an Authorised Signatory.

2.1.4 The **Actual Voting Share** for each Voting Party v will be determined as the lesser of the Provisional Voting Share and the Voting Share Cap, or:

$$VSA_v = \min(VSP_v, VSC)$$

2.1.5 The **Provisional Voting Share** for each Voting Party v will be determined as:

(a) For the NETSO:

$$VSP_v = 600$$

(b) For each Voting Party that is a Trading Party Group but is not a Distribution Business Group:

$$VSP_v = \max(\lfloor (8600 * (\sum_{p(v)} FSA_{pm} / \sum_p FSA_{pm})) \rfloor, 1)$$

(c) For each Voting Party that is a Trading Party Group and a Distribution Business Group:

$$VSP_v = \max(\lfloor (8600 * (\sum_{p(v)} FSA_{pm} / \sum_p FSA_{pm})) \rfloor + \lfloor (800 / D) \rfloor, 1)$$

(d) For each Voting Party that is a Distribution Business Group but is not a Trading Party Group:

$$VSP_v = \max(\lfloor (800 / D) \rfloor, 1)$$

where:

FSA_{pm} is the Annual Funding Share for Trading Party p determined for the month m that is the most recent month for which Annual Funding Shares can be calculated in accordance with Section D1.2.1(e);

$\sum_{p(v)}$ is the sum across all Trading Parties p that belong to the Trading Party Group that forms Voting Party v ;

\sum_p is the sum across all Trading Parties p ; and

D is the number of individual Distribution Business Groups.

2.1.6 The **Voting Share Cap** will be determined as:

$$VSC = \lfloor (\sum_v VSP_v) * 0.06 \rfloor$$

where \sum_v is the sum across all Voting Parties v .

3. QUORUM AND CONDUCT OF MEETING

3.1 Quorum

3.1.1 No business in relation to a Resolution shall be transacted at a meeting unless the Quorum Requirements have been met.

3.1.2 The Quorum Requirements in respect of votes under this Annex C-2 are as follows:

(a) A minimum of at least ten (10) Voting Parties should be present at the relevant meeting either in person or through a duly appointed proxy;

(b) The Voting Parties casting a vote at the meeting (in person or through a duly appointed proxy) should hold an aggregate Actual Voting Share of at least thirty (30) per cent (%) of the total Actual Voting Share; and

- (c) an Authorised Signatory of the NETSO should be present at the meeting.
- 3.1.3 If within 30 minutes after the time for which a General Meeting has been convened the Quorum Requirements have not been met:
- (a) the Board shall fix the time and date of the adjourned meeting; and
 - (b) BSCCo shall give notice of the adjourned meeting.
- 3.1.4 If within 30 minutes after the time for which a vote on a Resolution is scheduled at an Annual BSC Meeting has been convened the Quorum Requirements have not been met:
- (a) the Board shall fix the time and date of the adjourned meeting; and
 - (b) BSCCo shall give notice of the adjourned meeting.
- 3.1.5 For the purposes of this Annex C-2 (including the provisions of this paragraph 3.1) any person (including a proxy) can attend any meeting virtually (including, without limitation, teleconference and videoconference) if that person is able to exercise a right to speak and be heard and to vote.
- 3.1.6 BSCCo shall review the Quorum Requirements:
- (a) from time to time; and
 - (b) in accordance with a request from the Authority or the Panel.
- 3.1.7 If a review under paragraph 3.1.6 results in a recommendation that the Quorum Requirements should be modified, the Panel shall decide at the following Panel meeting whether to propose a modification to the Quorum Requirements in accordance with Section F.
- 3.2 Conduct of Meeting**
- 3.2.1 Each General Meeting and any part of any Annual BSC Meeting dealing with Resolutions shall be chaired by the BSCCo Chairman, except:
- (a) if the BSCCo Chairman is the subject of a Binding Resolution, a vice-chairman of the Board (if appointed) will chair the meeting; or
 - (b) if there is no vice-chairman of the Board, or if that person is also the subject of a Binding Resolution, another Director selected by the Board will chair the meeting; or
 - (c) if the entire Board is the subject of a Binding Resolution, the NETSO attendee will chair the meeting.
- 3.2.2 Resolutions at Annual BSC Meetings shall, subject to the provisions of this Annex C-2, be conducted in accordance with the provisions of Section B6.2.
- 3.2.3 The following shall be entitled to attend and speak at any General Meeting or, for the purposes only of a vote on a Resolution (but without prejudice to Section B6.2 in respect of other business to be conducted), any Annual BSC Meeting:
- (a) the representative (which may include its Authorised Signatory) of any Voting Party;

- (b) any proxy that has been duly appointed by a Voting Party;
- (c) any Director of BSCCo;
- (d) in respect of an Annual BSC Meeting, any person who is entitled to attend the Annual BSC Meeting shall be entitled to attend the business relating to a Resolution but shall not be permitted to speak except pursuant to paragraph 3.2.3(e); and
- (e) any other person who the chairman has permitted to attend and speak at such meeting.

4. VOTING

4.1 Administration of Voting

- 4.1.1 BSCCo shall administer each vote pursuant to this Annex C-2.
- 4.1.2 In respect of each Voting Party only an Authorised Signatory may submit a vote or authorise a proxy to submit a vote on their behalf.
- 4.1.3 A Voting Party's Actual Voting Share for the purposes of a vote shall be the Actual Voting Share published on the BSC Website at 17:00 on the last Working Day before the day of the vote.

4.2 Voting

- 4.2.1 Provided the Quorum Requirements are met a vote on any Resolution shall be determined by a simple majority of votes cast.
- 4.2.2 BSCCo shall count the votes on any Resolution held and:
 - (a) within one Working Day of the meeting shall publish indicative results of such a vote; and
 - (b) within five Working Days of the meeting shall publish final confirmation of the result of the vote.

4.3 Audit

- 4.3.1 Provided a Voting Party requests an audit within five (5) Working Days of a confirmation under paragraph 4.2.2(b), BSCCo shall commission an audit of that vote, which shall be completed within thirty (30) Working Days.