

TERMS OF REFERENCE – Trading Disputes Committee (TDC)

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Unless otherwise stated or the context otherwise requires, words and expressions and general rules as to interpretation that are used in these Terms of Reference shall have the same meanings and application attributed to them under the Balancing and Settlement Code (the Code). In particular, references to Sections in these Terms of Reference are to Sections of the Code and a reference to the Trading Disputes Committee (TDC and/or Committee) shall, unless the context otherwise requires, include a TDC Member (Member) and any duly appointed alternate.

1. Establishment and Role

1.1 Establishment

1.1.1 The Panel has, in accordance with Section W2.1, established a Trading Disputes Committee which shall for the purposes of Section B, be a Panel Committee.

1.1.2 In the event of any conflict or inconsistency between the provisions of Section W and the provisions of Section B, the provisions of Section W shall prevail.

1.2 Role

1.2.1 The Committee's role is to:

- (i) investigate and resolve all Trading Disputes in accordance with the provisions of Section W and consistently with the provisions of the Code;
- (ii) monitor the operation of and recommend modifications to the BSC Procedures which support the procedures for resolving Trading Disputes; and
- (iii) submit recommendations to the Panel for modification of the Code and/or any Code Subsidiary Documents arising out of the activities of the Committee under Section W.

1.2.2 In addition to the above, the Panel has, in accordance with Section B5.1.3, delegated its powers, responsibilities and functions under Section Q7 (Manifest Errors) to the Committee. Therefore, it is the further role of the Committee to consider claims of Manifest Error.

2. Composition of the Committee and Appointment of Members

2.1 Members

2.1.1 The Committee shall be composed (as the Panel shall decide) of not more than twelve (12) members (each a Member), having such experience and expertise in the electricity industry as the Panel decides is appropriate.

2.1.2 The Panel shall appoint Members to the Committee and a Member of the Committee shall remain in office until the Committee is dissolved or until their resignation has been submitted in writing to the Secretary (as that person is described in paragraph 2.6) or their removal by the Panel in accordance with paragraph 2.1.3 below (whichever is earlier).

2.1.3 Without prejudice to paragraph 2.1.2 above, the Panel may remove and replace such Members from time to time if:

- a) in the Panel's opinion they are unwilling, unable, unfit or otherwise are incapable for any reason to carry out their duties as a Member in accordance with the Code, Code Subsidiary Documents (CSDs) or these Terms of Reference; or

b) any of the matters stated in Sections B 2.7.4(b) or B2.7.4(d) occurs and/or applies with such sections being read as if a Panel Member was a Member.

2.1.4 Without prejudice to the generality of paragraphs 2.1.2 and 2.1.3 above, the Panel may review and alter the membership of the Committee at any time but in any case will review the membership annually.

2.2 Independence and Confidentiality

2.2.1 Each Member shall act independently, impartially and shall not be representative of, and shall act without undue regard to, the particular interests of any particular body, person or class of persons or any Related Person.

2.2.2 The Panel shall require from any Member such applicable statements equivalent to those set out in Sections B2.8.2 and B2.8.4 with such sections being read as if a Panel Member was a Member.

2.2.3 For the avoidance of doubt, upon a change in employment of a Member, the Member shall notify the Committee Secretary and within 60 days shall provide a letter (equivalent to the letter required from Panel Members in Section B2.8.2(b)) from their new employer and shall be removed from office if they do not.

2.2.4 Where the employer is not a Trading Party, an Industry Member shall additionally ensure that they have, or receive, a current nomination from a Trading Party and provide a copy of this to the Committee Secretary.

2.2.5 Members acknowledge that in carrying out their duties and functions as a Member that they may during the course of their business be in receipt of confidential information and as such each Member will be required to sign a confidentiality agreement. For the avoidance of doubt each Member shall not disclose any confidential information received in their capacity as Member to any person except where:

a) expressly required under the Code, CSDs and/or these Terms of Reference;

b) the disclosure of data is to the Authority, the Panel and/or any other Panel Committee as may be directed by the Panel;

c) the data is in the public domain;

d) required to do so in order to comply with any dispute resolution process, Legal Requirement and/or any Approved Modification.

2.3 Alternates

2.3.1 Members shall make themselves available at all reasonable times to attend meetings and to carry out their duties and functions as a Member.

2.3.2 A Member shall be entitled to appoint an alternate (with such appointment and such alternate being approved by the Panel) and further may remove such person as their alternate from time to time by giving written notice to the Secretary. The appointment and removal of an alternate shall be effective from the time so specified in such notice given to the Secretary.

2.3.3 These Terms of Reference shall apply in respect of the appointment of an alternate as though references to the Member in any paragraph were to such alternate.

2.3.4 Sections B2.10.6 and B2.10.7 shall apply in respect of any alternate as though references to a Panel Member alternate were to such a Member's alternate.

2.3.5 For the avoidance of doubt a person appointed as an alternate shall automatically cease to be available as an alternate:-

a) if the Member ceases to be a Member; or

b) if any of the matters stated in Section B2.7.4 occurs with such section being read as if a Panel Member was an alternate.

2.4 Indemnification

2.4.1 BSCCo shall indemnify all Members and their duly appointed alternates in accordance with Section B2.9.

2.5 Chair and Panel Sponsor

2.5.1 There shall be a chair to the Committee (TDC Chair) who shall be a person appointed (and where necessary removed/replaced) by the Panel from time to time.

- 2.5.2 There shall be a Panel Sponsor to the Committee who shall be a person appointed (and where necessary removed/replaced) by the Panel Chair from time to time.
- 2.5.3 The TDC Chair shall select a TDC Vice Chair. In the TDC Chair's absence, the TDC Vice Chair will fulfil the role of TDC Chair and exercise such powers, functions and responsibilities as the TDC Chair. In the event the TDC Vice Chair is unable to attend Sections B 4.2.3(b) and B4.2.4 shall apply.
- 2.5.4 The TDC Chair, TDC Vice Chair and the Panel Sponsor shall not be members of the Committee and shall not cast votes as Members.
- 2.5.5 The principal powers, functions and responsibilities of the TDC Chairman shall include but not be limited to:
- a) chair and regulate the conduct of meetings of the Committee;
 - b) set the agenda for the meetings of the Committee;
 - c) authorise finding forms, deferral forms, payment forms and/or any other forms within the timescales required by the Code or any relevant CSD that relate to the business or operation of the Committee; and
 - d) any other functions in connection with the business or operation of the Committee as appropriate.

2.6 **Secretary**

- 2.6.1 There shall be a secretary to the Committee (Secretary) who shall be a person (or persons) appointed (and removed) by BSCCo from time to time.
- 2.6.2 The Secretary shall not be a member of the Committee and shall not cast a vote as a Member.
- 2.6.3 The principal powers, functions and responsibilities of the Secretary shall include but not be limited to:
- a) schedule and notify Members of meetings of the Committee;
 - b) use reasonable endeavours to ensure a quorum is present at meetings of the Committee;
 - c) circulate the agenda and any relevant papers before a scheduled meeting of the Committee;
 - d) produce the minutes of Committee meetings;
 - e) produce finding forms, deferral forms, payment forms and any other forms within the timescales required by Code or any relevant CSD or any relevant CSD that relate to the business or operation of the Committee;
 - f) maintain a Register of Decisions of the Committee;
 - g) ensure that prior to the attendance of any invitees at a Committee meeting they execute an approved confidentiality undertaking or such other undertaking as may be required by the Committee;
 - h) record the expenditure associated with the Committee and account for such amounts to the TDC Chairman;
 - i) advising all relevant parties of the appointment, re-appointment and/or resignation of the Chairmen and/or any Members or their alternates;
 - j) provide training for new Members and ongoing Members as necessary; and
 - k) any other functions in connection with the business or operation of the Committee as appropriate.

2.7 **Expenses**

- 2.7.1 The reasonable costs and expenses, and all other amounts incurred on behalf of the Committee in association with its functions and responsibilities, shall be paid by BSCCo and for the avoidance of doubt any payments paid by BSCCo pursuant to this paragraph shall be BSC Costs.
- 2.7.2 Section B2.11.2 shall apply to each Member save for circumstances where their attendance is required for other Panel Committee business for which they are already receiving reimbursement for the same reasonable expenses.

3. **Conflict of Interest**

- 3.1 It shall be each Member's responsibility to disclose to the TDC Chair from time to time any interests of such Member which constitute, in such Member's reasonable opinion, an actual or perceived conflict of interest with their functions as a Member and in such circumstances such Member may absent themselves from voting.

3.2 If the TDC Chair decides (after consultation with other Members (if necessary) including but not limited to circumstances where a Member does not volunteer to absent themselves from voting on such matters) that a Member has an actual or perceived conflict of interest then the TDC Chair may determine, whether the Member in question should be required to absent themselves from particular Committee business and/or whether a recommendation should be made to the Panel that such Member be removed as a Member. Any decision of the TDC Chair (and/or the Panel) in this regard shall be final and binding.

4. Powers and Functions of the TDC

4.1 General Powers and Functions

- 4.1.1 The Committee shall act in accordance with the Code, any relevant CSDs and these Terms of Reference.
- 4.1.2 The Committee shall have the powers, functions and responsibilities as is detailed in Sections W, Q7, and any relevant CSD that relate to those Sections and these Terms of Reference.
- 4.1.3 Subject to Section W2.2.2, the Committee has no ability to determine any matter, discharge any function or exercise any power not relating to the resolution of Trading Disputes unless this has been expressly assigned to it under Section W.
- 4.1.4 Notwithstanding paragraph 4.1.3 and Section W2.2, the Committee has been appointed by the Panel to consider claims of Manifest Error in accordance with Section Q7.

4.2 Delegation

- 4.2.1 The Committee shall not delegate to any person any of its powers, functions and responsibilities unless the Panel expressly permits such delegation in advance.

5. Proceedings of the Committee

5.1 Meetings

- 5.1.1 Meetings of the Committee shall be held at least once a month, at such a time and place as notified to the Members by the Secretary in accordance with these Terms of Reference
- 5.1.2 The Secretary shall, at the request of the TDC Chair, convene Committee meetings by giving notice, at least five Working Days prior to the proposed meeting (or such other period so determined by the TDC Chair), to each Member, approved alternates and the TDC Panel Sponsor. Such notice shall set out:
 - a) the date, time and place of the meeting; and
 - b) an agenda of the matters for consideration at the meeting and any supporting papers available to the Secretary at the time the notice is given (and the Secretary shall, if necessary, circulate to Members any late papers, as approved by the TDC Chair, as and when they are received by him/her).
- 5.1.3 The Secretary shall ensure that details of forthcoming Committee meetings shall be notified on the BSC website. Such notification shall include agendas and any non-confidential information.
- 5.1.4 Subject to Section B2.10.1 a meeting of the Committee may be cancelled if:
 - (i) the TDC Chair determines that there is no business for the Committee to conduct, and so requests the Secretary to cancel the meeting; and
 - (ii) the Secretary notifies all Members in writing of the proposal to cancel it, not less than five Working Days prior to the date that the meeting is or is to be convened; and
 - (iii) three Working Days before the date for which the meeting is or is to be convened, no Member has notified the Secretary that they object to such cancellation.
- 5.1.5 Sections B4.1.9 and B4.1.10 shall apply in respect of a meeting of the Committee with such sections being read as if a meeting of the Panel were to a meeting of the Committee.
- 5.1.6 Where any matter not contained in the agenda is put before a meeting of the Committee that is in the opinion of the Committee necessary (in view of the urgency of the matter or otherwise) to consider then the Committee may determine upon such matter.

5.2 Urgent/Special Committee meetings

5.2.1 Notwithstanding anything contrary in paragraph 5.1 if, in the opinion of the TDC Chair, any matter arises which is of a sufficiently urgent nature so as to require a decision earlier than is possible under the next convened Committee meeting:

- a) the Secretary shall, at the request of the TDC Chair, convene such a meeting and distribute an agenda and any papers in accordance with such notice as the TDC Chair considers appropriate; and
- b) each Member shall be deemed to have consented to the convening of such a meeting and distribution of the agenda and papers in the manner and on such notice as the TDC Chair determines.

5.2.2 In respect of an urgent/special meeting if after thirty minutes a quorum is not present, then at the election of the TDC Chair (with such consideration being given to the nature of the business), those Members present shall constitute a quorum provided that at least 2 Members are present and provided further that the TDC Chair shall endeavour to contact each Member individually in order to ascertain each Members vote and any matter decided shall be decided by a majority of those Members voted. Where the TDC Chair is unable to contact the correct quorum number of Members within 1 Working Day of the meeting the TDC Chair may decide the matter in consultation with the Panel and/or Panel Chair.

5.3 Attendance by other persons

5.3.1 All meetings of the Committee shall be held in closed confidential session.

5.3.2 The following Non Member Representatives may attend any meeting of the Committee and shall be entitled to receive all notices and documentation relating to such meetings:

- a) the Panel Sponsor of the Committee;
- b) a representative from the BSC Auditor; and
- c) a representative from the Authority,

provided that in the case of paragraph (b), and prior to the receipt of any notices or documentation, notification is given to the Secretary and confidentiality undertaking is executed by such representative.

5.3.3 The individuals referred to in paragraph 5.3.2 shall be entitled to speak at any of the meetings they attend but shall have no vote and shall not be members of the Committee.

5.3.4 The Chief Executive (or their duly appointed representative) of BSCCo is entitled to attend all meetings of the Committee. They shall be entitled to speak at all meetings, but shall have no vote and shall not be a Member.

5.3.5 The TDC Chair may invite such individuals as he sees fit (including but not limited to representatives of a BSC Agent, Party or the National Electricity Transmission System Operator (NETSO)) to attend a meeting of the Committee provided that prior to their attendance a confidentiality undertaking is executed by such invitee. Any such individual shall be entitled to receive from the Secretary (with approval from the TDC Chair) such part of the agenda and/or any papers that may concern the invitee.

5.3.6 Any person in attendance at a Committee meeting by virtue of paragraph 5.3.5 shall:

- a) have no vote and shall not be a member of the Committee;
- b) address the meeting where invited to do so by the TDC Chair; and
- c) leave the meeting when requested to do so by the TDC Chair.

5.4 Quorum

5.4.1 Subject to paragraph 5.2.2, no business shall be transacted at any meeting of the Committee unless a quorum is present. A quorum shall comprise of at least four Members (or by their duly appointed alternates). For the avoidance of doubt a meeting shall be quorate if the necessary Members are present in person at the meeting or are contactable by telephone conference call (or such other similar means), provided that if it is the latter then the Members must be able to speak to and hear each other.

5.4.2 Any Committee meeting at which a quorum is not in attendance after a period of thirty minutes of its commencement shall be adjourned and re-scheduled with the Secretary giving notice of the adjourned hearing and re-scheduling in such manner as requested by the TDC Chair.

5.5 Voting

- 5.5.1 At any meeting of the Committee all matters to be decided shall be put to a vote of all quorum Members (or by their duly appointed alternate).
- 5.5.2 In deciding any matter, each Member shall cast one vote only. All matters shall be decided by a simple majority of votes cast.
- 5.5.3 For the avoidance of doubt and for the purposes of paragraphs 5.5.1 and 5.5.2, abstentions shall not be classed as votes and will therefore not prevent unanimous agreement of a matter.
- 5.5.4 A resolution in writing signed by or on behalf of all Members entitled to vote in respect of the matter the subject of the resolution shall be valid and effectual as if it had been passed at a duly convened and quorate meeting of the Committee.
- 5.5.5 Where a majority decision cannot be reached within a reasonable period of time then, at the TDC Chair's discretion, the matter shall be deferred until further deliberation or information has been had by the Committee. If the TDC Chair feels, after a reasonable period of time, that no decision is possible then the matter shall be referred to the Panel for determination.

5.6 **Teleconference and/or Correspondence Meetings**

- 5.6.1 Where the TDC Chair considers it appropriate, a meeting of the Committee may be validly held by telephone conference call (or such other similar means) or by correspondence.
- 5.6.2 A quorum is obtained in respect of a teleconference call (or such other similar means) as per these Terms of Reference but in addition, all present Members at the telephone conference call must confirm that they can speak and hear each other.
- 5.6.3 A quorum is obtained in respect of a correspondence meeting where at least a quorum (as per these Terms of Reference) shall provide a response (including their vote) to correspondence the subject of a determination provided that the Members have at least five Working Days to consider and respond to such correspondence received.
- 5.6.4 Paragraph 5.5 shall apply to any meetings outlined in this paragraph.

5.7 **Minutes of Meetings**

- 5.7.1 The Secretary shall ensure that as soon as is reasonably practicable after each Committee meeting that all discussions are minuted (including determinations and the failure to make a determination) and such minutes are to be distributed to the meeting attendees for approval, provided that the discussion in respect of individual Trading Disputes shall not be minuted.
- 5.7.2 The Secretary shall prepare a non-confidential headline report detailing key decisions so agreed by the Members that can be publicised. Such headline report once agreed by the TDC Chair is to be made available on the BSC website.

5.8 **Papers**

- 5.8.1 The Secretary shall circulate to Members any papers (including any late papers) as and when is appropriate, save that such circulation, unless otherwise agreed by the TDC Chair, shall not be less than five Working Days before the proposed meeting.
- 5.8.2 If any Member wishes to notify additional matters to be considered at a meeting of the Committee, they shall give notice to the Secretary no less than 3 Working Days before the meeting (or such lesser period as the TDC Chair may from time to time determine). The Secretary will circulate such notice to all other persons entitled to attend that meeting.
- 5.8.3 On receipt of any paper by the TDC Chair, the TDC Chair shall, after consultation, with Members determine whether the subject of the paper is within the remit of the Committee. Any papers deemed to be outside the remit of the Committee will, where practicable, be forwarded by the Secretary to the appropriate body and in all events be reported to the Panel.

6. **Decisions of the Committee**

6.1 **Decisions**

- 6.1.1 In considering a Trading Dispute, the Committee may, in accordance with Section W and any relevant CSD, make such enquiries as it considers appropriate and request BSCCo to procure additional information or data as it considers necessary to enable it to make a decision.

- 6.1.2 Section W3.4A.2 shall apply in respect of any determinations of the Committee when carrying out its powers, functions and responsibilities under Section W.
- 6.1.3 Since the Trading Disputes provisions are designed to correct errors arising in Settlement, the TDC should not seek to penalise BSC Parties or otherwise limit the recovery of erroneous Trading Charges by Parties that had contributed to the error. A Settlement Error should be considered for full correction if the TDC uphold a Trading Dispute regardless of where the culpability lies for a Settlement Error (but always subject to the defined requirements establishing what constitutes a valid Trading Dispute under the BSC).
- 6.1.4 Any determination (including, if applicable, any adjustments and/or error compensation determinations) of the Committee (when carrying out its powers, functions and responsibilities under Section Q7) made under these Terms of Reference shall be final and binding on the Parties and no such decision shall be capable of being referred to for the purposes of an appeal or otherwise to the Panel.
- 6.2 Notification of Committee Decisions in respect of Trading Disputes**
- 6.2.1 In respect of a Trading Dispute, the Secretary shall promptly following the making of a determination by the Committee, comply with Section W3.4A.
- 6.2.2 Where a Trading Dispute has implicated or partly implicated the BSCCo as the cause of the error, the Raising Party shall receive an expanded version of the BSCP11/07 TDC Findings Form agreed by the TDC in addition to the determination details pursuant to Section W3.4A.
- 6.2.3 Notifications made in respect of this paragraph 6.2 shall be wholly attributed to the TDC and shall not contain verbatim copies of, or extracts from, legal advice received by the BSC Panel or its Panel Committees in accordance with paragraph 10.
- 6.2.4 Without prejudice to paragraph 6.2.1, all BSC Parties shall be notified of a Trading Dispute determination by the Committee in such manner as determined by the TDC Chair from time to time.
- 6.3 Register of Decisions in respect of Trading Disputes**
- 6.3.1 The Committee shall maintain a Register of Decisions (which shall also be known as a Register of Determinations) in respect of Trading Disputes.
- 6.3.2 The Committee shall have regard, where relevant, to the Register of Determinations but it shall decide in all the circumstances whether or to what extent it shall be bound by a precedent in respect of a Trading Dispute.

7. Reporting to the Panel in respect of Trading disputes

- 7.1.1 The TDC Chair on behalf of the Committee shall provide a monthly report to the Panel which details those matters referred to in Section W5.1.1.
- 7.1.2 The TDC Chair on behalf of the Committee shall prepare that part of the Annual Report concerning Trading Disputes setting out those matters referred to in Section W5.2.1 which occurred during the preceding year up to 31 March.
- 7.1.3 The dissenting view of any Members shall be reflected in the report prepared under paragraph 7.1.2.

8. Committee Communications

8.1 Operational Communications

- 8.1.1 Where the TDC is overseeing defined BSC processes, any communications to BSC Parties, Party Agents or other bodies will be defined either in the BSC or in Code Subsidiary Documents (most often BSCPs) and may take the form of consultations, circular notifications, e-mails or letters etc.
- 8.1.2 Where the TDC deals with matters which do not have explicitly defined communication steps set out in the BSC but do fall clearly within its explicitly defined areas of responsibility, powers and functions the TDC will communicate with BSC Parties, Party Agents or other bodies via e-mails and letters.
- 8.1.3 In both cases such communications may be delegated to BSCCo by the TDC or groups unless otherwise prohibited by the BSC.
- 8.1.4 Such communications as outlined above remain the responsibility of the TDC.

8.2 Strategic Communications and Other Communications

- 8.2.1 From time to time, matters may arise that relate to wider industry issues. Such matters may impact the TDC's areas of responsibility either directly or indirectly but will also have impacts that arise out with the BSC.
- 8.2.2 Where the TDC has views on such matters these views should be relayed to the BSC Panel such that the BSC Panel may, at its discretion, issue a communication to the relevant industry participant, body or government department (either via letter or any other form as appropriate).
- 8.2.3 It is possible that the views of the Panel's independent committees and groups do not align with the views of the Panel itself. To ensure that the views of the TDC are not lost, where matters are relayed to the BSC Panel, these will be recorded in the relevant meeting materials or minutes as appropriate. Further, the Panel should reference the views of its various groups and committees in its communications with industry participants, bodies or government departments.
- 8.2.4 Where the Panel issues communications based on matters brought to its attention by the TDC (or receives responses to such communications), the Panel will, unless it agrees otherwise on the basis of confidentiality, provide a copy of such communications or responses to the TDC.

8.3 Time-Bound Communications

- 8.3.1 Where the TDC identifies a strategic or other matter (as outlined above) which it wishes to bring to the Panel's attention and where that matter is such that the value of any communication would be eroded if a communication is not issued prior to the end of the week following the next scheduled Panel meeting, the TDC chair will relay the matter to the Panel Chair (or, in their absence, the Deputy Panel Chair) directly. The Panel Chair (or, in their absence, the Deputy Panel Chair) will then determine whether to:
- Seek the views of Panel members¹ and their ex-committee approval to issue an appropriate communication so as to meet the timescales required for the communication before issuing such communication to the relevant industry participants, bodies or government departments; or
 - Issue an appropriate communication to the relevant industry participants, bodies or government departments so as to meet the timescales required for the communication and circulate a copy of this communication to Panel members¹ for information.

9. Referring parties to the Performance Assurance Board

- 9.1 The TDC are to be made aware of open Trading Disputes where the continued lack of information from the BSCCo, BSC Parties, BSC Agents and/or any relevant expert is hindering investigation. In accordance with BSCP11 5.1.4 the TDC can report the case to the Performance Assurance Board (PAB) as a compliance matter.
- 9.2 The TDC are to note Parties that have caused significant or persistent Settlement Errors and can refer such Parties to the PAB for further investigation.

10. Legal support and disclosure

- 10.1 The TDC should determine required legal support at its own discretion having regard to the extent to which the BSCCo is implicated in the relevant Trading Dispute.
- 10.2 There is no strong case for the TDC to be served by legal firms that are wholly separate to those that provides support to the BSCCo and that any perceived conflict of interests be managed on a case by case basis.
- 10.3 Where a Trading Dispute includes an allegation that an act or omission by BSCCo has directly contributed to the alleged Settlement Error, advice procured by the TDC will remain confidential to the TDC, the TDC Chair and attendees permitted to participate in the dispute, and a single supporting BSCCo lawyer. Such advice should be prevented from being accessed by any other BSCCo employee until such time as the matter that is the subject of the advice is resolved or as the TDC deems otherwise appropriate.
- 10.4 The provisions established under paragraph 10.3 of this policy shall be subject to review of the TDC Chair on behalf of the TDC.

¹ Including those regular attendees entitled to attend the BSC Panel as prescribed by the BSC (i.e. the representative of Distribution System Operators appointed in accordance with B2.13 of the BSC, the representative of the Authority (as provided for under Section B2.12.1 of the BSC) and the Chief Executive of ELEXON (as provided for under Section B2.14.1 of the BSC).

