

## SECTION H: GENERAL

### 1. STRUCTURE

#### 1.1 Introduction

1.1.1 This Section H sets out:

- (a) arrangements for the establishment and designation of Code Subsidiary Documents;
- (b) the relationship of the Code with other documents;
- (c) arrangements for the commencement of trading under the Code;
- (d) the events constituting and the consequences resulting from a Default under the Code;
- (e) provisions relating to the ownership, use and disclosure of data;
- (f) the limitation of liability of Parties under the Code;
- (g) arrangements for the resolution of disputes; and
- (h) other provisions defining the legal and contractual relationship between the Parties.

#### 1.2 Internal structure

1.2.1 The Code comprises:

- (a) each of the Sections;
- (b) any Annex attached to a Section; and
- (c) the Pool Supplement.

1.2.2 The Pool Supplement includes provision for the determination, settlement and reconciliation of liabilities (as provided in the Pool Supplement) arising under or by reference to the Pooling and Settlement Agreement in respect of the period prior to the Go-live Date and, accordingly, references in the Code to the Code, insofar as it applies to or by reference to Settlement Periods from (and including) the First Settlement Period shall not include the Pool Supplement, unless otherwise expressly stated.

1.2.3 The Code also refers to and creates obligations in respect of Code Subsidiary Documents.

1.2.4 Code Subsidiary Documents comprise each of the following documents:

- (a) BSC Procedures;
- (b) Codes of Practice;
- (c) BSC Service Descriptions;
- (d) Party Service Lines;
- (e) Data Catalogues;

- (f) Communication Requirements Documents; and
  - (g) the Reporting Catalogue.
- 1.2.5 Subject to Section L3.2, a reference in the Code or in any Code Subsidiary Document to a Code Subsidiary Document shall be to the version of that Code Subsidiary Document then in force, unless the context otherwise requires.
- 1.2.6 Code Subsidiary Documents shall have binding effect for the purposes of the Code.
- 1.2.7 Subject to paragraph 1.2.8:
- (a) each Party and each BSC Agent shall comply with (and each Party shall ensure that its Party Agents comply with) each of the Code Subsidiary Documents in force from time to time (whether or not such Code Subsidiary Document is expressly identified or referred to in, or in a particular Section of, the Code) to the extent such Code Subsidiary Document is applicable to such Party, BSC Agent or Party Agent;
  - (b) without prejudice to paragraph 1.5 and other than in Section A, Section F, Section H, Section X (including Annex X-1 and Annex X-2) and the Pool Supplement references in the Code to the Code shall be interpreted to include all relevant Code Subsidiary Documents, unless the context otherwise requires; and
  - (c) a breach of any Code Subsidiary Document shall be treated as a breach of the Code for the purposes of paragraph 3.
- 1.2.8 The provisions of paragraph 1.2.7 shall not apply to the BSC Service Descriptions (but without prejudice to any obligations of BSC Agents under the BSC Agent Contracts).
- 1.3 Establishment of Code Subsidiary Documents**
- 1.3.1 The Code Subsidiary Documents in force as at the Code Effective Date shall be those listed in the Implementation Scheme and they shall be deemed to be adopted by the Panel, for the purposes of the Code, as at the Code Effective Date (subject to the provisions of the Implementation Scheme).
- 1.3.2 BSCCo shall:
- (a) maintain an up-to-date list of the Code Subsidiary Documents, indicating the version number of each Code Subsidiary Document then in force (and the version numbers of previous versions) together with the date with effect from which each such version applies or applied;
  - (b) make a copy of such list available to any person on request; and
  - (c) maintain a library of all past and current versions of each Code Subsidiary Document (including, in the case of Codes of Practice, the versions referred to in Section L3.2.3).
- 1.3.3 Existing Code Subsidiary Documents may be modified and new Code Subsidiary Documents may be created in accordance with Section F3.

## **1.4 Access to Code**

- 1.4.1 BSCCo shall provide a copy of the Code and of any Code Subsidiary Document to any person on request, subject (other than in the case of the Authority) to payment by such person of an amount (as approved by the Panel from time to time) not exceeding the reasonable costs of BSCCo in making and providing such copy.
- 1.4.2 In complying with paragraph 1.4.1 (and without prejudice to the requirements of that paragraph), BSCCo shall, and shall be entitled to, take such steps as it considers appropriate to protect the IPRs which BSCCo holds in such documents pursuant to paragraph 4.7.
- 1.4.3 Notwithstanding paragraph 1.4.1, BSCCo may, with the prior approval of the Panel, refuse to provide a copy of any Code Subsidiary Document (or part of it) to a third party or to third parties generally (or may make the provision thereof subject to conditions) to the extent only and for the period that the provision of such Code Subsidiary Document (or part of it) to such third party or parties would, in the opinion of BSCCo, substantially prejudice the interests of all Parties collectively or classes of Parties collectively.
- 1.4.4 Where, with the approval of the Panel, BSCCo determines that a Code Subsidiary Document (or part of it) should not be made available to a third party or to third parties generally pursuant to paragraph 1.4.3, BSCCo shall notify Parties and the Authority accordingly.
- 1.4.5 Subject to any existing confidentiality obligation, each other Party shall be free to disclose the Code or any Code Subsidiary Document to any third party to the extent that BSCCo would be entitled to make such document(s) available to that third party pursuant to this paragraph 1.4 and subject to compliance with any steps BSCCo may prescribe under paragraph 1.4.2, provided always that, where BSCCo refuses to provide a copy of a Code Subsidiary Document to a third party or third parties pursuant to paragraph 1.4.3, such Party shall not disclose that Code Subsidiary Document to such third party or parties.

## **1.5 Precedence**

- 1.5.1 In the event of any conflict between the provisions of the Code and:
- (a) the provisions of any Code Subsidiary Document;
  - (b) the Code Administration Code of Practice Principles; and/or
  - (c) the provisions of any other document established or adopted under and pursuant to the Code or any Code Subsidiary Document,
- the provisions of the Code shall prevail.
- 1.5.2 In the event of any conflict between the provisions of one type of Code Subsidiary Document and another, or between the provisions of one Code Subsidiary Document and another:
- (a) the Codes of Practice shall take precedence over all other types of Code Subsidiary Document;
  - (b) subject to paragraph (a), the Panel shall determine which provision is to take precedence pending modification of the Code Subsidiary Document(s),
- and the Panel shall take steps in accordance with Section F3 to remove such conflict.

- 1.5.3 In the event of any conflict between the provisions of a Code Subsidiary Document and the provisions of any other document established or adopted under and pursuant to the Code or any Code Subsidiary Document, the provisions of the Code Subsidiary Document shall prevail.
- 1.5.4 The provisions of this paragraph 1.5 shall be subject to any express provision to the contrary in the Code.
- 1.5.5 References in this paragraph 1.5 to the Code shall not include the Pool Supplement.

## **1.6 Relationship with other documents**

- 1.6.1 If at any time there is a conflict between the BSC Requirements for the MRA (as defined in Section K and as interpreted in the context of the Code) and the Priority Provisions (as defined in, and interpreted in the context of, the Master Registration Agreement), the Parties agree that:

- (a) if and for so long as a Party complies with the Priority Provisions under the Master Registration Agreement, it will not be in breach of its obligations under the BSC Requirements for the MRA in respect of those provisions which are in conflict with the Priority Provisions; and
- (b) until such time as such conflict is resolved through the procedures set out in clause 9 of the Master Registration Agreement and the applicable procedures under the Code, the Priority Provisions shall prevail over the BSC Requirements for the MRA with which they are in conflict,

provided that nothing in this paragraph 1.6.1 or clause 9.2 of the Master Registration Agreement shall prejudice the form or content of any proposed change to resolve the conflict and provided that, where such conflict arises as a result of a Code Modification, BSCCo (in its capacity as MRA BSC Agent) shall propose a change under the MRA to the Priority Provisions in order to resolve such conflict.

- 1.6.2 In the event of any conflict between the provisions of the Grid Code and the provisions of the Code, no Party shall be liable hereunder or under the Grid Code as a result of complying with its obligations under the Code or under the Grid Code provided that each Party shall take such steps within its power as may be necessary, subject to and in accordance with the provisions of the Code and the Grid Code relating to modifications, to resolve such conflict as soon as possible.
- 1.6.3 Notwithstanding paragraph 1.6.2, the Parties acknowledge that, depending on the nature of the conflict between the Grid Code and the Code, it may not be practicable or desirable for individual Parties to comply with differing and conflicting obligations and, in that event, the Panel and the Transmission Company, with the approval of the Authority, may determine which provisions are to prevail pending modification of the Grid Code and/or the Code to remove such conflict.
- 1.6.4 For the avoidance of doubt, a conflict for the purposes of this paragraph 1.6 arises where compliance with the requirements of one document would necessarily (but for the provisions of this paragraph 1.6) result in a breach of the other document and, accordingly, the existence of an additional or supplementary requirement under one or other document in relation to matters forming the subject of both documents does not, of itself, constitute a conflict for the purposes of this paragraph 1.6.
- 1.6.5 In this paragraph 1.6, references to the Code include each of the Code Subsidiary Documents.

- 1.6.6 BSCCo shall inform the Panel and the Transmission Company as soon as reasonably practicable where it becomes aware of any conflict or material inconsistency between the Code and another applicable Industry Code.

## **1.7 IPR Litigation Requirements Document**

- 1.7.1 With reference to the arrangements described or referred to in the IPR Litigation Requirements document referred to in Section A2.2.5, it is agreed that those arrangements shall take effect in accordance with their terms; and Parties shall be bound by the effect of those arrangements; and the Panel and BSCCo shall have and discharge their respective powers, functions and responsibilities set out in and in accordance with those arrangements; and all costs, expenses and liabilities incurred by BSCCo in connection with or pursuant to those arrangements shall (subject as provided therein) be BSC Costs.

## **2. COMMENCEMENT AND TERM**

### **2.1 Term**

- 2.1.1 Without prejudice to paragraphs 2.3 and 2.4, the Code shall come into force and take effect on and from the Code Effective Date.

- 2.1.2 The Code shall have no fixed duration.

### **2.2 Implementation Scheme**

- 2.2.1 Upon execution of or accession to the Framework Agreement, each Party shall execute or accede to (as the case may be) the Scheme Framework Agreement and shall comply with such parts of the Implementation Scheme as are expressed in the Implementation Scheme to be binding in contract to the extent those parts apply to such Party.

- 2.2.2 The provisions of the Code and the Code Subsidiary Documents are varied or suspended (and the requirements of the Code and Code Subsidiary Documents are deemed to be satisfied) by or in accordance with, and for the period and to the extent set out in, the Implementation Scheme and the Scheme Subsidiary Documents.

- 2.2.3 In the event of any conflict or inconsistency between the provisions of the Code (or any Code Subsidiary Document) and the provisions of the Implementation Scheme (or any Scheme Subsidiary Document), the provisions of the Implementation Scheme (or, as the case may be, the Scheme Subsidiary Document) shall prevail.

- 2.2.4 The obligations in paragraph 2.2.1 shall not apply to any person who becomes a Party after the date notified by the Secretary of State to the Panel for the purposes of this paragraph 2.2.4 provided that such person shall be bound by the effect of the provisions of the Implementation Scheme and the Scheme Subsidiary Documents (and any steps taken or arrangements made thereunder) as they apply to or affect the Code or any Code Subsidiary Documents (and the rights and obligations of the Parties thereunder) to the extent such provisions, steps or arrangements have an effect beyond that date.

- 2.2.5 In this Section H, "**Scheme Subsidiary Document**" has the meaning given to that term in the Implementation Scheme.

### **2.3 Go-live Date**

- 2.3.1 The trading of electricity (and settlement of financial obligations in respect thereof) in accordance with arrangements established by the Code shall not begin until the Go-live

Date and, accordingly, the rights, obligations and liabilities of each Party under the Code in respect of transactions giving rise to Trading Charges shall apply in respect of the First Settlement Period and each Settlement Period thereafter (and shall not apply in respect of any period prior to the First Settlement Period).

2.3.2 The provisions of paragraph 2.3.1 are without prejudice to any other rights, obligations and liabilities of each Party under the Code (including satisfaction of any requirements applicable to such Party in order to be able to effect transactions as referred to in paragraph 2.3.1).

2.3.3 In this paragraph 2.3, the "**First Settlement Period**" is the Settlement Period commencing at 00:00 hours on the Go-live Date.

## 2.4 Pool Supplement

2.4.1 The arrangements set out in the Pool Supplement shall apply on and from the date and in relation to the matters set out in the Pool Supplement.

## 3. DEFAULT

### 3.1 Events of Default

3.1.1 For the purposes of this paragraph 3, there shall have occurred a "**Default**" in relation to a Party (the "**Defaulting Party**") in any of the following events or circumstances:

- (a) where, in respect of the Defaulting Party's liability for amounts in respect of Trading Charges and in relation to any amount which has become due for payment by the Defaulting Party under the Code in respect thereof:
  - (i) the Defaulting Party has not paid the amount in full on the due date for payment; and
  - (ii) on or after the due date for payment BSCCo has given notice to the Defaulting Party requiring payment of such amount; and
  - (iii) the Defaulting Party has not paid such amount in full by the third Business Day after the date of BSCCo's notice under paragraph (ii); or
- (b) where, in respect of the Defaulting Party's liability for any sums under the Code other than Trading Charges and in relation to any amount which has become due for payment by the Defaulting Party under the Code in respect thereof:
  - (i) the Defaulting Party has not paid the amount in full on the due date for payment; and
  - (ii) on or after the due date for payment BSCCo has given notice to the Defaulting Party requiring payment of such amount; and
  - (iii) the Defaulting Party has not paid such amount in full by the fifteenth Business Day after the date of BSCCo's notice under paragraph (ii); or

(c) where:

- (i) in respect of any continuous period of 90 days or any intermittent period of 120 days out of 180, a Trading Party is in Level 1 Credit Default or;
- (ii) in respect of any continuous period of 60 days or any intermittent period of 75 days out of 120, a Trading Party is in Level 2 Credit Default; or
- (iii) a Trading Party's Credit Cover Percentage, as determined by the ECVA, is not equal to or lower than 90% by the end of the same numbered Settlement Period on the second to next occurring Working Day after the Settlement Period during which the Trading Party was in Level 2 Credit Default and had a Credit Cover Percentage exceeding 100%; or
- (iv) a Relevant Credit Default Series occurs in relation to a Trading Party.

For the purposes of this paragraph 3.1.1(c)(iv) a "**Relevant Credit Default Series**" shall be:

- (A) an instance of a Trading Party being in Level 2 Credit Default and having a Credit Cover Percentage, as determined by the ECVA, exceeding 100% (an instance of "**Relevant Credit Default**"); FOLLOWED BY
- (B) five further instances of Relevant Credit Default each occurring on or later than the same numbered Settlement Period on the second to next occurring Working Day after the Settlement Period in which the Trading Party's previous instance of Relevant Credit Default in the Relevant Credit Default Series ended but which need not be consecutive; and
- (C) where each of the five instances referred to in paragraph (B) occurs within six (6) calendar months of the instance of Relevant Credit Default referred to in paragraph (A); and

(d) where:

- (i) the Defaulting Party is in breach of any material provision of the Code (other than a provision which is the subject of paragraphs (a), (b) or (c) above); and
- (ii) the breach is capable of remedy by the Defaulting Party; and
- (iii) BSCCo has given notice (making reference to this paragraph 3) of such breach to the Defaulting Party; and
- (iv) within 14 days (or such longer period as the Panel may approve) after BSCCo's notice under paragraph (iii), the Defaulting Party does not either:



- (1) remedy the breach in all material respects, where the breach is capable of remedy within such period; or
  - (2) where the breach is not so capable of remedy, provide to BSCCo a programme (setting out the steps to be taken by the Defaulting Party and the timetable for taking such steps) for the remedy as soon as reasonably practicable of the breach; and
- (v) in the case in paragraph 3.1.1(d)(iv)(2), the Defaulting Party does not remedy the breach in all material respects with all reasonable diligence and so far as reasonably practicable in accordance with the programme provided under that paragraph (or such revised programme as the Panel may approve); or
- (e) where:
  - (i) the Defaulting Party is in breach of any material provision of the Code (other than a provision which is the subject of paragraphs (a), (b) or (c) above); and
  - (ii) the breach is not capable of remedy; and
  - (iii) BSCCo has given notice (making reference to this paragraph 3) of the breach to the Defaulting Party; and
  - (iv) at any time within the period of 12 months following BSCCo's notice under paragraph (iii), there occurs a further breach by the Defaulting Party of the same provision or any other material provision (excluding a provision which is the subject of paragraphs (a), (b) or (c) above) of the Code; or
- (f) where:
  - (i) the Defaulting Party is in persistent breach of any provision of the Code (other than a provision which is the subject of paragraphs (a), (b) or (c) above) during a period of 6 months; and
  - (ii) after such 6-month period has elapsed, BSCCo has given notice (making reference to this paragraph 3) of the persistent breach to the Defaulting Party; and
  - (iii) the Defaulting Party persists in breaching such provision of the Code for a further period in excess of 3 months; or
- (g) where:
  - (i) the Defaulting Party suspends payment of its debts or admits its inability to pay its debts as they fall due;
  - (ii) the Defaulting Party is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraph 3.1.2), or any voluntary arrangement is proposed in relation to it or it enters into any composition or scheme of arrangement (other than for the purpose of a bona fide solvent reconstruction or amalgamation); or



- (iii) the Defaulting Party has a receiver of the whole or any material part of its assets or undertaking appointed; or
- (iv) the Defaulting Party has an administrator appointed or a winding-up order made in relation to it; or
- (v) the Defaulting Party passes any resolution for winding-up (other than for the purpose of a bona fide solvent reconstruction or amalgamation); or
- (vi) a petition is presented or legal proceedings are commenced for making an administration order in relation to, or for the winding up or dissolution of, the Defaulting Party (other than a petition which is vexatious or frivolous and is, in any event, discharged within 21 days of presentation and before it is advertised);

or any analogous events occur in respect of the Defaulting Party in any other jurisdiction;

in any such case for whatever reason and whether or not within the control of the Defaulting Party.

3.1.2 For the purposes of paragraph 3.1.1(g)(ii), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£10,000"; and the Defaulting Party shall not be deemed to be unable to pay its debts for the purposes of that paragraph if any such demand as is mentioned in that section of the Insolvency Act 1986 is being contested in good faith by the Defaulting Party with recourse to all appropriate measures and procedures.

3.1.3 Without prejudice to a Party's obligation to make any payments under the Code (including under Section D, Section N and Annex S-1) in accordance with the requirements of and at the times and in the manner specified in the Code, a Party shall not be in breach of any other provision of the Code to the extent that and for so long as it is not possible for that Party to comply with that provision as a result of Section G4 applying or by reason of a failure of a BSC Agent and/or BSCCo to perform any obligation under the Code provided that the Party shall:

- (a) promptly notify BSCCo in writing of such impossibility and the reasons why it is not possible for such Party to comply with the relevant provision of the Code; and
- (b) discuss with BSCCo whether there is a possible alternative means of complying with the relevant provision and, if so, take all reasonable steps to do so.

## **3.2 Consequences of Default**

3.2.1 Upon the occurrence of a Default by a Defaulting Party, the Panel may take one or more of the following steps while such Default persists and for the duration of such Default (in each case at such time as it sees fit and having regard to all the circumstances of the Default):

- (a) notify each other Party of such Default;
- (b) suspend one or more of the rights or take one or more of the steps referred to in paragraph 3.2.2 (subject to any prior consultation or approval as specified in paragraph 3.2.2) in respect of the Defaulting Party, either generally or progressively and either wholly or partially and for such period as the Panel considers appropriate;

- (c) in the case of a Default by an Interconnector Error Administrator of the type referred to in paragraph 3.1.1(a), remove the registration of the Interconnector Error Administrator and require the Interconnected System Operator (with the prior approval of the Authority or, in the case an Interconnector connected to an External System outside the National Electricity Transmission System Operator Area, the Secretary of State) to assume the future responsibilities of such Interconnector Error Administrator acting in that capacity;
- (d) with the prior approval of the Authority, require the Defaulting Party and the Transmission Company or the Distribution System Operator (as the case may be) to de-energise the Plant or Apparatus comprising one or more of the BM Units (other than Interconnector BM Units) for which the Defaulting Party is the Lead Party (and each Party hereby irrevocably and unconditionally consents to such de-energisation);
- (e) expel the Party from the Code subject to and in accordance with Section A5; and/or
- (f) notify the FAA on behalf of the BSC Clearer to treat the Party as a Defaulting Party for the purposes of Section N.

3.2.2 The rights and steps referred to in paragraph 3.2.1(b) are:

- (a) in relation to Energy Contract Volume Notifications (or, in the case of a Default of the type referred to in paragraph 3.1.1(a) or (b), relevant Energy Contract Volume Notifications, as defined in Section P2.5.3):
  - (i) the right to submit such Energy Contract Volume Notifications under Section P; and/or
  - (ii) the disapplication (for the purposes of Settlement) of any such Energy Contract Volume Notifications as have already been submitted at any time (except to the extent that they relate to Settlement Periods for which Gate Closure has occurred prior to the time when the Panel notifies the Parties of such disapplication);
- (b) in relation to Metered Volume Reallocation Notifications (or, in the case of a Default of the type referred to in paragraph 3.1.1(a) or (b), relevant Metered Volume Reallocation Notifications, as defined in Section P3.5.3):
  - (i) the right to submit such Metered Volume Reallocation Notifications under Section P; and/or
  - (ii) the disapplication (for the purposes of Settlement) of any such Metered Volume Reallocation Notifications as have already been submitted at any time (except to the extent that they relate to Settlement Periods for which Gate Closure has occurred prior to the time when the Panel notifies the Parties of such disapplication);
- (c) where the Defaulting Party is an Interconnector User, the rights of such Party to be allocated BM Unit Metered Volumes (of such kinds as the Panel may specify) in respect of its Interconnector BM Units;
- (d) following consultation with the Transmission Company, the right to submit Bid-Offer Pairs under Section Q;

- (e) with the prior approval of the Authority, the right to register further Metering Systems and BM Units;
  - (f) the rights to receive reports and data under Section V;
  - (g) the right to vote pursuant to Annex B-2.
- 3.2.3 The taking of any steps by the Panel under this paragraph 3.2 in relation to a Defaulting Party shall not affect or alter the liabilities of such Defaulting Party under the Code (accrued or accruing in respect of the period prior to, on or after the date when such step is taken) and, without prejudice to the generality of the foregoing, a Defaulting Party shall be liable for all sums (including VAT) which it is required under the Code to pay in respect of Trading Charges and other sums pending removal, de-energisation or expulsion pursuant to paragraph 3.2.1.
- 3.2.4 Each Licensed Distribution System Operator shall ensure that it has the necessary rights to effect or procure the de-energisation of Plant or Apparatus, following an instruction from the Panel pursuant to paragraph 3.2.1(d), which is connected to a Distribution System (not being a Transmission System or the Distribution System of any other Distribution System Operator) forming part of the Total System and having a connection with such Licensed Distribution System Operator's Distribution System.
- 3.2.5 In relation to any instruction to de-energise Plant or Apparatus issued pursuant to paragraph 3.2.1(d):
- (a) the Transmission Company or the relevant Distribution System Operator (as the case may be) shall use all reasonable endeavours to comply (or procure compliance) as quickly as practicable with any such instruction;
  - (b) each Lead Party hereby irrevocably and unconditionally consents to such de-energisation; and
  - (c) the Defaulting Party, failing which each Trading Party (but, in the case of a Trading Party, only in respect of its Annual Funding Share at the time of receipt of the request for indemnification, calculated on a default basis in relation to the Defaulting Party) shall indemnify and keep indemnified the Transmission Company and/or the Distribution System Operator (as the case may be) on demand against any and all liability, loss or damage which it may suffer by reason of effecting such de-energisation.
- 3.2.6 If, by virtue of any Legal Requirement, another Party is to assume responsibility for the supply of electricity to Customers through Metering Systems for which the Defaulting Party is the Registrant, BSCCo shall take such steps (and shall require relevant BSC Agents to take such steps) as may be necessary to ensure that such other Party assumes responsibility for such Metering Systems for the purposes of Settlement upon or as soon as reasonably practicable after such requirement arises.
- 3.2.7 The provisions of this paragraph 3.2 are without prejudice to any other rights or remedies or consequences which are expressly provided under the Code to arise in the event of any failure by a Party to comply with the requirements of the Code.
- 3.2.8 BSCCo shall, and shall be entitled to, take such steps as may be required by the Panel (including giving instructions to relevant BSC Agents) in order to give effect to the exercise by the Panel of any of its powers under this paragraph 3.2.

### 3.3 Application

- 3.3.1 This paragraph 3 does not apply to BSCCo or the BSC Clearer and references to a "Defaulting Party" are to a Party other than BSCCo or the BSC Clearer.

## 4. CONFIDENTIALITY AND OTHER INTELLECTUAL PROPERTY RIGHTS

### 4.1 Interpretation

- 4.1.1 In this paragraph 4:

- (a) **"Authorised Recipient"** means any Business Person to whom Protected Information has been divulged in accordance with paragraph 4.4 provided that such person:
  - (i) requires access to such Protected Information for the proper performance of his duties as a Business Person in the course of Permitted Activities; and
  - (ii) has been informed of the duties of the Transmission Company in relation to inter alia Protected Information under paragraph 4.4;
- (b) **"Business Person"** means any person who is a Main Business Person or a Corporate Functions Person, and **"Business Personnel"** shall be construed accordingly;
- (c) **"Corporate Functions Person"** means any person who:
  - (i) is an officer of the Transmission Company; or
  - (ii) is an employee of the Transmission Company, carrying out any administrative, finance or other corporate services of any kind which in part relate to the Main Business; or
  - (iii) is engaged by or on behalf of the Transmission Company as an agent or adviser to or otherwise to perform work in relation to services for the Main Business;
- (d) **"Disclose"** means disclose, reveal, report, publish or transfer by any means and **"Disclosure"** shall be construed accordingly;
- (e) **"Main Business"** means, in relation to the Transmission Company, any business of the Transmission Company as at the Code Effective Date and any business which the Transmission Company must carry out under the Transmission Licence;
- (f) **"Main Business Person"** means any employee of the Transmission Company who is engaged solely in the Main Business of the Transmission Company, and **"Main Business Personnel"** shall be construed accordingly;
- (g) **"Nominated Agreements"** means:
  - (i) the Code;
  - (ii) the Code Subsidiary Documents;

- (iii) the Implementation Scheme;
  - (iv) the Scheme Subsidiary Documents;
  - (v) the Settlement Agreement for Scotland;
  - (vi) the Master Registration Agreement;
  - (vii) all Connection Agreements;
  - (viii) the Data Transfer Service Agreement; ~~and~~
  - (ix) all Contracts for Difference; and
  - ~~(ix)~~ any other electricity industry agreement or document as may be specified (or of a type specified) as a Nominated Agreement by the Panel from time to time (following such consultation with Parties as the Panel considers appropriate for this purpose);
- (h) **"Permitted Activities"** means activities carried on for the purposes of the Main Business;
- (i) **"Protected Information"** means any information relating to the affairs of a Party which is furnished to Business Personnel pursuant to the Code unless, prior to such information being furnished, such Party has informed the recipient thereof by notice in writing or by endorsement on such information that the said information is not to be regarded as Protected Information;
- (j) **"Relevant Instrument"** means any or, as the context may require, a particular one of the following:
- (i) the Act and all subordinate legislation made under the Act;
  - (ii) the Data Protection Act 1998 and all subordinate legislation made under it;
  - (iii) any Licence and any determination or notice made or issued by the Authority pursuant to the terms thereof;
  - (iv) the Capacity Market Rules,

and whether under any of the foregoing or otherwise, all authorisations, approvals, licences, exemptions, filings, registrations, notarisations, consents, guidelines and other matters which are required or which a Party acting in accordance with Good Industry Practice would obtain or comply with for the purposes of the Code, of or from any Competent Authority.

## 4.2 Party obligations

- 4.2.1 The obligations under this paragraph 4.2 apply to each Party (a **"Restricted Party"**) other than the Transmission Company.
- 4.2.2 Each Restricted Party hereby undertakes with each other Party that it shall preserve the confidentiality of, and shall not directly or indirectly Disclose or use for its own purposes, Confidential Information, subject to the provisions of paragraph 4.2.3.

4.2.3 A Restricted Party shall be entitled to Disclose or use Confidential Information if and to the extent that one or more of the following apply:

- (a) the Restricted Party is required or permitted to Disclose or use Confidential Information pursuant to the terms of a Nominated Agreement, to the extent of such requirement or permission; or
- (b) the Restricted Party believes, on reasonable grounds, that market arrangements set out or contemplated by the Code require or permit it to Disclose Confidential Information to another person or to use Confidential Information, to the extent of such requirement or permission; or
- (c) the person to whose affairs the Confidential Information relates gives its prior written consent to the Disclosure or use, to the extent of such consent; or
- (d) the Confidential Information, before it is furnished to the Restricted Party, is in the public domain; or
- (e) the Confidential Information, after it is furnished to the Restricted Party:
  - (i) is acquired by the Restricted Party in circumstances in which this paragraph 4.2 does not apply; or
  - (ii) is acquired by the Restricted Party in circumstances in which this paragraph 4.2 does apply and thereafter ceases to be subject to the restrictions imposed by this paragraph 4.2; or
  - (iii) enters the public domain,

and in any such case otherwise than as a result of either a breach by the Restricted Party of its obligations in this paragraph 4.2 or a breach by the person who disclosed that Confidential Information of any confidentiality obligation of that person where the Restricted Party is aware of such breach by that person; or
- (f) the Restricted Party is required or permitted to Disclose to any person Confidential Information or to use Confidential Information:
  - (i) in compliance with any provisions of any Relevant Instrument; or
  - (ii) in compliance with any other Legal Requirement; or
  - (iii) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
  - (iv) pursuant to the arbitration rules for the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the Restricted Party including any disputes committee established under the terms of the Code, the Settlement Agreement for Scotland or the Master Registration Agreement; or
- (g) the Restricted Party Discloses Confidential Information to its Affiliates or Related Undertakings or to its employees, directors, agents, consultants and professional advisers or those of its Affiliates or Related Undertakings or, where the Restricted Party is a Supplier, to a relevant Exempt Supplier (being an Exempt Supplier as defined in, and with or to whom the Supplier agrees or

offers to provide exempt supply services pursuant to Condition 8B of, a PES Supplier Licence or any equivalent condition of another Supply Licence); or

(h) the Restricted Party Discloses Confidential Information to the Authority.

4.2.4 Confidential Information which a Restricted Party is permitted or obliged to Disclose or use pursuant to this paragraph 4.2 shall not cease to be regarded as Confidential Information by virtue of such Disclosure or use.

4.2.5 Each Restricted Party shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information, including the following:

- (a) Confidential Information will be disseminated within its organisation on a "need-to-know" basis;
- (b) the persons referred to in paragraph 4.2.3(g) will be made fully aware of the provisions of this paragraph 4.2; and
- (c) any copies of Confidential Information, whether in hard copy, computerised or other (for example, microfiche) form, will clearly identify the information as confidential.

4.2.6 Each Restricted Party shall procure that its Affiliates, Related Undertakings and consultants observe the restrictions set out in this paragraph 4.2 (as if references to "Restricted Party" were references to such Affiliates, Related Undertakings and consultants) and shall be responsible under the Code for any failure by such persons to observe such restrictions.

4.2.7 The obligations of BSCCo and the BSC Clearer under this paragraph 4.2 are subject to the provisions of paragraph 4.3.

### **4.3 BSCCo and BSC Clearer obligations**

4.3.1 BSCCo and the BSC Clearer (and any other BSC Companies) shall be entitled to use Confidential Information for the purposes of discharging their respective duties and functions under and pursuant to the Code and the Code Subsidiary Documents.

4.3.2 The provisions of paragraph 4.2.5(a) and (c) shall not apply to BSCCo or the BSC Clearer.

4.3.3 BSCCo and the BSC Clearer undertakes to each of the other Parties that, having regard to the activities in which any employee of BSCCo or the BSC Clearer is engaged and the nature and effective life of the Confidential Information divulged to him by virtue of such activities, BSCCo and BSC Clearer shall not unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Confidential Information or permit Confidential Information to be divulged to any employee of BSCCo or the BSC Clearer who has notified BSCCo or the BSC Clearer of his intention to become engaged as an employee or agent of any other person who is:

- (a) authorised by Licence or Exemption to generate, participate in the transmission of, distribute or supply electricity; or
- (b) an electricity broker or who is known to be engaged in the writing of electricity sale and purchase contracts; or
- (c) known to be retained as a consultant to any such person who is referred to in paragraphs (a) or (b),



save where BSCCo and the BSC Clearer could not, in all the circumstances, reasonably be expected to refrain from divulging to such employee Confidential Information which is required for the proper performance of his duties.

4.3.4 For the purposes of paragraph 4.2.3(a), where:

- (a) a provision of the Code provides that BSCCo shall or may provide or disclose any data to any person(s) or body(ies); and
- (b) the data to be provided or disclosed is not specifically identified in or readily identifiable (without the need to exercise any particular judgment as to the content thereof) from such provision

then BSCCo shall be entitled to provide or disclose data in accordance with the provisions, mutatis mutandis, of Section B3.3.1 (as if references to the Panel were references to BSCCo) subject to the further provisions of Section B3.3 (as if references to the fulfilment of the functions and duties of the Panel were references to the fulfilment of the functions and duties of BSCCo).

4.3.5 For the avoidance of doubt, paragraph 4.2.4 shall not apply to information which is published by BSCCo under the Code (where the Code provides that information may be published) but without prejudice to paragraph 4.7.

#### **4.4 Confidentiality for the Transmission Company**

4.4.1 The Transmission Company (in each of its capacities under the Code) shall ensure that Protected Information is not:

- (a) divulged by Business Personnel to any person unless that person is an Authorised Recipient;
- (b) used by Business Personnel for the purposes of obtaining for the Transmission Company or any of its Affiliates or for any other person:
  - (i) any Licence; or
  - (ii) any right to purchase or otherwise acquire, or to distribute, electricity except as and to the extent permitted under the Transmission Licence; or
  - (iii) any contract or arrangement for the supply of electricity to Customers or Suppliers; or
  - (iv) any contract for the use of any electrical lines or electrical plant belonging to or under the control of a Supplier; or
  - (v) control of any body corporate which, whether directly or indirectly, has the benefit of any such Licence, contract or arrangement; and
- (c) used by Business Personnel for the purpose of carrying on any activities other than Permitted Activities,

except with the prior consent in writing of the Party to whose affairs such Protected Information relates.

4.4.2 Nothing in this paragraph 4.4 shall apply to any Protected Information:

- (a) which, before it is furnished to Business Personnel, is in the public domain; or
- (b) which, after it is furnished to Business Personnel:
  - (i) is acquired by the Transmission Company in circumstances in which this paragraph 4.4 does not apply; or
  - (ii) is acquired by the Transmission Company in circumstances in which this paragraph 4.4 does apply and thereafter ceases to be subject to the restrictions imposed by this paragraph 4.4; or
  - (iii) enters the public domain,

and in any such case otherwise than as a result of either a breach by the Transmission Company of its obligations in this paragraph 4.4 or a breach by the person who disclosed that Protected Information of any confidentiality obligation of that person where the Transmission Company is aware of such breach by that person; and/or
- (c) disclosed to any person where the Transmission Company or any Affiliate of the Transmission Company is required or expressly permitted to make such disclosure to such person:
  - (i) in compliance with the duties of the Transmission Company under the Act or any other Legal Requirement; or
  - (ii) in compliance with the conditions of the Transmission Licence or any document referred to in the Transmission Licence with which the Transmission Company or any Affiliate of the Transmission Company is required by virtue of the Act or the Transmission Licence to comply; or
  - (iii) in compliance with any other Legal Requirement; or
  - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
  - (v) pursuant to the arbitration rules for the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the Transmission Company or its Affiliates; or
  - (vi) pursuant to an EMR Legal Requirement; or
- (d) to the extent that the Transmission Company or any of its Affiliates is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Code, the Grid Code, the Distribution Codes and the Fuel Security Code) with the Party to whose affairs such Protected Information relates.

4.4.3 The Transmission Company may use all and any information or data supplied to or acquired by it under the Code from or in relation to the other Parties to the extent necessary in performing Permitted Activities including, for the following purposes:

- (a) the operation and planning of the Transmission System;

- (b) the calculation of charges and preparation of offers of terms for connection to or use of the Transmission System and for the Transmission Services Activity (as defined in the Transmission Licence);
- (c) the provision of information under the British Grid Systems Agreement and the EdF Documents,

and may pass the same to Affiliates of the Transmission Company which carry out such activities and the Parties agree to provide all information to the Transmission Company and its Affiliates for such purposes provided that the Transmission Company shall procure that such Affiliates observe the restrictions set out in this paragraph 4.4 as if the references to Transmission Company were replaced by references to such Affiliates.

4.4.4 The Transmission Company undertakes to each of the other Parties that, having regard to the activities in which any Business Person is engaged and the nature and effective life of the Protected Information divulged to him by virtue of such activities, neither the Transmission Company nor any of its Affiliates shall unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Protected Information or permit Protected Information to be divulged by any Affiliate of the Transmission Company to any Business Person who has notified the Transmission Company or the relevant Affiliate of his intention to become engaged as an employee or agent of any other person (other than of the Transmission Company or any Affiliate thereof) who is:

- (a) authorised by Licence or Exemption to generate, participate in the transmission of, distribute or supply electricity; or
- (b) an electricity broker or who is known to be engaged in the writing of electricity sale and purchase contracts; or
- (c) known to be retained as a consultant to any such person who is referred to in paragraphs (a) and (b),

save where the Transmission Company or such Affiliate could not, in all the circumstances, reasonably be expected to refrain from divulging to such Business Person Protected Information which is required for the proper performance of his duties.

4.4.5 Without prejudice to the other provisions of this paragraph 4.4, the Transmission Company shall procure that any additional copies made of the Protected Information, whether in hard copy or computerised form, will clearly identify the Protected Information as protected.

4.4.6 The Transmission Company undertakes to use all reasonable endeavours to procure that no employee is a Corporate Functions Person unless the same is necessary for the proper performance of his duties.

4.4.7 Without prejudice to paragraph 4.4.3, the Transmission Company and each of its Affiliates may use and pass to each other any BM Unit Metered Volumes data supplied to or acquired by it under the Code for the purposes of its estimation and calculation of system maximum ACS (Average Cold Spell) demand as required from time to time for the purposes of the Transmission Licence.

## 4.5 Additional provisions

4.5.1 The Transmission Company and BSCCo shall and may pass any relevant information and data relating to the BM Unit Metered Volumes (including, for the avoidance of doubt, all relevant metered data) of any of the BM Units comprising Generating Units which are the

subject of qualifying arrangements (as defined in section 33 of the Act) to such person as may be specified from time to time pursuant to such qualifying arrangements.

4.5.2 The provisions of paragraphs 4.1 to 4.4 shall continue, for a period of 3 years after a Party ceases to be a Party to the Code irrespective of the reason for such cessation.

4.5.3 Each Party acknowledges and agrees that no Party shall be in breach of any obligation of confidentiality owed to it pursuant to the Code in reporting under Section U1.3.1 any breach of the Code or its belief (in good faith) that any such breach has occurred.

#### 4.6 Data ownership

4.6.1 References in the Code:

- (a) to data include any information;
- (b) to rights of ownership of data mean all IPRs in data (including IPRs in any database or other compilation or collection of data) and references to a person owning data shall be construed accordingly.

4.6.2 For the purposes of this paragraph 4.6:

- (a) **"relevant party data"** in relation to a Party (other than BSCCo, the BSC Clearer and any Licensed Distribution System Operator acting in its capacity as a SMRA) means data which is to be provided to any relevant person by or on behalf of that Party (including by any Party Agent appointed by that Party) pursuant to any provision of the Code, including metering data derived (but not estimated, where such estimation is carried out by a relevant person other than that Party or its Party Agent) from any Metering System of which such Party is Registrant;
- (b) **"relevant BSC data"** means data, including data derived from any relevant party data (but excluding any relevant party data), which is created, produced or acquired:
  - (i) pursuant to or for the purposes of the Code, or
  - (ii) pursuant to any process, procedure, calculation or determination provided for by the Code
 by or on behalf of any relevant person;
- (c) a **"relevant person"** is any of:
  - (i) the Panel, any Panel Committee, any Workgroup, BSCCo, the BSC Clearer, any other Subsidiary of BSCCo, any BSC Agent and any SMRA;
  - (ii) any Party and any Party Agent appointed by any Party;
- (d) references to the Code include any Code Subsidiary Document;
- (e) any express provision of any other part of the Code as to the ownership of IPRs in data or to data ownership shall, so far as in conflict with, prevail over the provisions of this paragraph 4.6.

- 4.6.3 Each Party grants to each relevant person a non-exclusive licence to use the relevant party data provided by or on behalf of that Party to the extent necessary and solely for the purposes contemplated by the Code, together with the right to sub-license the use of such data as necessary solely for those purposes.
- 4.6.4 Each Party other than BSCCo and the BSC Clearer shall (without payment) use all reasonable endeavours to ensure that, and warrants to BSCCo (for itself and for the benefit of all other relevant persons), in each case in respect of its relevant party data used or to be used in Settlement, that:
- (a) the provision to any relevant person pursuant to the Code of all such relevant party data;
  - (b) the use and disclosure of all such relevant party data by any relevant person pursuant to, or as and for the purposes contemplated, by the Code;
  - (c) the publication of any such relevant party data as provided for by or contemplated by the Code;
  - (d) the operation of paragraph 4.6.5 in relation to any such relevant BSC data derived from relevant party data
- will not, as far as it is aware, infringe the IPRs of any person, or be contrary to any obligations of confidence or be in breach of any obligation or duty to any third party and each Party hereby indemnifies BSCCo (for itself and for the benefit of each other relevant person (other than itself)) in respect of any loss, liability, damages, costs (including legal costs), expenses, claims and proceedings which such relevant person may suffer or incur by reason of any breach by that Party of its obligations under this paragraph 4.6.4.
- 4.6.5 So far as there are any IPRs in any relevant BSC data created, produced or acquired by or on behalf of any relevant person:
- (a) all IPRs in the relevant BSC data in Great Britain and in relation to Offshore shall (as between BSCCo and all other relevant persons but without prejudice to the provisions of any BSC Agent Contract as to such ownership) be the property of and vest in BSCCo;
  - (b) subject to the other provisions of this paragraph 4, to the extent to which such data is (pursuant to provisions of the Code) provided to or available to any relevant person, that relevant person is authorised to use and disclose such data for purposes contemplated by the Code and in connection with its operations under the Code; and
  - (c) the other relevant person shall do all such things and sign all documents or instruments reasonably necessary in the opinion of BSCCo to enable BSCCo to obtain, perfect and prove its rights in the relevant BSC data.
- 4.6.6 For the purposes of any warranties, undertakings or assurances given or to be given by a Party pursuant to any provision of the Code (including paragraph 4.6.4), such warranties, undertakings and assurances shall be treated as given subject to any matter which is contained or referred to in the "IPR Litigation Requirements" document referred to in Section A2.2.5, and accordingly any such matter shall be deemed to be disclosed against any such warranty, undertaking or assurance.

#### **4.7 Other Intellectual Property Rights**

- 4.7.1 The Intellectual Property Rights in and title to the BSCCo Materials in Great Britain and in relation to Offshore shall, as between BSCCo and all other Parties, be owned by BSCCo (or by a Subsidiary of BSCCo on behalf of BSCCo).
- 4.7.2 Each Party hereby assigns to BSCCo by way of assignment of all present and future rights all IPRs it may have at any time in the BSCCo Materials in Great Britain and in relation to Offshore (except to the extent those rights are already owned by BSCCo).
- 4.7.3 By virtue of this paragraph 4.7, all IPRs in the BSCCo Materials in Great Britain and in relation to Offshore will vest in BSCCo on their creation or acquisition.
- 4.7.4 Each Party shall do all things and sign all documents or instruments reasonably necessary in the opinion of BSCCo to enable BSCCo to obtain, perfect and prove its rights in the BSCCo Materials.
- 4.7.5 Each Party hereby waives, or shall use all reasonable endeavours to procure that the owner of any moral rights in the BSCCo Materials waives, all such moral rights as may arise in them.
- 4.7.6 Insofar as BSCCo (or any Subsidiary of BSCCo which owns BSCCo Materials) is permitted subject to the rights of any third party in respect thereof, BSCCo hereby grants (and shall procure that any of its Subsidiaries which own BSCCo Materials shall grant) to each Party a non-exclusive licence to use the BSCCo Materials to the extent necessary and solely for its business in connection with the arrangements established under the Code, together with the right to sub-license the use of such materials as necessary solely for those purposes.

#### **4.8 Data Protection Act**

- 4.8.1 Each Party (other than BSCCo and the BSC Clearer) warrants that it has effected, and undertakes that it will during the term of the Code effect and maintain all such notifications and registrations as it is required to effect and maintain under the Data Protection Act 1998 to enable it lawfully to perform the obligations imposed on it by the Code.
- 4.8.2 Each Party undertakes to comply with the Data Protection Act 1998 in the performance of its obligations under the Code.
- 4.8.3 Each Party undertakes that, in any case where information to be disclosed by it under the Code or any Code Subsidiary Document may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consents so as to enable it, or the relevant BSC Agent, as the case may be, promptly to perform its obligations under or as envisaged by the Code.

#### **4.9 Publication of data**

- 4.9.1 Wherever, pursuant to a provision of the Code or any Code Subsidiary Document, data (other than Trading Data, but without prejudice to Section V) is to be provided to all Parties, BSCCo shall make such data available to any third party on request unless the Panel considers:
- (a) that the release of such data to that third party (or to third parties generally) would substantially prejudice the interests of Parties collectively, or a class of Parties collectively; or

- (b) (in the case of data relating to the affairs of an individual Party), that such data is commercially sensitive and release of that data is not necessary to facilitate fulfilment of the Panel's or BSCCo's functions and duties under the Code in accordance with the objectives set out in Section B1.2.1 (other than the objective in Section B1.2.1(e)).
- 4.9.2 Without prejudice to Section C3.6, BSCCo shall not be obliged to provide such data to a third party unless:
- (a) the request made by such third party is in writing, on a case by case basis and such that the data to which the request relates may be reasonably ascertained from such request; and
- (b) such third party has paid to BSCCo a sum representing the reasonable costs of copying and providing such data to such third party.
- 4.9.3 Without prejudice to any specific requirement to place data on the BSC Website, the Panel may (but shall not be obliged to) publish any data which, by virtue of this paragraph 4.9 may be made available to third parties, on the BSC Website and each Party hereby consents irrevocably and unconditionally to such publication.
- 4.10 Privilege**
- 4.10.1 No Party shall be required to produce documents pursuant to any provision of the Code or Code Subsidiary Documents which such Party could not be compelled to produce in civil proceedings in any court in England or Wales or to supply information which such Party could not be compelled to give in evidence in any such proceedings.
- 4.10.2 For the avoidance of doubt, nothing in the Code or any Code Subsidiary Document shall require the Panel or BSCCo to disclose documents to any person which BSCCo or any other Party could not be compelled to produce in civil proceedings in any court in England or Wales or to supply information which BSCCo or any other Party could not be compelled to give in evidence in any such proceedings.
- 5. AUDIT**
- 5.1 BSC Audit**
- 5.1.1 The BSC Auditor shall be appointed in order to undertake, subject to paragraph 5.1.6, an operational audit in relation to each BSC Year (the "**Audit Year**"), or such other period of time as the Panel may determine, on behalf of Parties (the "**BSC Audit**") and such other ad hoc operational audits as the Panel may direct from time to time.
- 5.1.2 The objective of the BSC Audit is to provide assurance (to such level as the Panel considers appropriate) that the provisions of the Code and Code Subsidiary Documents in relation to Settlement and in relation to the calculation of Funding Shares have been complied with in the Audit Year.
- 5.1.3 The scope of the BSC Audit (save to the extent covered by the scope of the audit to be carried out by the BM Auditor under paragraph 5.1.6) shall include:
- (a) the submission and application of standing and periodic data, used in connection with Settlement, by Parties and Party Agents;



- (b) the processes applied to such data pursuant to the Code and Code Subsidiary Documents;
- (c) the determinations and calculations made by Market Index Data Providers in the provision of Market Index Data (but only to the extent provided in the relevant Market Index Data Provider Contract);
- (d) the determinations and calculations made by BSC Agents and BSCCo where it provides the Profile Administration Services for the purposes of Settlement;
- (e) the systems, processes and procedures used and applied (by BSC Agents and BSCCo) for the purposes of or in connection with the foregoing,

provided that from the Performance Assurance Effective Date the Panel may determine a different scope for the BSC Audit with respect to Supplier Volume Allocation.

5.1.4 The scope of the BSC Audit shall not include:

- (a) the registration of Metering Systems in accordance with the Master Registration Agreement;
- (b) the application by BSCCo of the compensation provisions under Section M4.

5.1.5 The Panel may also, at any time, request the BSC Auditor to undertake an ad hoc operational audit, test, review or check, which may include a review of all or any of the Code Subsidiary Documents for the purposes of determining whether they are appropriate to give effect to the Code in accordance with the objectives set out in Section B1.2.

5.1.6 The following matters shall be audited by an independent auditor of internationally recognised standing appointed by the Transmission Company (the "**BM Auditor**"), rather than by the BSC Auditor, and the provisions of paragraph 5.7 shall apply to the audits to be carried out by the BM Auditor:

- (a) the compiling and submission of Final Physical Notification Data by the Transmission Company pursuant to and in accordance with Section Q;
- (b) the compiling and submission of Bid-Offer Data by the Transmission Company pursuant to and in accordance with Section Q;
- (c) the compiling and submission of Acceptance Data by the Transmission Company pursuant to and in accordance with Section Q;
- (d) the submission of other data by the Transmission Company pursuant and in accordance with Section Q6.

5.1.7 For the avoidance of doubt, the BSC Auditor and the BM Auditor may be the same person.

## **5.2 Terms of reference for BSC Auditor**

5.2.1 The terms of reference for the BSC Audit to be carried out by the BSC Auditor shall be set by the Panel consistent with the BSC Service Description for Audit.

5.2.2 In establishing and amending the terms of the BSC Service Description for Audit from time to time and in setting the terms of reference from time to time of the BSC Audit to be carried out by the BSC Auditor, the Panel shall have regard to:

- (a) the extent to which other aspects of the performance assurance regime provide assurance to Parties as to the matters to which the BSC Audit relates;
- (b) the extent to which it is more cost-effective to verify such matters centrally; and
- (c) the extent to which such matters are capable of being verified by Parties severally and independently.

5.2.3 The terms of reference shall include:

- (a) thresholds of materiality for the purposes of paragraph 5.4.2;
- (b) the form and frequency of audit reports and the qualifications permitted to each investigation; and
- (c) any specific matters which the Panel wish the BSC Auditor to address.

5.2.4 The Panel may vary the terms of reference for the BSC Audit to be carried out by the BSC Auditor from year to year and within the Audit Year.

5.2.5 BSCCo shall provide a copy of the prevailing terms of reference for the BSC Audit to be carried out by the BSC Auditor to the Authority, each Party and each relevant BSC Agent.

### 5.3 Required contract terms

5.3.1 The terms of the relevant BSC Agent Contract shall require the BSC Auditor:

- (a) to disclose to the Panel the existence and nature of all assignments of the BSC Auditor with any Party or BSC Agent or Market Index Data Provider or service provider of Profile Administration Services referred to in Section C9.3.1 for the carrying out of financial audits;
- (b) to permit the external auditors of each Trading Party and the Transmission Company to liaise with the BSC Auditor in accordance with normal professional standards, including provision of access to working papers;
- (c) to require the BSC Auditor to report forthwith any material concerns with respect to matters forming the subject of a BSC Audit;
- (d) as a condition precedent to its appointment, to execute a confidentiality undertaking, in such form as may be reasonably required from time to time by the Panel, in favour of:
  - (i) each BSC Agent;
  - (ii) each Market Index Data Provider; and
  - (iii) BSCCo on behalf of each Party;
- (e) with (and only with) the consent of the Panel, to execute a confidentiality undertaking, in such form as may be reasonably required from time to time by the Panel, in favour of such other person as may request the BSC Auditor to do so in connection with the BSC Audit.

5.3.2 BSCCo shall take such steps (pursuant to the terms contained in the relevant BSC Agent Contract pursuant to paragraph 5.3.1(b)) as any Trading Party or the Transmission

Company may reasonably request to ensure that the BSC Auditor co-operates with such Trading Party's and the Transmission Company's external auditors.

- 5.3.3 The BSC Auditor may be appointed to act as BSCCo's agent (if applicable) in relation to the Qualification Process (or any part thereof) for the purposes of the Code but shall not otherwise be appointed to carry out any functions of any other BSC Agent or any Market Index Data Provider.
- 5.3.4 If the BSC Auditor is also appointed to act as BSCCo's agent in relation to the Qualification Process (or any part thereof), the BSC Auditor shall not be required to comply with the provisions of this paragraph 5.3 in the exercise of its functions and duties as that agent.

## 5.4 Reporting

- 5.4.1 Unless otherwise established by the Panel, the results of the BSC Audit to be carried out by the BSC Auditor will be reported with the delivery of an opinion (the "**BSC Audit Report**") at a time set out in the terms of reference for the BSC Auditor.
- 5.4.2 The BSC Auditor will not be required to report in respect of particular matters with a potential financial impact below such threshold as the Panel shall from time to time determine.
- 5.4.3 The BSC Audit Report shall be addressed to the Panel for and on behalf of Trading Parties and the Transmission Company in the Audit Year, and shall include all of the BSC Auditor's findings and conclusion.
- 5.4.4 The BSC Auditor shall deliver the BSC Audit Report to the Panel and shall, upon request from the Panel, send copies of the report to the Performance Assurance Board, each Trading Party, the Transmission Company and the Authority.
- 5.4.5 BSCCo shall procure the production by the BSC Auditor of a version of the BSC Audit Report that is suitable for publication (having regard to the provisions of paragraph 4.3.4).
- 5.4.6 BSCCo shall post on the BSC Website the version of the BSC Audit Report referred to in paragraph 5.4.5 and shall provide a copy thereof to any person upon request, subject to payment of the reasonable costs of providing such copy.

## 5.5 Access/co-operation

- 5.5.1 Without prejudice to any specific rights of access provided for elsewhere, each of the Parties shall use its reasonable endeavours to procure for the BSC Auditor access to premises, personnel, data, information and records sufficient to enable the BSC Auditor properly to undertake the BSC Audit to be carried out by the BSC Auditor in accordance with the terms of reference and having regard to its purpose as set out in paragraph 5.1.2.
- 5.5.2 Without prejudice to any specific rights of access provided for elsewhere, each BSC Agent (other than the BSC Auditor) and any service provider of Profile Administration Services referred to in Section C9.3.1 shall be required to provide to the BSC Auditor access to:
- (a) the systems, system specifications and other systems documents used by that BSC Agent or service provider in connection with performing its obligations and functions as BSC Agent or service provider of Profile Administration Services; and
  - (b) its premises, personnel, data, information and records,

sufficient to enable the BSC Auditor properly to undertake the BSC Audit in accordance with its terms of reference.

- 5.5.3 Upon written request of the BSC Auditor a Party shall promptly provide the BSC Auditor with a written statement of all disputes under or in connection with the Code which relate to the subject matter of the BSC Audit to be carried out by the BSC Auditor, which are then outstanding and which involve such Party or which the relevant Party believes may arise and are likely to involve such Party, and (subject to any supervening obligations of confidentiality binding on such Party) such statement shall include reasonable details of each such dispute.

## **5.6 Corrective Action**

- 5.6.1 BSCCo shall instruct the relevant BSC Agent(s), Market Index Data Providers and/or service provider of Profile Administration Services referred to in Section C9.3.1 (as applicable) to carry out, or shall carry out, such corrective action as may be required by the Panel consequent on receipt of the BSC Audit Report.
- 5.6.2 Each relevant BSC Agent, Market Index Data Provider and service provider of Profile Administration Services referred to in Section C9.3.1 shall promptly take such corrective action as may be required by BSCCo in accordance with paragraph 5.6.1.

## **5.7 BM Auditor**

- 5.7.1 The audits to be carried out by the BM Auditor pursuant to paragraph 5.1.6 in relation to the matters referred to in that paragraph shall:
- (a) form part of the BSC Audit for the purposes of the Code;
  - (b) be carried out to meet the objective set out in paragraph 5.1.2.
- 5.7.2 The Transmission Company shall develop the terms of reference for the BM Auditor in consultation with the Panel such as to satisfy the requirements of this paragraph 5.7, and may revise such terms of reference from time to time in consultation with the Panel.
- 5.7.3 The Transmission Company shall provide a copy of the terms of reference of the BM Auditor (as revised from time to time) to BSCCo, and BSCCo shall make a copy thereof available to the Authority and each Party.
- 5.7.4 The provisions of paragraph 5.4 shall apply mutatis mutandis to the audits to be carried out by the BM Auditor (as if references to the BSC Auditor were references to the BM Auditor and references to the BSC Audit Report were references to the audit report prepared by the BM Auditor).
- 5.7.5 As soon as reasonably practicable after the provision of any audit report by the BM Auditor pursuant to this paragraph 5.7, the Transmission Company shall propose to the Panel any corrective action which is necessary as a consequence of the audit report and the Transmission Company shall take such corrective action as may be agreed with the Panel.
- 5.7.6 The costs of carrying out any such audit by the BM Auditor shall, subject to the prior approval of such costs by the Panel, be charged to BSCCo and shall be treated as BSC Costs for the purposes of Section D.

## **6. LIABILITY AND RELATED ISSUES**

## **6.1 Relationship between Parties**

6.1.1 Save as otherwise expressly provided in the Code:

- (a) the obligations of each Party under the Code are several;
- (b) a Party shall not be responsible for the obligations or liabilities of any other Party;
- (c) subject to paragraph 3.1.3, the failure of any Party to carry out all or any of its obligations under the Code shall not relieve any other Party of all or any of its obligations under the Code.

6.1.2 In respect of those obligations of a Party under the Code which are several, such Party shall indemnify and keep indemnified each other Party from and against all losses, costs (including legal costs), claims and expenses which such other Party may suffer or incur as a result of being held liable by operation of law for the performance or non-performance of all or any of the obligations of that Party.

6.1.3 In any case where the Code provides for Trading Parties jointly and severally:

- (a) to give any indemnity to any person, or
- (b) to incur or assume or accept any other liability

then (unless the Code otherwise provides) the Trading Parties shall, as between themselves, be liable under such indemnity or for such other liability severally in their Annual Funding Shares applying in relation to the month in which the request for indemnification was made and shall be entitled to rights of contribution among themselves accordingly.

6.1.4 The rights and obligations of Parties under the Code (as between themselves) are subject to the further provisions of Section E and this Section H.

## **6.2 Limitation of liability**

6.2.1 For the purposes of this paragraph 6.2, references to a Party includes any of its officers, employees or agents.

6.2.2 Subject to the succeeding provisions of this paragraph 6.2, each Party agrees and acknowledges that:

- (a) no Party shall be liable to any other Party for loss arising from any breach of the Code other than for loss directly resulting from such breach and which at the Code Effective Date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
  - (i) physical damage to the property of any other Party, and/or
  - (ii) the liability (in law) of any other such Party to any other person for loss in respect of physical damage to the property of such person;
- (b) no Party shall in any circumstances be liable in respect of any breach of the Code to any other Party for:
  - (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or

- (ii) any indirect or consequential loss; or
- (iii) except as provided in paragraphs 6.2.2(a)(ii) and 6.2.4, loss resulting from the liability of any other Party to any other person howsoever and whensoever arising.

6.2.3 Paragraph 6.2.2 is without prejudice to any provision of the Code which provides for an indemnity, or which provides for any Party to make a payment to another.

6.2.4 Nothing in the Code shall exclude or limit the liability of any Party for death or personal injury resulting from the negligence of such Party.

### **6.3 Exclusion of certain rights and remedies**

6.3.1 Subject to paragraph 6.3.7, the rights and remedies of the Parties provided under the Code are exclusive and not cumulative and exclude and are in place of all substantive rights or remedies express or implied and provided by common law or statute in respect of the subject matter of the Code, including any rights which any Party may possess in tort (which shall include actions brought in negligence and/or nuisance) or for breach of trust.

6.3.2 Subject to paragraph 6.3.7 and 6.3.5, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases a Party which is liable to another (or others), its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the Code and undertakes not to enforce any of the same except as expressly provided herein.

6.3.3 The provisions of paragraphs 6.3.1 and 6.3.2 are without prejudice to a Party's right to any equitable remedies and/or interim relief which may be available to the Party.

6.3.4 For the avoidance of doubt, nothing in this paragraph 6.3 shall apply to:

- (a) any rights and remedies which one Party may have against another pursuant to any bilateral agreement entered into in connection with or in consequence of the arrangements established by the Code; and
- (b) the rights and remedies which a Party may have against another Party pursuant to the Implementation Scheme or any other agreement entered into pursuant to the Code, provided that a Party shall not be entitled to recover damages or an account more than once in respect of the same matter.

6.3.5 Without prejudice to paragraph 6.3.1, where any provision of the Code provides for any amount to be payable by a Party upon or in respect of that Party's breach of any provision of the Code, each Party agrees and acknowledges that the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages or an account in respect of such breach or the event or circumstance giving rise thereto.

6.3.6 For the avoidance of doubt, nothing in this paragraph 6.3 shall prevent any Party from or restrict it in enforcing any obligation (including suing for a debt) owed to it under or pursuant to the Code but without prejudice to the provisions of Section C and Section N in relation to the enforcement of rights under the Code.

6.3.7 Nothing in this paragraph 6.3 shall constitute a waiver by any Party of any right or remedy it may have (other than pursuant to the Code) in respect of a breach by any other Party of any Legal Requirement.

### **6.4 General provisions**



- 6.4.1 Each Party acknowledges and agrees that each of the other Parties holds the benefit of the provisions of this paragraph 6 for itself and as trustee and agent for its officers, employees and agents.
- 6.4.2 Each provision of this paragraph 6 shall be construed as a separate and severable contract term, and shall remain in full force and effect and shall continue to bind the Parties even if a Party ceases to be a Party to the Code or the Code is terminated.
- 6.4.3 Each Party acknowledges and agrees that the provisions of this paragraph 6 have been the subject of discussion and are fair and reasonable having regard to the circumstances as at the Code Effective Date.
- 6.4.4 Where any provision of the Code provides for any amount to be payable by a Party upon or in respect of that Party's breach of any provision of the Code, each Party agrees and acknowledges that such provision has been the subject of discussion, and that the amount provided to be payable represents no more than a genuine pre-estimate of the loss of the Party to which such amount is payable.
- 6.4.5 References in this paragraph 6 to the Code include the Framework Agreement and Code Subsidiary Documents.

## **7. DISPUTE RESOLUTION**

### **7.1 Arbitration**

- 7.1.1 Save where expressly stated in the Code to the contrary and subject to any contrary provision of the Act, ~~or any Licence,~~ any EMR Legal Requirement or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Licence or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under, out of or in connection with the Code between any one or more Parties shall be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association in force from time to time.
- 7.1.2 For the avoidance of doubt, the provisions of paragraph 7.1.1 shall not apply in respect of any dispute by any Party with the Panel, any Panel Committee or any Workgroup.
- 7.1.3 Whatever the nationality, residence or domicile of any Party and wherever the dispute or difference or any part thereof arose the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be England and Wales and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.
- 7.1.4 Where a dispute is referred to arbitration pursuant to paragraph 7.1.1, the Panel may, following consultation with Parties, instruct BSCCo to join in such arbitration proceedings for the purposes of representing, in accordance with terms of reference set by the Panel, the interests of any Party not party to the arbitration proceedings, or the interests of all or any class of Parties collectively.
- 7.1.5 Each Party shall give notice to BSCCo promptly upon referring any dispute or difference to arbitration pursuant to paragraph 7.1.1.
- 7.1.6 The decision of the arbitrator pursuant to a reference under paragraph 7.1.1 shall be final and binding on each of the Parties and the Parties shall comply with such decision provided that (for the avoidance of doubt) the arbitrator shall not have the power to modify the Code.



7.1.7 The annual overhead costs of the Electricity Arbitration Association shall be borne by BSCCo and shall be recovered from Parties in the manner and in the proportions set out in Section D.

7.1.8 The provisions of this paragraph 7.1 are subject to the provisions of Section W.

7.1.9 References in this paragraph 7.1 to the Code include the Framework Agreement and Code Subsidiary Documents.

## 7.2 Third Party Claims

7.2.1 Subject always to paragraph 7.2.4, if:

- (a) any designated customer (as defined in the Supply Licence) brings any legal proceedings in any court (as referred to in the Civil Procedure Act 1997) against one or more persons, any of which is a Party (the "**Defendant Contracting Party**"); and
- (b) the Defendant Contracting Party wishes to make a Third Party Claim against any other Party (a "**Contracting Party**") which would, but for this paragraph 7.2, have been a dispute or difference referred to arbitration by virtue of paragraph 7.1

then, notwithstanding the provisions of paragraph 7.1 which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the Third Party Claim not only between the designated customer and the Defendant Contracting Party but also between either or both of them and any other Contracting Party whether by way of third party proceedings (pursuant to the Civil Procedure Rules 1998) or otherwise as may be ordered by the court.

7.2.2 Where a Defendant Contracting Party makes a Third Party Claim against any Contracting Party and such Contracting Party wishes to make a Third Party Claim against a further Contracting Party, the provisions of paragraph 7.2.1 shall apply mutatis mutandis as if such Contracting Party had been the Defendant Contracting Party and similarly in relation to any such further Contracting Party.

7.2.3 For the purposes of this paragraph 7.2, "**Third Party Claim**" shall mean a counterclaim by a defendant or any claim for contribution, indemnity or some other remedy.

7.2.4 The provisions of this paragraph 7.2 shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the Defendant Contracting Party and another Contracting Party raising or involving the same or substantially the same issues as would be raised by or involved in the Third Party Claim and the tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

## 8. REFERENCES TO THE AUTHORITY

### 8.1 General provisions

8.1.1 Where the Code expressly provides that a matter or question may be referred to the Authority for determination (as provided in Condition C3 of the Transmission Licence), the

provisions of this paragraph 8 shall apply in the event of any such reference (unless and to the extent otherwise expressly stated).

- 8.1.2 The Transmission Company hereby appoints each of the Panel and BSCCo to refer to the Authority on behalf of the Transmission Company any question or other matter arising under any provision of the Code which pursuant to any such provision may be or is to be so referred.
- 8.1.3 The Authority may decline to determine the matter for whatever reason, in which case (unless otherwise provided in the Code) the decision of the Panel, Panel Committee or BSCCo (as the case may be) shall take effect, but without prejudice to the rights of any Party to bring a claim in respect of the decision of the Panel, Panel Committee or BSCCo (as the case may be) to the extent permitted in law.
- 8.1.4 If the Authority agrees to determine the matter:
- (a) the Authority may do so in such manner and using such procedures as it considers fit;
  - (b) the Authority may undertake such investigations and require such information and documentation from Parties, Party Applicants, Party Agents, BSC Agents and Qualified Persons as it considers fit for the purposes of determining the matter provided a Party shall not be compelled to produce any document or provide any information which it could not be compelled to produce or provide in evidence in any civil proceedings in any court in England or Wales;
  - (c) the decision of the Authority shall be final and binding on the Parties, Party Applicants, Party Agents, BSC Agents and Qualified Persons.
- 8.1.5 The Panel, each Party and each BSC Agent shall co-operate with the Authority and provide or procure the provision of such information and documentation as the Authority may require (subject to the proviso in paragraph 8.1.4(b)) for the purposes of determining the matter.
- 8.1.6 Pending:
- (a) any decision of the Authority to accept or decline a reference to it pursuant to the Code; or
  - (b) any determination of the matter,
- the decision forming the subject of such reference shall be implemented unless and to the extent that the Authority instructs otherwise and provided that, if the Authority's determination of such matter is different from such decision, the effect of the decision can be reversed without undue difficulty or additional material expense and/or without significant expense incurred in implementing the decision being wasted.
- 8.1.7 BSCCo shall notify each Party as soon as reasonably practicable of:
- (a) the referral of any matter to the Authority under the Code;
  - (b) any decision of the Authority to decline jurisdiction as envisaged by paragraph 8.1.3;
  - (c) any instruction given by the Authority as envisaged by paragraph 8.1.6; and

- (d) any determination of the Authority in relation to the matter or matters referred to him.

## **9. GENERAL**

### **9.1 Assignment**

- 9.1.1 A Party shall not assign and/or transfer and shall not purport to assign or transfer any of its rights or obligations under the Code or the Framework Agreement, provided that a Party may assign, subject to Section N2.4 to 2.7 (inclusive), by way of security only all or any of its rights over receivables arising under the Code.

### **9.2 Notices**

- 9.2.1 Save as otherwise expressly provided in the Code or relevant BSC Procedure(s), any notice or other communication to be given by one Party to another under or in connection with the matters contemplated by the Code or the Framework Agreement shall be addressed to the recipient and sent to the postal address, facsimile number or e-mail address(es) of such other Party previously notified in accordance with its Party Details.

- 9.2.2 Such notice or other communication, shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or facsimile or by e-mail, and shall be deemed to have been received:

- (a) in the case of delivery by hand, when delivered; or
- (b) in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail overseas or from overseas) on the fifth day following the day of posting; or
- (c) in the case of facsimile, on acknowledgement of the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement; or
- (d) subject to paragraph 9.2.4, in the case of e-mail one hour after being sent, in the absence of any undeliverable return receipt received by the sender during that period.

- 9.2.3 The provisions of this paragraph 9.2:

- (a) extend to any notice or other communication to be given by or to the Panel, any Panel Committee, any Workgroup or any secretary to the Panel, any Panel Committee or a Workgroup; and
- (b) apply, mutatis mutandis, to any notice or communication to be given under any Code Subsidiary Document; and
- (c) are subject to Section O.

- 9.2.4 Other than in relation to a notice or communication sent by e-mail in respect of an Urgent Modification Proposal, if the time at which a notice or communication sent by e-mail is deemed to have been received falls after 1700 hours on a day, the notice or communication shall be deemed to have been received at 0900 hours on the following day.

9.2.5 For the purposes of:

- (a) Section A paragraphs 2.2.3(b), 2.3.2(a), 2.6.1(a), 5.1.1, 5.2.4; and
- (b) Section B paragraphs 2.5.1, 2.5.2, 2.6.1, 2.6.2, 2.8.2, 2.8.3, 2.8.4, 2.9.3, 2.10.1, Annex B-2 1.2.1, Annex B-2 3.1, Annex B-2 3.2; and
- (c) Section D paragraphs 1.4.5(a), 6.1.1, 6.1.2, 6.5.6, 6.6.1; and
- (d) Section F paragraphs 1.1.2, 1.1.4, 1.7.2, 2.1.6, 2.4.6(b), 6.3.3, 6.4.1; and
- (e) Section H paragraphs 3.1.1(a)(ii), 3.1.1(b)(ii), 3.1.1(d)(iii), 3.1.1(d)(iv)(2), 3.1.1(e)(iii), 3.1.1(f)(ii), 3.1.3(a), 7.1.5; and
- (f) Section W paragraphs 3.5.1, 3.6.1,

the preceding provisions of this paragraph 9.2 relating to e-mail shall not apply, provided that the provisions of this paragraph 9.2.5 shall only apply to Section F paragraphs 1.1.2, 1.1.4 and 1.7.2 in so far as those provisions refer to notices sent by the Transmission Company to the Modification Secretary.

9.2.6 Each Party acknowledges and agrees that the recipient of any notice or communication sent by e-mail in accordance with this paragraph 9.2 shall (on deemed receipt) be entitled to rely on the contents of such notice or communication, including for the avoidance of doubt, the identity of the sender.

### 9.3 Waiver

9.3.1 No delay by or omission of any Party, or the Panel or any Panel Committee in exercising any right, power, privilege or remedy under the Code, the Framework Agreement or any Code Subsidiary Document shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof.

9.3.2 Any single or partial exercise of any such right, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

9.3.3 For the avoidance of doubt, the Parties acknowledge and agree that nothing in the Code or any Code Subsidiary Document shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, privileges, remedies, duties and obligations of the Secretary of State or the Authority under the Act or any Licence or otherwise under applicable law.

### 9.4 Rights of Third Parties

9.4.1 Subject to paragraph 6.4.1, the Parties do not intend that any third party shall have any rights, benefits, entitlements or privileges under the Code, the Framework Agreement and the Code Subsidiary Documents, and nothing in the Code, the Framework Agreement or any Code Subsidiary Document shall be construed as conferring or purporting to confer any such right, benefit, entitlement or privilege on any such person.

9.4.2 The Parties do not intend that any term of the Code, the Framework Agreement or any Code Subsidiary Document shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.

9.4.3 Save for the Authority and the Panel as provided in Section F and, in respect of the Secretary of State, to the extent provided in Section C, no third party consent shall be required to rescind, vary or modify the Code or any Code Subsidiary Document (but

without prejudice to the rights of BSC Agents under their respective BSC Agent Contracts in respect of any change to such BSC Agent Contract).

## **9.5 Language**

- 9.5.1 Every notice or other communication to be given by one Party to another under the Code or any Code Subsidiary Document shall be in the English language.

## **9.6 Severance of Terms**

- 9.6.1 If any provision of the Code or any Code Subsidiary Document is or becomes invalid, unenforceable or illegal, or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction or by order of any other Competent Authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the Code and the Code Subsidiary Documents which shall continue in full force and effect notwithstanding the same.

## **9.7 Entire Agreement**

- 9.7.1 The Code, the Framework Agreement and the Code Subsidiary Documents (as respects the Parties thereto) contain or expressly refer to the entire agreement between the Parties with respect to the subject matter thereof, and supersede all previous agreements or understandings between the Parties with respect thereto; and any warranty, condition or other term implied at law or by custom is (to the fullest extent permitted by law) expressly excluded therefrom.
- 9.7.2 Each Party acknowledges that in entering into or acceding to the Framework Agreement it does not rely on any representation, warranty or other understanding not expressly contained in the Code.
- 9.7.3 Without prejudice to paragraph 2.2, nothing contained in a document (other than a Code Subsidiary Document) referred to in the Code, beyond what is expressly contemplated by the Code as being contained in such document or is necessary for the purposes of giving effect to a provision of the Code, shall modify or have any effect for the purposes of the Code or be construed as relevant to the interpretation of the Code.

## **9.8 Euro**

9.8.1 Unless otherwise prohibited by law, if more than one currency unit are at the same time recognised by the Bank of England as the lawful currency of the United Kingdom, then:

- (a) any reference in the Code or Code Subsidiary Documents to, and obligations arising thereunder in, the currency of the United Kingdom shall be translated into, or paid in, the currency or currency unit of the United Kingdom designated by the Panel following consultation with the Parties;
- (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the Bank of England for the conversion of that currency or currency unit into the other, and rounded up or down in accordance with rounding rules recognised by the Bank of England;
- (c) to the extent that, following any designation by the Panel pursuant to paragraph (a), the provisions of the Code or Code Subsidiary Documents are incompatible with any generally accepted conventions and market practices in the London interbank market, BSCCo may recommend to the Panel such modifications to the Code and/or Code Subsidiary Documents as it sees fit to accommodate the change in currency.

## **9.9 Jurisdiction**

9.9.1 Subject and without prejudice to paragraph 7, under the Code, all the Parties irrevocably agree that only the courts of England and Wales and the courts of Scotland are to have jurisdiction to settle any disputes which may arise out of or in connection with the Code or any Code Subsidiary Document and that accordingly any suit, action or proceeding (collectively proceedings) arising out of or in connection with the Code or any Code Subsidiary Document may be brought (and may only be brought) in such courts.

9.9.2 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in any such court as is referred to in paragraph 9.9.1 and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any proceedings brought in the English or Welsh courts, or the Scottish courts, shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

9.9.3 Any Party which is not a company incorporated under the Companies Act 1985 shall immediately on becoming a Party (or upon ceasing to be a company so incorporated) provide to BSCCo an address in Great Britain for service of process on its behalf in any proceedings provided that if any such Party fails at any time to provide such address, such Party shall be deemed to have appointed BSCCo as its agent to accept service of process on its behalf until and unless such Party provides BSCCo with an alternative address in Great Britain for these purposes.

9.9.4 For the avoidance of doubt nothing contained in the foregoing provision of this paragraph 9.9 shall be taken as permitting a Party to commence proceedings in the courts where the Code otherwise provides for the proceedings to be referred to arbitration or otherwise determined.

## **9.10 Governing law**

9.10.1 The Code and each Code Subsidiary Document shall be governed by, and construed in all respects in accordance with, the laws of England and Wales.