

SECTION C: BSCCO AND ITS SUBSIDIARIES

1. GENERAL

1.1 Introduction

1.1.1 This Section C sets out:

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

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

1.2 Role and powers, functions and responsibilities of BSCCo

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

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

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

- (e) the appointed BSC Company shall account for all costs, expenses, liabilities and resources (incurred or used) and for payments (received and made) in the discharge of the WHD Operator's functions and responsibilities separately from BSC Costs and Trading Charges respectively;
- (f) the appointed BSC Company shall provide all information requested by the Authority or Secretary of State in relation to its discharge of the WHD Operator's functions and responsibilities;
- (g) the appointed BSC Company shall provide the Panel with reports from time to time in relation to its discharge of the WHD Operator's functions and responsibilities, provided that such BSC Company shall not be required to disclose to the Panel any information that the Secretary of State or the Authority expressly request such BSC Company to keep confidential;
- (h) in discharging the WHD Operator's functions and responsibilities, the appointed BSC Company has the objective of the efficient and economic discharge of the functions and responsibilities under the Warm Home Discount (Reconciliation) Regulations 2011 and paragraph 1.3.1 shall accordingly not apply to this paragraph 1.2.1A;
- (i) paragraphs 3.4.5(b), 5.1, 5.2 and 7 shall not apply to this paragraph 1.2.1A;
- (j) notwithstanding Section F2, this paragraph 1.2.1A and paragraphs 3.1.2A and 3.1.2B of Section B may not be amended without the prior written consent of the Secretary of State or the Authority; and
- (k) for the purposes of the Code, this paragraph 1.2.1A shall cease to have effect upon the termination of the appointment of a BSC Company as the WHD Operator, save for paragraphs (c), (d), (e), (f), (g) and (i) which shall continue to apply to the extent and for such period as is necessary.

1.2.1B Without prejudice to paragraphs 1.2.1 and 1.2.1A, and subject to the provisions of paragraphs 3.4, 3.5 and 10, the activities set out in Annex C-1 (the "**Permissible Activities**") may be undertaken by an Affiliate (or Affiliates) of BSCCo established to undertake those Permissible Activities ("**Permitted Affiliate**").

- 1.2.2 Subject to the further provisions of this Section C, BSCCo shall have the powers, functions and responsibilities set out in or assigned to it pursuant to the Code, and shall not undertake any business or activity other than as provided for in the Code.
- 1.2.3 Without prejudice to the generality of paragraph 1.2.2, BSCCo shall have the powers, functions and responsibilities set out in paragraph 3.
- 1.2.4 Subject to the further provisions of this Section C, BSCCo may do anything necessary for or reasonably incidental to the discharge of the functions and responsibilities assigned to it in the Code or by the Panel pursuant to the Code.
- 1.2.5 The powers of BSCCo shall be subject to the restrictions and limits set out in or imposed pursuant to the Code.
- 1.2.6 Subject always to Section H1.5.1, BSCCo shall, in the exercise of its powers, functions and responsibilities, have regard to and, to the extent they are relevant, act consistently with the Code Administration Code of Practice Principles.

1.3 Objectives

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

2. CONSTITUTION OF BSCCO AND OBLIGATIONS OF TRANSMISSION COMPANY AS BSCCO SHAREHOLDER

2.1 Constitution of BSCCo

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

2.2 Share capital of BSCCo

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

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

2.3 Further undertakings of Transmission Company

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

2.3.2 The matters referred to in paragraph 2.3.1 are:

- (a) the amendment of the Memorandum or Articles of Association of BSCCo so that they are in any modified form from time to time pursuant to paragraph 2.1.2;
- (b) the appointment, re-appointment or removal of any Director (in accordance with a nomination under or otherwise as required in accordance with paragraph 4) or the secretary or auditors of BSCCo, provided that (in the case of an appointment or reappointment) the consent of the person to be appointed or reappointed has been obtained;
- (c) the approval of the annual accounts (as defined in the Companies Act 1985) of BSCCo; and
- (d) any other act of or in relation to BSCCo which can, or under any Legal Requirement must, be done by a vote or resolution or other assent of the BSCCo Shareholder.

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

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

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

2.4 No obligation to finance

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

2.5 Winding-up of BSCCo

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

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

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

2.6 Legal Requirements relating to the Transmission Company

- 2.6.1 It is recognised that, by reason of the Transmission Company being BSCCo Shareholder, it is possible that certain steps which might be taken by BSCCo or a Subsidiary of BSCCo could result in the Transmission Company or an Affiliate of the Transmission Company being in breach of, or being required to take action under or make a payment under, or incurring a liability under, a Legal Requirement (or being or doing so in the absence of a notification to or approval of a Competent Authority) (any such step which would have such result being a "relevant step").
- 2.6.2 The Transmission Company may from time to time notify to BSCCo particular Legal Requirements, applying to the Transmission Company or its Affiliates, which the Transmission Company reasonably considers may fall within paragraph 2.6.1, provided that the Transmission Company shall at the same time provide such details of such Legal Requirement as are reasonably necessary to enable BSCCo to determine whether any step which it might take would be a relevant step in relation to such Legal Requirement.
- 2.6.3 Where the Transmission Company has for the time being notified BSCCo of a particular Legal Requirement pursuant to paragraph 2.6.2, BSCCo will take all reasonable measures to ensure that it and its Subsidiaries do not take any relevant step in relation to that Legal Requirement unless:
 - (a) BSCCo has first notified and consulted with the Transmission Company in relation to such step, and
 - (b) either the Transmission Company has approved the taking of such step or BSCCo is required to take such step for the purposes of discharging its functions and responsibilities under the Code (but subject always to any Code Modification made following a proposal by any person entitled to do so).
- 2.6.4 For the purposes of this paragraph 2.6:
 - (a) Legal Requirement shall be construed:
 - (i) as including a requirement of any stock exchange in any country or of the Panel on Takeovers and Mergers or any body in any country having equivalent functions to those of that panel where compliance with the requirements of such body is customary; and
 - (ii) in accordance with paragraph (b);

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

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

2.7 Taxation and other payments

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

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

3. POWERS AND FUNCTIONS OF BSCCO

3.1 General

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

- (a) to enter into, manage and enforce contracts with service providers (as BSC Agents) for the supply of the services required by BSC Service Descriptions, and negotiate and agree amendments to such contracts, as further provided in Section E and, where relevant, paragraph 10.1.5;
- (b) to advise the Panel and keep it advised as to and in respect of the matters which it is necessary or appropriate that the Panel should consider in order to discharge the Panel's functions and responsibilities in accordance with the Code;
- (c) to provide or arrange the provision of such facilities, resources and other support as may be required by the Panel to enable the Panel or any Panel Committee or Workgroup to discharge its functions and responsibilities under the Code;
- (d) to provide secretarial and administrative services in connection with meetings of the Panel and Panel Committees and Workgroups, including the convening and holding of such meetings, and taking and circulation of minutes;
- (e) to provide and make available to Parties such facilities, services and information in connection with the implementation of the Code as the Code may provide or the Panel may require;

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

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

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

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

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

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

3.1.4 BSCCo shall have the powers, functions and responsibilities assigned to it:

- (a) in the Implementation Scheme (including without limitation those provided in connection with the Pooling and Settlement Agreement); and
- (b) in the Pool Supplement.

3.2 Panel Secretary

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

3.3 Enforcement of Code

3.3.1 If:

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

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

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

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

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

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

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

3.3.6 Where:

- (a) a Party is or may be in breach of the Code, and

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

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

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

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

3.4 Restrictions on powers of BSCCo

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

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

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

- (a) enter into any borrowings in a cumulative aggregate principal amount exceeding £10,000,000;
- (b) make loans or grant any credit to any person, other than to a Subsidiary of BSCCo or in the ordinary course of business or as required or expressly permitted by the Code;
- (c) mortgage, charge, assign by way of security, pledge or otherwise encumber any property of BSCCo or enter into any transaction which has a financial effect similar to a secured borrowing, other than:
 - (i) by way of lien or set-off arising by operation of law and in the ordinary course of trading; or
 - (ii) by way of reservation of title by the supplier of any property (other than real property) to BSCCo in the normal course of such supplier's business;
- (d) except pursuant to any provision of the Code:
 - (i) dispose (by way of licence, charge, sale or otherwise, other than by way of licence to a BSC Agent in connection with a BSC Agent Contract) of any Intellectual Property Rights or other rights held by BSCCo in or in respect of any BSC Systems, or
 - (ii) (where any BSC Agent Contract prohibits such disposal without BSCCo's authority or consent) authorise or consent to any such disposal by a BSC Agent of any such rights held by that BSC Agent;

- (e) commence any proceedings against any person, or grant a waiver of any claim against any person, or settle any dispute, proceedings or claim brought by or against BSCCo or any other BSC Company, where the amount of such dispute or claim or subject to such proceedings exceeds (or in BSCCo's reasonable opinion is likely to exceed) such threshold amount as the Panel may from time to time specify for the purposes of this paragraph (e); provided that (without prejudice to the further provisions of the Code) this paragraph (e) does not apply in relation to claims, disputes and proceedings against or with Parties or BSC Agents or Market Index Data Providers.

3.4.4 For the purposes of paragraph 3.4.3, "**borrowing**" means any obligation (whether present or future, actual or contingent, as principal or surety) for the payment or repayment of money (whether in respect of interest, principal or otherwise) of BSCCo and any Subsidiary of BSCCo (other than the BSC Clearer) incurred in respect of:

- (a) moneys borrowed or raised;
- (b) any bond, note, loan stock, debenture or similar instrument;
- (c) any acceptance credit, bill discounting, note purchase, factoring or documentary credit facility;
- (d) any hire purchase agreement, conditional sale agreement or lease, where that agreement has been entered into primarily as a method of raising finance or financing the acquisition of an asset;
- (e) any guarantee, bond, stand-by letter of credit or other similar instrument issued in connection with the performance of contracts;
- (f) any interest rate or currency swap agreement or any other hedging or derivatives instrument or agreement; or
- (g) any guarantee, indemnity or similar insurance against financial loss given in respect of the obligation of any person.

3.4.5 BSCCo shall not and shall not offer or agree to:

- (a) issue, or grant any option, warrant or other instrument, security or right to subscribe for, or which is convertible into or exchangeable for, any shares of BSCCo;
- (b) subscribe for, acquire or hold any share or other security in any company other than:
 - (i) shares in the BSC Clearer; or
 - (ii) any shares acquired pursuant to the Implementation Scheme;
- (c) dispose of any legal or beneficial interest in any shares in the BSC Clearer or any other Subsidiary of BSCCo.

3.4.6 Except where expressly provided for in the Code, BSCCo shall not give any cross-subsidy to, or receive any cross-subsidy from, a Permitted Affiliate.

3.5 BSCCo resources

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

3.6 Provision of information to the Authority, etc

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

3.7 Matters relating to the Transmission Licence

- 3.7.1 If the Authority issues a direction pursuant to the Transmission Licence to the Transmission Company to secure compliance with any relevant provision of the Code:
- (a) BSCCo shall provide all such assistance and take all such steps as the Transmission Company may reasonably require to comply or secure compliance with the relevant provision;
 - (b) without limitation of paragraph (a), BSCCo hereby appoints and authorises the Transmission Company to make any request of or issue any instruction to any BSC Agent or Market Index Data Provider on behalf of and in the name of BSCCo;

- (c) the Transmission Company is hereby authorised by all Parties to provide to the Authority or (where the relevant provision of the Code so requires) place on the BSC Website or otherwise publish the information in question;
- (d) the reasonable costs of the Transmission Company properly incurred in complying with such direction shall be paid by BSCCo to the Transmission Company.

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

3.8 Reviews of the Code

3.8.1 BSCCo shall carry out:

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

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

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

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

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

3.8.5 For the purposes of paragraph 3.8.4:

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

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

- (a) prepare a report in respect of the review and its conclusions (including any analysis by the Transmission Company under paragraph 3.8.4);

- (b) provide a copy of such report to the Authority; and
- (c) subject to paragraph 3.8.7, provide a copy of such report to each Party and place a copy of the report on the BSC Website.

3.8.7 In a case under paragraph 3.8.1(b), if the Authority so requests or approves, the version of the report which is provided to Parties and placed on the BSC Website shall be amended so as to exclude such material, relating to particular Parties or persons, as the Authority shall so request or approve.

3.8.8 In addition to the foregoing, BSCCo shall keep under review whether any possible modification of the Code from time to time would better facilitate the objective in Condition C3(3)(d) of the Transmission Licence, and shall recommend to the Panel any particular such modification which in BSCCo's opinion would do so.

3.9 Reporting and information

3.9.1 Without prejudice to the generality of the objective in Section B1.2.1(e), BSCCo shall provide to the Panel, each Party and the Authority, quarterly reports (in such detail and such form as shall be agreed between BSCCo and the Panel) on the matters which are to be covered by the Annual BSC Report under Section B6.1.

3.10 Summary of Code

3.10.1 BSCCo shall prepare and from time to time update a useful summary of the Code, and separately of the Code Subsidiary Documents, and shall provide a copy of each summary to the Panel and the Authority and (upon payment of an amount not exceeding the reasonable costs of making such a copy) to any person who requests such a copy.

3.10.2 The summary of the Code shall include (as a separate document) a summary and explanation of the basis of calculation of System Buy Price and System Sell Price pursuant to Section T.

3.10.3 No person shall be entitled to rely on such summaries for any purpose.

4. MANAGEMENT OF BSCCO

4.1 Appointment of Board of Directors

4.1.1 The size and composition of the Board shall be determined by the Board's Nomination Committee provided that the person who is Panel Chairman for the time being shall be chairman of the Board.

4.1.2 The Board shall establish a Nomination Committee which, other than in respect of the chairman of the Board who shall be appointed in accordance with Section B2, shall be responsible for:

- (a) evaluating the balance of skills, experience, independence and knowledge on the Board; and
- (b) leading the process for Board appointments including:
 - (i) preparing a description of the role and capabilities required for a particular appointment; and

- (ii) making appointment recommendations to the Board.

4.1.3 The Board shall provide written terms of reference for the Nomination Committee which shall, inter alia, specify that:

- (a) the Nomination Committee shall, in recommending appointments to the Board, have appropriate regard to reflecting different classes of, or categories of, industry participants on the Board;
- (b) a majority of the Directors (excluding the chairman) shall have relevant electricity industry experience; and
- (c) at least two Directors shall be (industry) independent in that such individual or a Related Person (in relation to that individual) shall not, at any time in the period of 5 years before their proposed appointment, have been:
 - (i) a Panel Member; or
 - (ii) an employee, director or representative of any Party, a class of Parties (including as a representative of an industry trade association or other industry group), a BSC Agent or other agent of BSCCo.

4.1.4 The Board shall:

- (a) submit the Nomination Committee terms of reference to the Panel for its approval prior to:
 - (i) adopting those terms of reference; or
 - (ii) making any material changes thereto; and
- (b) publish the terms of reference on the BSC Website.

4.1.5 The composition of the Nomination Committee shall be set out in its terms of reference provided that:

- (a) the chairman of the Nomination Committee shall be the chairman of the Board;
- (b) at least one Nomination Committee member shall be a Director appointed under paragraph 4.1.3(b); and
- (c) at least one Nomination Committee member shall be an independent Director within the meaning of paragraph 4.1.3(c).

4.1.6 The Panel may appoint one of its members to act as an advisor to the Nomination Committee in connection with the recruitment process for any proposed appointments to the Board. If a Panel advisor is appointed then the Nomination Committee shall:

- (a) keep the Panel advisor informed of the conduct and progress of the recruitment process; and
- (b) consult with and seek the advice of the Panel advisor at regular intervals (including before recommending an appointment to the Board).

4.1.7 The Nomination Committee shall at all times comply with its terms of reference provided that where it deems it necessary to exercise any of its duties otherwise than in compliance

with the Nomination Committee terms of reference it shall first seek the approval of the Board and the Panel to such non-compliance.

4.2 Directors

4.2.1 A person appointed as Director under paragraph 4.1:

- (a) shall hold office for a term not exceeding two years, but shall be eligible for re-appointment on expiry of such term;
- (b) may resign or be removed from office in accordance with the provisions of the Articles of Association of BSCCo;
- (c) shall cease to hold office if removed in accordance with Section B6.2.9 to B6.2.15; and
- (d) shall, if also a Panel Member, cease to hold office if he also ceases to hold office as a Panel Member pursuant to Section B2.7.4(d).

4.3 Transitional arrangements in respect of Directors who are Industry Panel Members

4.3.1 Each Director of BSCCo who is an Industry Panel Member at the Relevant Implementation Date for Modification Proposal P281 shall remain in office until the earlier of:

- (a) the expiry of that Director's term of office;
- (b) the resignation by that Director of his office;
- (c) that Director ceasing to hold office in accordance with Section B2.7.4(b), (c) or (d); or
- (d) the appointment (under paragraph 4.1 or 4.3.2) of a replacement Director with relevant industry experience.

4.3.2 The Chairman may appoint, after consultation with the Panel, up to two Directors with relevant industry experience to serve as ad-hoc Directors until such time as they are replaced by, or confirmed as (as the case may be), Directors nominated and appointed in accordance with paragraph 4.1

4.4 Expenses and remuneration

4.4.1 Each Director shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such Director in attending meetings of or otherwise in the conduct of the business of the Board.

4.4.2 In addition to reimbursement under paragraph 4.4.1, any Director appointed under paragraph 4.1.3(c) shall be entitled to be paid by BSCCo such remuneration and benefits as may be determined by the Panel Chairman after consultation with the Panel.

4.4.3 Except as provided in paragraph 4.4.2, no Director shall be entitled (in that capacity) to be paid any remuneration or benefits other than his costs and expenses in accordance with paragraph 4.4.1.

4.4.4 The secretary of BSCCo shall not be entitled to remuneration in that capacity, but without prejudice to the terms on which he is employed by BSCCo.

- 4.4.5 The remuneration and benefits payable to a Director pursuant to paragraph 4.4.2 shall be disclosed in the Annual BSC Report.

4.5 Indemnity

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

4.6 Chief Executive

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

4.7 Proceedings of the Board

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

5. RELATIONSHIP BETWEEN PARTIES AND BSCCO

5.1 Liability of BSCCo

- 5.1.1 It is acknowledged that, by virtue of the arrangements for funding BSCCo set out in Section D:
- (a) BSCCo is not intended to make profits or losses in any BSC Year; and
 - (b) if any Party or Parties were to make any claim against any BSC Company the financial consequences of such claim would be borne by the Trading Parties themselves.
- 5.1.2 Accordingly, subject to the further provisions of this paragraph 5.1 and paragraph 5.2, the Parties agree that they do not intend that any Party or Parties should be able to make any claim in damages or any other claim of a financial nature against any BSC Company; and each Party (to the fullest extent permitted by law) waives any such claims against any BSC Company and releases each BSC Company from any such liability in respect of any breach by such BSC Company of any provision of the Code or in tort (including negligence) or otherwise.
- 5.1.3 The obligations of each Trading Party in respect of the funding of BSCCo pursuant to Section D shall not be prejudiced, qualified or affected in any way by any breach by any

BSC Company of any provision of the Code, or any other act or omission of any BSC Company.

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

5.1.5 Paragraph 5.1.2 is without prejudice to:

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

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

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

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

5.2 Party particularly prejudiced by BSCCo breach

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

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

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

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

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

- 5.2.3 A Party may not bring a claim or commence any proceedings against BSCCo in respect of an actionable breach more than 6 months after the date on which the breach occurred or commenced or (if later) more than 3 months after the Party became or could reasonably be expected to have become aware of the breach.
- 5.2.4 A Party may not make a claim against BSCCo in respect of an actionable breach if the amount of the Party's loss resulting from such breach is less than £50,000.
- 5.2.5 The aggregate cumulative amount payable by BSCCo to all Parties in respect of actionable breaches under this paragraph 5.2 for which payments (of damages or otherwise) fall to be made by BSCCo in any BSC Year shall not exceed £3,000,000.
- 5.2.6 If the aggregate amount so payable by BSCCo in a BSC Year would otherwise exceed the amount specified in paragraph 5.2.5:
- (a) the amounts for which BSCCo is liable to each relevant Party shall be reduced pro rata (and if unpaid, BSCCo shall pay such reduced amounts);
 - (b) where BSCCo has already paid any such amount to a Party, BSCCo shall require and each relevant Party shall make and pay such adjustment amounts as the Panel shall approve for the purposes of giving effect to paragraph (a).

5.3 Capacity of BSCCo

- 5.3.1 Subject to paragraph 5.3.2, BSCCo shall act as principal and not as agent of Parties in the exercise and discharge of its powers, functions and responsibilities.
- 5.3.2 Where the Code so provides, BSCCo shall, or (if the Code so provides) may, act as agent for and on behalf of, or as trustee for, Parties or particular Parties.
- 5.3.3 Except as provided by the Code, BSCCo shall not, and is not authorised to, enter into any commitment or incur any liability as agent for or in the name of any Party (but without prejudice to Parties' funding obligations under Section D).

6. BUSINESS STRATEGY AND ANNUAL BUDGET

6.1 Introduction

- 6.1.1 For each BSC Year (the "**Plan Year**") BSCCo shall have:
- (a) a Business Strategy, setting out the principal activities which BSCCo expects to be carrying out in the Plan Year and each of the two following BSC Years, on the basis of the functions and responsibilities which are or have been assigned to BSCCo under or pursuant to the Code but excluding the activities of Permitted Affiliates, except as contemplated in paragraph 1.3.1 of Annex C-1;
 - (b) an Annual Budget, setting out the expenditure which BSCCo considers reasonably necessary in order to carry out such activities in the Plan Year,
- each established and from time to time amended in accordance with this paragraph 6.
- 6.1.2 The Business Strategy for each BSC Year shall be approved by the Panel in accordance with paragraph 6.3.

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

6.2 Scope of Business Strategy and Annual Budget

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

6.3 Business Strategy

- 6.3.1 For each BSC Year, BSCCo shall:

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

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

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

- 6.3.4 After adopting the Business Strategy, BSCCo shall keep the Business Strategy (so far as it relates to the Plan Year) under review, and shall propose any revision thereto which appears requisite, and shall revise the Business Strategy in accordance with any approval of the Panel but not otherwise.

6.4 Annual Budget

- 6.4.1 At the same time as preparing each draft of the Business Strategy under paragraph 6.3, BSCCo shall prepare or revise, and submit to the persons to whom each draft Business Strategy is submitted, a draft Annual Budget for the Plan Year.

- 6.4.2 Following approval by the Panel of the Business Strategy, BSCCo shall finalise and adopt the Annual Budget.

- 6.4.3 Following any revision of the Business Strategy, BSCCo shall review and if appropriate revise the Annual Budget.

- 6.4.4 The Annual Budget for each BSC Year and any revision (including under paragraph 6.5) of such Annual Budget shall be approved by the Board.

6.5 Budget overspend

- 6.5.1 If the aggregate amount of BSCCo's expenditure in any BSC Year exceeds, or BSCCo anticipates that it may exceed, the amount contained in the Annual Budget, BSCCo shall promptly:
- (a) notify the Panel and all Parties, giving details of the excess expenditure and an explanation of the reasons therefor; and
 - (b) submit to the Panel and all Parties a draft revision of the Annual Budget, together with any possible options for modifying the Business Strategy which BSCCo considers may be appropriate so as to reduce or limit its expenditure in the relevant BSC Year (and an indication of the effect of such proposals on the Annual Budget).
- 6.5.2 After discussion with the Panel (and such consultation with Trading Parties as the Panel may stipulate), but subject to and taking account of any consequent revision of the Business Strategy which the Panel may have approved, BSCCo shall revise the Annual Budget so as to include the excess expenditure.

7. BSC COMPANIES

7.1 General

- 7.1.1 BSCCo may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) a Subsidiary in which BSCCo is permitted to hold shares in accordance with paragraph 3.4.5(b)(ii) (and in particular may hold any BSC Agent Contract through such a Subsidiary); but only to the extent to which the powers, functions or responsibilities relate to activities which were carried out, or which are equivalent to or developed from activities which were carried out, by the relevant company before it became a Subsidiary pursuant to the Implementation Scheme on the Code Effective Date.
- 7.1.2 No Subsidiary of BSCCo shall, and BSCCo shall procure that any Subsidiary shall not:
- (a) have or exercise any powers or functions beyond the powers and functions of BSCCo; or
 - (b) otherwise do anything which pursuant to the Code may not be done by BSCCo, or may not be done without the consent or approval of the Panel.
- 7.1.3 For the purposes of paragraph 3.4.3(a) the reference to borrowings in that paragraph shall be to the borrowings of BSCCo and all of its Subsidiaries in aggregate.
- 7.1.4 Reference in this paragraph 7.1 to Subsidiaries of BSCCo do not include the BSC Clearer.
- 7.1.5 Without prejudice to the generality of paragraph 7.1.1, a Subsidiary in which BSCCo is permitted to hold shares in accordance with paragraph 3.4.5(b)(ii) may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) the BSC Services Manager.

7.2 BSC Clearer

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

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

7.3 Duties of BSCCo

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

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

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

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

7.4 Constitution, etc

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

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

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

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

7.5 Directors and secretary

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

- 7.5.1A Where any Subsidiary of BSCCo is a Dormant Subsidiary then it shall not be necessary for all of the persons who are for the time being Directors of BSCCo to also be Directors of each Dormant Subsidiary, provided that the chairman of BSCCo shall at all times be a Director of each Subsidiary.
- 7.5.2 Subject to paragraph 7.5.1A, any person who is appointed or re-appointed as, or who resigns or is removed as, Director or company secretary of BSCCo shall be appointed or re-appointed, or shall resign or be removed, as a director or (as the case may be) the company secretary of each Subsidiary of BSCCo; and a director or the company secretary of such a Subsidiary shall not resign as such unless he resigns at the same time as a director or (as the case may be) the company secretary of BSCCo.
- 7.5.3 Subject to paragraph 4.6.1, the person who is for the time being Chief Executive of BSCCo shall act as chief executive of each Subsidiary of BSCCo, under such terms of reference as the board of directors of such Subsidiary may determine.
- 7.5.4 Each director of a Subsidiary shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such director in attending meetings or otherwise in the conduct of the business of the board of directors of the Subsidiary and not otherwise reimbursed under paragraph 4.4.1.
- 7.5.5 No director of a Subsidiary shall be entitled (in that capacity) to be paid any remuneration or benefits other than his costs and expenses in accordance with paragraph 7.5.4.
- 7.6 BSCCo services**
- 7.6.1 BSCCo shall provide to each of its Subsidiaries such administrative, support and other services, and may make such other arrangements with such Subsidiaries, as may be required to enable the Subsidiary to perform its functions.
- 7.6.2 The arrangements made by BSCCo under paragraph 7.6.1 shall include arrangements which ensure that each Subsidiary has funds sufficient to meet its costs, expenses and other outgoings.
- 7.6.3 In the case of the BSC Clearer, the services to be provided by BSCCo under paragraph 7.6.1 include, without limitation, to the extent to which (under the Code and the relevant BSC Service Description) the FAA is to provide services to or for the benefit of the BSC Clearer, entering into and managing the relevant BSC Agent Contract with the FAA.
- 7.6.4 The BSC Clearer and BSCCo will make such further arrangements (including the conferring of appropriate authorities on BSCCo) as are requisite in connection with the provision of services by BSCCo under paragraph 7.6.1.

8. BSCCO INVOLVEMENT IN BETTA

8.1 BETTA Support Work

- 8.1.1 Subject to the further provisions of this paragraph 8, and without prejudice to the discharge of its other functions and responsibilities in accordance with paragraph 1.3.1 and any other provisions of the Code, BSCCo may undertake work (**BETTA Support Work**) by way of the provision to the Authority of facilities, resources and other services and support in connection with the development and implementation of BETTA, including in particular:

- (a) the identification and development of the changes which would be required to the Code and Code Subsidiary Documents to enable them to serve as a balancing and settlement code for Great Britain (**GB BSC**) and its subsidiary documents for BETTA;
- (b) the identification, impact assessment, design, development, testing and trialling of the changes which would be required to BSC Agent Systems, BSC Service Descriptions and BSC Agent Contracts and the systems, service descriptions and contracts of other service providers to enable them to serve as systems, service descriptions and contracts for BETTA;
- (c) planning and preparation for the introduction of, and the transition from the arrangements subsisting pursuant to the Code and the Settlement Agreement for Scotland to those subsisting under, a GB BSC; and
- (d) the implementation of BETTA during the Transition Period.

8.1.2 BSCCo shall not undertake any BETTA Support Work unless BSCCo has proposed to the Authority a work specification (in such form and detail as the Authority may require) for such BETTA Support Work and the Authority has approved such work specification.

8.1.3 If the Transmission Licence is modified so as to exclude Standard Condition C3.3(e), with effect from the effective date of such modification, BSCCo's authority to conduct BETTA Support Work shall lapse, without prejudice to the BETTA Support Work undertaken by BSCCo before such date, and to BSCCo's authority to satisfy any commitment entered into in the course of undertaking BETTA Support Work (pursuant to a work specification approved pursuant to paragraph 8.1.2) before such date.

8.2 Further provisions

8.2.1 In the course of undertaking BETTA Support Work pursuant to a work specification approved pursuant to paragraph 8.1.2 BSCCo may (without limitation):

- (a) procure advice, impact assessments and other services (as required for the purposes of paragraph 8.1.1(b), (c) or (d)) from BSC Agents and other service providers;
- (b) prior to BETTA Go Active negotiate amendments with BSC Agents and other service providers (as to such additions and changes as are described in paragraph 8.1.1(b)) to BSC Agent Contracts, BSC Service Descriptions and other service provider contracts and service descriptions, or with the approval of the Authority procure and/or negotiate an offer from a person not being the existing BSC Agent to enter into such an additional or amended BSC Agent Contract, provided that any such amendment (or acceptance of any such offer) shall be expressed to be conditional and contingent upon the decision (which BSCCo will not, until BETTA Go Active and in accordance with paragraph 8.2.6, be authorised to take) that the relevant BSC Agent or other person is to be appointed in an equivalent capacity under the GB BSC;
- (c) subsequent to BETTA Go Active, negotiate and agree additions or changes to existing BSC Agent Contracts, BSC Service Descriptions and other service provider contracts and service descriptions and negotiate, agree and enter into new BSC Agent Contracts, BSC Service Descriptions and other contracts, or in each case negotiate offers for the same;

- (d) liaise, cooperate and exchange information with Core Industry Document Owners;
 - (e) consult with Parties and others in relation to the matters in paragraphs 8.1.1(a), (b), (c) and (d);
 - (f) for the purposes of any such consultation required by paragraph 8.2.1(e), disclose or publish any relevant information (as defined in paragraph 3.6.4), excluding any information which relates to the affairs of an individual Party and is in BSCCo's opinion commercially sensitive, or the disclosure or publication of which would in BSCCo's opinion substantially prejudice the interests of all or a class of Parties collectively, unless the Authority notifies BSCCo that the Authority has determined that such disclosure or publication is requisite for the purposes of the undertaking of the BETTA Support Work;
 - (g) procure such further resources and services as it may reasonably require to enable it to undertake such BETTA Support Work.
- 8.2.2 The costs, expenses and liabilities incurred by BSCCo in the undertaking of BETTA Support Work shall be BSC Costs, but BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.
- 8.2.3 BSCCo shall prepare and make available to the Panel and to Parties regular reports in respect of BETTA Support Work, and the costs, expenses and liabilities incurred in undertaking such work, but BSCCo shall not be required to disclose to Parties or the Panel any information relating to BETTA which the Authority expressly requests BSCCo to keep confidential.
- 8.2.4 The functions of, and the things done by, BSCCo under and pursuant to this paragraph 8 shall be considered to be functions under and things done pursuant to the Code for the purposes of paragraphs 3.4.1, 3.4.2, 4.4, 4.5, 4.6, 5.1 and 5.3 and Sections D2, H4.2 and H4.3 (but subject to paragraph 8.2.1(f) above), H4.5, H4.6, H4.7 (for the purposes of which BSCCo Materials and BSC Systems shall be construed taking account of BETTA Support Work), H4.9, H4.10.2, H6, H7 and H9 but not for the purposes of any other provision of the Code (including paragraph 1.3) which applies or refers directly or indirectly to the functions of BSCCo; and the Panel shall have no duties or responsibilities in relation to BETTA Support Work and (except as provided in paragraph 8.2.3) BSCCo shall owe no duties to the Panel or to any Party or Parties generally in the carrying out of such functions.
- 8.2.5 Without prejudice to what may be provided in the relevant work specification pursuant to paragraph 8.1.2, Section E2.7 shall not apply in relation to anything done by BSCCo pursuant to paragraph 8.2.1(b) and (c).
- 8.2.6 BSCCo shall on and from BETTA Go Active be authorised and entitled to:
- (a) waive or treat as satisfied any condition or contingency to which any change, addition or amendment to an existing BSC Agent Contract, BSC Service Description or other service provider contractor or service description, or to which any new BSC Agent Contract, BSC Service Description, service provider contract or service description, is expressed as being subject to or contingent on; and
 - (b) make the decision referred to in paragraph 8.2.1(b) that the relevant BSC Agent or other person is to be appointed in an equivalent capacity under the GB BSC.

9. PROVISION OF PROFILE ADMINISTRATION SERVICES BY BSCCO

9.1 Provision of Profile Administration Services in certain circumstances

- 9.1.1 Subject to the further provisions of this paragraph 9, BSCCo shall where the Panel's prior consent has been obtained, provide (directly and/or via a service provider) the services set out in Section S4.2 (the "**Profile Administration Services**").
- 9.1.2 Where the Panel's prior consent to BSCCo providing the Profile Administration Services has not been obtained, a Profile Administrator shall be appointed in accordance with Section E.
- 9.1.3 BSCCo shall obtain further Panel consent to continue to provide the Profile Administration Services if a material change occurs in BSCCo's provision of the Profile Administration Services and in any event not less than once every five years.
- 9.1.4 A "**material change**" for the purposes of this paragraph 9 means a change to BSCCo's systems, processes or resources which is of such a type or magnitude as to raise the reasonable expectation of an impact on BSCCo's ability to efficiently meet its obligations to deliver the Profile Administration Services.

9.2 BSCCo's capacity and obligations

- 9.2.1 Where the Profile Administration Services are provided by BSCCo, they are provided in its capacity as BSCCo and not as a BSC Agent.
- 9.2.2 For the duration of any period where BSCCo provides the Profile Administration Services, Section E shall not apply in respect of the provision of those services.
- 9.2.3 Subject to paragraphs 9.2.1 and 9.2.2, BSCCo shall provide the Profile Administration Services in accordance with the Code.
- 9.2.4 Where the Profile Administration Services are provided by BSCCo, all obligations and requirements on Parties and other persons in the Code with respect to Profile Administration Services and/or the Profile Administrator shall continue unaltered (*mutatis mutandis*) notwithstanding that the Profile Administration Services shall be provided by BSCCo.
- 9.2.5 For the duration of any period where BSCCo provides the Profile Administration Services, the following provisions of Section S4 shall be deemed to have been amended as follows:

- (a) Section S4.2.1(f) shall not apply;
- (b) Section S4.2.2 shall read:

BSCCo shall prepare a set of Regression Coefficients, Group Average Annual Consumption values and Profile Coefficients for each BSC Year on or before 30th November before the beginning of the relevant BSC Year, using data collected from the load research programme carried out by it or its appointee, augmented with data provided by Suppliers which is consistent with the overall sample design;

- (c) Section S4.2.3 shall read:

BSCCo shall prepare:

- (a) *on a quarterly basis, a breakdown by GSP Group of each Profile Class sample, together with a statement of the daily average number of customers for which monitoring equipment has been successfully installed and commissioned for each Profile Class in respect of the previous quarter (a quarter being a period of 3 months commencing on 1st January, 1st April, 1st July and 1st October in any year); and*
- (b) *an annual report and data analysis plan (in such form as may be specified by the Panel) setting out what load research data it proposes to use, together with a load research plan (in such form as the Panel shall specify) setting out the proposed sample design and sample sizes in respect of the following BSC Year.*
- (d) for the purposes of Sections S4.2.4, S4.2.5, S4.2.6, S4.2.7 and S4.2.8 “*Profile Administrator*” shall be read as “*BSCCo*”.

9.3 Contracts for Profile Administration Services

9.3.1 Where BSCCo provides the Profile Administration Services, in whole or in part, via a service provider(s), BSCCo shall enter into each contract for the provision of Profile Administration Services in accordance with this paragraph 9.3 (a “**Profile Administration Services Contract**”) and for these purposes:

- (a) a service provider providing Profile Administration Services shall not be considered to be a 'BSC Agent' under the Code; and
- (b) notwithstanding paragraphs 9.2.2 and 9.3.1(a), the provisions of Section E2.4 and Section E3 shall apply to each Profile Administration Services Contract as if references to a BSC Agent included the service provider and references to a BSC Agent Contract included all Profile Administration Services Contracts subject to the provisions of Section E3.2 applying to a service provider of Profile Administration Services in its capacity as such and not in any other capacity which it may have under the Code.

9.3.2 Each Profile Administration Services Contract shall contain terms which provide that the service provider shall make provision for the BSC Auditor to access those things required by Section H5.5.2.

9.3.3 It is recognised that where paragraph 9.3.1 applies, a service provider of Profile Administration Services may be a Party. Where a service provider of Profile Administration Services is a Party:

- (a) such Party shall have no rights, benefits, obligations or liability in its capacity as a service provider to or against any other Party under the Code, but without prejudice to its rights and obligations:
 - (i) as service provider under its Profile Administration Services Contract; and
 - (ii) in any other capacity under the Code;
- (b) references to a Party or Parties in the Code shall be construed as excluding any service provider of Profile Administration Services (which is a Party) in its capacity as a service provider (but as including such person in any other capacity it may have under the Code); and

- (c) the provision, disclosure and use of any data relating to a Party which is used in or in connection with the Profile Administration Services by a service provider shall not be considered or construed as being made pursuant to any provision of the Code.

9.3.4 Notwithstanding paragraph 9.3.1(a):

- (a) Section H4.6 shall apply to service providers of Profile Administration Services as if references to BSC Agents included service providers and references to BSC Agent Contracts included Profile Administration Services Contracts;
- (b) references to BSC Agents and BSC Agent Contracts in Section W shall be deemed to include, respectively, service providers referred to in paragraph C9.3.1 and Profile Administration Services Contracts; and
- (c) references to BSC Agents in Section W1.4.1 shall be deemed to include BSCCo.

10. PERMISSIBLE ACTIVITIES UNDERTAKEN BY PERMITTED AFFILIATES

10.1 General

10.1.1 In respect of each Permitted Affiliate:

- (a) BSCCo shall be entitled to subscribe for, acquire or hold any share or other security in a Permitted Affiliate and paragraph 3.4.5(b) shall not apply;
- (b) BSCCo shall not dispose of any legal or beneficial interest in any shares or other security in a Permitted Affiliate undertaking activities and functions specified in paragraph 1 of Annex C-1 except:
 - (i) to the CfD Counterparty and/or the CM Settlement Body and/or to any nominees of the CfD Counterparty and/or the CM Settlement Body; or
 - (ii) where otherwise directed to do so by the Secretary of State,
in which case paragraph 3.4.5(c) shall not apply;
- (c) the Panel shall have no rights of approval or disapproval in respect of claims or proceedings by or against a Permitted Affiliate, or waivers or settlements of such claims, and paragraph 3.4.3(e) shall not apply; and
- (d) paragraph 7 shall not apply.

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

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

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

- (a) death or personal injury resulting from the negligence of such Permitted Affiliate; or
- (b) fraud or fraudulent misrepresentation; or
- (c) any claim against that Permitted Affiliate brought by a Party (acting in a capacity other than as a Party) solely to the extent that such Party has a right to bring a claim under an EMR Legal Requirement.

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

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

10.2 Ring-Fencing of Permitted Affiliates

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

- (a) without prejudice to paragraph 3, BSCCo shall not transfer, lease, licence, or lend any sum or sums, asset (including non-financial resources), right, or benefit to a Permitted Affiliate except by way of:
 - (i) a payment properly due for any goods, services, or assets provided on an arm's length basis and on normal commercial terms; or
 - (ii) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit that is on an arm's length basis and on normal commercial terms;
- (b) except as permitted in paragraph 10.2.1(a), BSCCo shall not enter into any borrowing for or on behalf of a Permitted Affiliate where the term "borrowing" has the same meaning as that term in accordance with paragraph 3.4.4;
- (c) BSCCo and each Permitted Affiliate shall implement agreed contractual arrangements to ensure that:
 - (i) where any common or shared costs between BSCCo and a Permitted Affiliate are incurred these costs are allocated reasonably and equitably, provided that in determining such allocation a Permitted Affiliate shall not be obliged to pay in excess of the established market rate, if applicable; and
 - (ii) where BSCCo incurs any costs (including costs in respect of any liabilities incurred by BSCCo) that arise as a consequence of services provided by BSCCo, or on BSCCo's behalf by a BSC Agent, to a Permitted Affiliate, such costs shall be recoverable from the Permitted Affiliate on a cost recovery basis; and
- (d) Parties shall have no liability or obligation to provide financial support to a Permitted Affiliate in respect of its performance of Permissible Activities.

11. PROVISION OF SUPPORT TO EMR SETTLEMENT SERVICES PROVIDERS

11.1 Provision of Support to EMR Settlement Services Providers

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

11.2 Agreement between BSCCo and EMR Settlement Services Providers

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

- (a) restrict the use of the Relevant EMR Settlement Data to the extent necessary to enable any CFD Settlement Services Provider and/or any CM Settlement Services Provider (and their service providers) to discharge their EMR Settlement Functions;
- (b) are consistent with the terms (as to availability and reliability of data) contained in agreements entered into by BSCCo pursuant to Section V3.2.7;
- (c) in respect of the CFD Settlement Data, impose restrictions on the use of CFD Settlement Data equivalent to the restrictions on the use of Confidential Information in Section H4 provided that a CFD Settlement Services Provider shall be entitled to share CFD Settlement Data with any CfD Counterparty, and otherwise in accordance with the EMR Legal Requirements;
- (d) in respect of the CM Settlement Data, reflect the provisions on the use of protected information contained in the EMR Legal Requirements;
- (e) where EMR Settlement Data is to be disclosed to a service provider of an EMR Settlement Services Provider, provide that such EMR Settlement Data shall only be disclosed on a "need-to-know" basis and requiring such service providers to enter into a confidentiality agreement with the relevant EMR Settlement Services Provider on terms equivalent to those contained in an EMR Legal Requirement or, if there is no applicable EMR Legal Requirement, Section H4;
- (f) allow for the provision of support services in accordance with paragraph 11.1.1 and which, to the fullest extent permitted by law, restrict BSCCo's liability to the EMR Settlement Services Provider for any claim in damages or any other claim of a financial nature relating to the supply of services to the EMR Settlement Services Provider to the amounts payable under the agreement for those services; and
- (g) provide for the payment by any CFD Settlement Services Provider of CFD Settlement Services Provider Costs and by any CM Settlement Services Provider of CM Settlement Services Provider Costs, as appropriate to the relevant agreement, in each case in accordance with Section D7.

ANNEX C-1: PERMISSIBLE ACTIVITIES

1 Activities performed pursuant to the Energy Act 2013

1.1 Settlement Services Provider for Feed in Tariff Contracts for Difference

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

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

1.2 Settlement Services Provider for Capacity Agreements

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

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

(iii) the Capacity Market Rules; and

(c) any other matters pursuant to Chapter 3 of Part 2 of the Energy Act 2013.

1.3 EMR Tender Activities

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

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