

## **SECTION B: THE PANEL**

### **1. ESTABLISHMENT OF PANEL**

#### **1.1 Establishment and composition**

1.1.1 There is hereby established a panel which shall be constituted in accordance with the further provisions of this Section B.

1.1.2 The Panel shall comprise the following members:

- (a) the person appointed as chairman of the Panel in accordance with paragraph 2.1;
- (b) not more than five persons appointed by Trading Parties in accordance with paragraph 2.2;
- (c) not more than two persons appointed by Citizens Advice or Citizens Advice Scotland in accordance with paragraph 2.3;
- (d) the person appointed by the NETSO in accordance with paragraph 2.4;
- (e) not more than two persons appointed by the Panel Chairman in accordance with paragraph 2.5; and
- (f) the person appointed (if the Panel Chairman so decides) by the Panel Chairman in accordance with paragraph 2.6.

1.1.3 There shall be a secretary to the Panel who shall be a person nominated and provided by BSCCo and approved by the Panel in accordance with Section C3.2.

1.1.4 In this Section B:

- (a) references to a person shall, unless the context otherwise requires, be construed as references to an individual; and
- (b) references to appointing a person as a Panel Member include replacing or (subject to paragraph 2.7.6) reappointing such person upon his ceasing to hold office in accordance with paragraph 2.7.4.

#### **1.2 Panel objectives**

1.2.1 The Panel shall conduct its business under the Code with a view to achieving the following objectives:

- (a) that the Code is given effect fully and promptly and in accordance with its terms;
- (b) that the Code is given effect in such manner as will facilitate achievement of the objectives (so far as applicable to the manner in which the Code is given effect) set out in Condition C3(3)(a) to (c) of the Transmission Licence, namely:
  - (i) the efficient discharge by the NETSO of the obligations imposed under the Transmission Licence;
  - (ii) the efficient, economic and co-ordinated operation by the NETSO of the Transmission System, and

- (iii) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase (as defined in the Transmission Licence) of electricity;
  - (c) that the Code is given effect without undue discrimination between Parties or classes of Party;
  - (d) consistent with the full and proper discharge of the functions and responsibilities of the Panel and BSCCo, that the Code is given effect as economically and efficiently as is reasonably practicable; and
  - (e) subject to the express provisions of the Code (including provisions as to confidentiality and including paragraph 1.2.2) and to any other duties of confidence owed to third parties, that there is transparency and openness in the conduct of the business of the Panel and BSCCo.
- 1.2.2 The objective set out in paragraph 1.2.1(e) applies save to the extent that to apply such objective would, in the Panel's opinion, substantially prejudice the interests of all Parties collectively or of a class of Parties collectively.
- 1.2.3 Insofar as the Panel Chairman or other individual Panel Members or the Panel Secretary have functions under the Code which they may or must carry out individually, the provisions of this paragraph 1.2 shall apply to the Panel Chairman, other individual Panel Member or Panel Secretary (as the case may be), as if references to the Panel in this paragraph 1.2 were references to such person, to the extent those provisions are applicable to such function.
- 1.2.4 When the Panel is exercising its powers and carrying out its functions and responsibilities referred to in paragraphs 3.1.2 (i) and (l):
- (a) paragraph 1.2 shall not apply; and
  - (b) in the context of Supplier Volume Allocation, the Panel shall have regard to the matters set out in Section Z5.1.4.

## **2. APPOINTMENT OF PANEL MEMBERS**

### **2.1 Appointment of Panel Chairman**

- 2.1.1 The Panel Chairman shall be a person nominated, in consultation with the Board, by the Panel (which may follow such procedures as it shall determine for the selection of the person so nominated) and approved by the Authority.
- 2.1.2 Subject to paragraph 2.1.3, a person shall be appointed as Panel Chairman where the Authority has given notice to the Panel Secretary of its approval, with effect from the later of the date specified in such notice and the date on which such notice is given.
- 2.1.3 A person shall not be appointed as Panel Chairman until and unless that person has entered into an agreement in writing with BSCCo setting out terms as to his remuneration and benefits (determined in accordance with paragraph 2.11.3) and any related matters.
- 2.1.4 A person shall be removed from and shall cease to hold the office of Panel Chairman:
- (a) subject to paragraph 2.1.6 and 2.1.7, upon expiry of his term of office; or

(b) in the circumstances in paragraph 2.7.4(b) or 2.7.4(d).

2.1.5 The Panel Secretary shall send a copy of any notice under paragraph 2.1.2 to all Panel Members and all Parties promptly upon receiving such notice.

2.1.6 The term of office of the Panel Chairman shall be three years from the date of his appointment, provided that this shall not prevent a person holding that office from re-appointment to that office.

2.1.7 If, at the expiry of the term of office or upon the resignation of a person appointed as Panel Chairman, no other person has been appointed to that office, that person shall (if willing to do so) continue in office as Panel Chairman until such time as another person is so appointed.

## **2.2 Appointment of Panel Members by Trading Parties**

2.2.1 Trading Parties may appoint up to five persons as Panel Members by election in accordance with Annex B-2.

## **2.3 Appointment of Panel Members by Citizens Advice or Citizens Advice Scotland**

2.3.1 Citizens Advice and Citizens Advice Scotland may appoint two persons as Panel Members (to be determined as between themselves), by giving notice of each such appointment to the Panel Secretary.

## **2.4 Appointment of a Panel Member by the NETSO**

2.4.1 The NETSO shall appoint a person as a Panel Member, by giving notice of such appointment to the Panel Secretary.

## **2.5 Appointment of Panel Members by the Panel Chairman**

2.5.1 Subject to the further provisions of this paragraph 2.5, the Panel Chairman shall appoint two persons as Panel Members, by giving notice of each such appointment to the Panel Secretary.

2.5.2 A person shall not be appointed as Panel Member under paragraph 2.5.1 unless he satisfies the requirements as to independence in paragraph 2.5.3, and shall be removed from such office (by notice given by the Panel Secretary) if at any time the Panel Chairman determines (after consultation with other Panel Members) that he has ceased to satisfy those requirements.

2.5.3 The requirements are that:

(a) such person is not, and no Related Person (in relation to such person) is, nor has such person or any such Related Person been at any time in the period of 1 year before the proposed appointment:

(i) a Party, or a person which was party to the Pooling and Settlement Agreement; and/or

(ii) a person who participates in the transmission of electricity, generates, supplies or distributes electricity in any part of the United Kingdom under licence or exemption; and/or

(iii) a BSC Agent or a Market Index Data Provider; and

- (b) in the opinion of the Panel Chairman, such person has no other interests which would conflict with his independence as a Panel Member.

2.5.4 The Panel Chairman will consult with the Panel before appointing any person as Panel Member pursuant to paragraph 2.5.1.

## **2.6 Appointment of further industry member**

2.6.1 If, at any time at which no person is appointed as Panel Member pursuant to this paragraph 2.6, in the opinion of the Panel Chairman:

- (a) there is any class or category (by type of Plant or Apparatus or otherwise) of person generating or supplying electricity in Great Britain and/or Offshore, whose members (as such a class or category):
  - (i) are exempt from the requirement to hold a Licence; and
  - (ii) have interests in respect of the Code; and
- (b) those interests:
  - (i) are not reflected in the composition of Panel Members for the time being appointed, but
  - (ii) would be so reflected if a particular person were appointed as an additional Panel Member

then the Panel Chairman may appoint that person as a Panel Member by giving notice of such appointment to the Panel Secretary.

2.6.2 If at any time:

- (a) the Panel Chairman has decided not to appoint an additional Panel Member pursuant to paragraph 2.6.1, but
- (b) in his opinion, there are Trading Parties of a particular class and/or participation capacity, whose interests are not reflected in the composition of Panel Members for the time being appointed, but would be so reflected if a particular person were appointed as an additional Panel Member

then the Panel Chairman may appoint that person as a Panel Member by giving notice of such appointment to the Panel Secretary.

2.6.3 Nothing in paragraphs 2.6.1 and 2.6.2 shall require the Panel Chairman to exercise his power to appoint another Panel Member, nor constrain or limit his discretion in doing so if in his opinion there is more than one class or category of person satisfying the conditions in paragraph 2.6.1.

2.6.4 The Panel Chairman may consult as he sees fit before appointing a person as a Panel Member pursuant to this paragraph 2.6.

2.6.5 A person appointed as a Panel Member pursuant to this paragraph 2.6 shall remain so appointed, subject to paragraph 2.7, notwithstanding that the conditions (in paragraph 2.6.1 or 2.6.2) by virtue of which he was appointed may cease to be satisfied.

## **2.7 Term of office, and removal from office, of Panel Members**

2.7.1 Subject to paragraph 2.8.2, a person appointed or re-appointed by a notice under paragraph 2.3, 2.4, 2.5 or 2.6 shall be appointed as a Panel Member with effect from:

- (i) the day following the next retirement day (as defined in paragraph 2.7.3), or
- (ii) if earlier, the date with effect from which an existing relevant Panel Member ceases to hold office pursuant to paragraph 2.7.4(b), (c) or (d), or
- (iii) where at the time at which the notice is given the office of a relevant Panel Member is vacant, the later of the date specified in the notice and the date when the notice is given;

for the purposes of which a "relevant" Panel Member is a Panel Member appointed under paragraph 2.3, 2.4, 2.5 or 2.6 respectively.

2.7.2 A person elected pursuant to Annex B-2 shall be appointed as a Panel Member with effect from:

- (a) in a case in paragraph 1.1.2(a) of that Annex, 1<sup>st</sup> October in the election year;
- (b) in a case in paragraph 1.1.2(b) of that Annex, the date of BSCCo's announcement under paragraph 4 thereof.

2.7.3 The term of office of a Panel Member (other than the Panel Chairman) shall be a period expiring on the next retirement day (a "retirement day" being 30th September in every second year following the year 2000) following his appointment; provided that a Panel Member whose term of office has expired or is to expire shall be eligible for re-appointment.

2.7.4 A person shall cease to hold office as a Panel Member:

- (a) upon expiry of his term of office, unless he is re-appointed;
- (b) if:
  - (i) he resigns his office by notice delivered to the Panel Secretary;
  - (ii) he becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (iii) he is or may be suffering from mental disorder and either he is admitted to hospital in pursuance of an application under the Mental Health Act 1983 or an order is made by a court having jurisdiction in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person with respect to his property or affairs;
  - (iv) he becomes prohibited by law from being a director of a company under the Companies Act 2006;
  - (v) he dies;
  - (vi) he is convicted of an indictable offence;

- (c) if he is removed from office in accordance with any provision of this paragraph 2; or
  - (d) if the Panel resolves (and the Authority does not veto such resolution by notice in writing to the Panel Secretary) that he should cease to hold office on grounds of his serious misconduct.
- 2.7.5 A Panel resolution under paragraph 2.7.4(d) shall, notwithstanding paragraphs 4.3.2 and 4.4.3, require the vote in favour of at least all Panel Members (other than the Panel Member who is the subject of such resolution) less one Panel Member and, for these purposes, an abstention shall count as a vote cast in favour of the resolution.
- 2.7.6 A person shall not qualify for appointment as a Panel Member if at the time of the proposed appointment he would be required by paragraph 2.7.4(b) to cease to hold that office.
- 2.7.7 The Panel Secretary shall give prompt notice to all Panel Members, all Parties and the Authority of the appointment or re-appointment of any Panel Member or of any Panel Member ceasing to hold office.
- 2.8 Duties of Panel Members**
- 2.8.1 A person appointed as Panel Member, when acting in that capacity:
- (a) shall act impartially and in accordance with paragraph 1.2.1; and
  - (b) shall not be representative of, and shall act without undue regard to the particular interests of:
    - (i) the body or person or persons by whom he was appointed as Panel Member; and
    - (ii) any Related Person from time to time.
- 2.8.2 A person shall not be appointed as a Panel Member unless he shall have first:
- (a) confirmed in writing to BSCCo for the benefit of all Parties that he agrees to act as a Panel Member in accordance with the Code and acknowledges the requirements of paragraphs 2.8.1 and 2.8.3; and
  - (b) where that person is employed, provided to the Panel Secretary a letter from his employer agreeing that he may act as Panel Member, and that the requirement in paragraph 2.8.1(b) shall prevail over his duties as an employee.
- 2.8.3 A Panel Member shall, at the time of appointment and upon any change in such interests, disclose (in writing) to the Panel Secretary any such interests (in relation to the Code) as are referred to in paragraph 2.8.1(b).
- 2.8.4 Upon a change in employment of a Panel Member, he shall so notify the Panel Secretary and shall endeavour to obtain from his new employer and provide to the Panel Secretary a letter in the terms required in paragraph 2.8.2(b); and he shall be removed from office if he does not do so within a period of 60 days after such change in employment.

## **2.9 Indemnity of and protections for Panel Members and others**

- 2.9.1 BSCCo shall indemnify and keep indemnified each of the persons referred to in paragraph 2.9.2 (each such person an "**indemnity beneficiary**") in respect of all costs (including legal costs), expenses, damages and other liabilities properly incurred or suffered by such person when acting in or in connection with his office under the Code, or in what he in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the Code, and all claims, demands and proceedings in connection therewith, other than:
- (a) any such costs or expenses in respect of which such person is reimbursed pursuant to paragraph 2.11;
  - (b) any such costs, expenses, damages or other liabilities incurred or suffered as a result of the wilful default or bad faith of such person.
- 2.9.2 The persons referred to in paragraph 2.9.1 are each Panel Member, the Panel Secretary, any member of any Panel Committee, the secretary of any Panel Committee, the Modification Secretary and each member of a Workgroup, together with their alternates (where such alternates are permitted to be appointed and are appointed in accordance with the Code).
- 2.9.3 BSCCo shall enter into and deliver to each Panel Member and, on request, each other indemnity beneficiary a deed of indemnity in the terms in paragraph 2.9.1.
- 2.9.4 The Parties agree that no indemnity beneficiary shall be liable for anything done when acting properly in or in connection with his office under the Code, or anything done in what he in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the Code; and each Party hereby irrevocably and unconditionally waives any such liability of any indemnity beneficiary, and any rights, remedies and claims against any indemnity beneficiary in respect thereof.
- 2.9.5 BSCCo acknowledges and agrees that it holds the benefit of paragraph 2.9.4 as trustee and agent for each indemnity beneficiary.
- 2.9.6 Without prejudice to paragraph 2.9.1, nothing in paragraph 2.9.4 shall exclude or limit the liability of an indemnity beneficiary for death or personal injury resulting from the negligence of such indemnity beneficiary.

## **2.10 Alternates**

- 2.10.1 It is expected that Panel Members will make themselves available to conduct the business of the Panel; but where the Panel Chairman (on the application of the Panel Member) accepts that particular circumstances warrant such appointment, a Panel Member (other than the Panel Chairman) may, subject to paragraph 2.10.2, appoint a person (whether or not a Panel Member) to be his alternate, and may remove a person so appointed as alternate, by giving notice of such appointment or removal to the Panel Secretary.
- 2.10.2 Paragraph 2.8.2 shall apply in respect of the appointment of an alternate as though references in that paragraph to a Panel Member were to such alternate.
- 2.10.3 In the case of an alternate appointed by a Panel Member who is appointed under paragraph 2.5, the provisions of paragraphs 2.5.2 and 2.5.3 shall apply to such alternate as though references in those paragraphs to a Panel Member were to such alternate.
- 2.10.4 The appointment or removal by a Panel Member of an alternate shall be effective with effect from the later of the time specified in such notice and the time when such notice is given.

- 2.10.5 The Panel Secretary shall promptly notify all Panel Members of the appointment or removal by any Panel Member of any alternate.
- 2.10.6 Where a Panel Member has appointed an alternate:
- (a) the alternate shall be entitled:
    - (i) unless the appointing Panel Member shall otherwise notify the Panel Secretary, to receive notices of meetings of the Panel;
    - (ii) to attend, speak and vote at any meeting of the Panel at which the Panel Member by whom he was appointed is not present, and at such meeting to exercise and discharge all of the functions, duties and powers of such Panel Member;
  - (b) the alternate shall cast one vote for each Panel Member by whom he was appointed, in addition (where he is a Panel Member himself) to his own vote;
  - (c) the provisions of paragraph 4 shall apply as if he were a Panel Member in relation to any meeting at which he attends.
- 2.10.7 A person appointed as alternate shall automatically cease to be an alternate:
- (a) if the appointing Panel Member ceases to be a Panel Member;
  - (b) if any of the circumstances in paragraph 2.7.4(b) applies in relation to such person;
  - (c) if the Panel resolves, in accordance with the provisions mutatis mutandis of paragraph 2.7.4(d), that such person should cease to be an alternate.
- 2.10.8 A reference in the Code to a Panel Member shall, unless the context otherwise requires, include his duly appointed alternate.
- 2.11 Expenses, remuneration and facilities**
- 2.11.1 Each Panel Member shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such Panel Member in attending meetings of or otherwise in the conduct of the business of the Panel.
- 2.11.2 Where so agreed by the Panel, any member of a Panel Committee who is not employed or engaged by BSCCo shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such person in attending meetings of or otherwise in the conduct of the business of such Panel Committee.
- 2.11.3 In addition to reimbursement under paragraph 2.11.1, the Panel Chairman shall be entitled to be paid by BSCCo such remuneration and benefits as may be or have been determined the Panel (excluding the Panel Chairman himself).
- 2.11.4 In addition to reimbursement under paragraph 2.11.1, any Panel Member appointed under paragraph 2.5 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.
- 2.11.5 Any remuneration or benefits awarded to the Panel Chairman under paragraph 2.11.3 or to a Panel Member under paragraph 2.11.4 shall be disclosed in the Annual BSC Report.



- 2.11.6 Except as provided in paragraphs 2.11.2, 2.11.3 and 2.11.4, no Panel Member shall be entitled under the Code to be paid any remuneration or benefits other than his costs and expenses in accordance with paragraph 2.11.1.
- 2.11.7 The Panel Secretary and the Modification Secretary shall not be entitled to remuneration in those capacities respectively, but without prejudice to the terms on which the Panel Secretary and the Modification Secretary are employed or procured by BSCCo.
- 2.11.8 Where the Panel Chairman and the BSCCo Chairman are the same person, the Panel and the Board may (but shall not be required to) agree joint arrangements for the remuneration of that person.

## **2.12 Representative of Authority**

- 2.12.1 A representative of the Authority shall be entitled to attend and speak at any meeting of the Panel, and to receive notice of any such meeting, but such representative shall not be entitled to vote at such meetings and shall not be a Panel Member.

## **2.13 Representative of Distribution System Operators**

- 2.13.1 A person appointed (in accordance with paragraph 2.13.2) by a distribution-representative body shall be entitled to attend and speak at any meeting of the Panel, and to receive notice of any such meeting, but such person shall not be entitled to vote at such meetings and shall not be a Panel Member.
- 2.13.2 A person shall be appointed or removed for the purposes of paragraph 2.13.1, where the Panel Secretary has received notice of such appointment or removal from such distribution-representative body, with effect from the later of the date of such appointment or removal specified in such notice and the date on which such notice is given, provided (in the case of an appointment) that no other person is or remains so appointed at such date.
- 2.13.3 For the purposes of this paragraph 2.13, a distribution-representative body is a body approved (for such purposes) by the Authority as representing the interests of Distribution System Operators collectively.

## **2.14 Chief Executive of BSCCo**

- 2.14.1 The Chief Executive of BSCCo shall be entitled to (and, if requested to do so by the Panel Chairman, shall be required to) attend and speak at any meeting of the Panel, and to receive notice of any such meeting, but shall not be entitled to vote at such meetings and shall not be a Panel Member.

## **2.15 Deputy Panel Chairman**

- 2.15.1 The Panel Chairman may after consulting with the Authority appoint to act as Deputy Panel Chairman one of the Panel Members appointed under paragraph 2.5.
- 2.15.2 A person appointed as Deputy Panel Chairman shall (if present) act as Panel Chairman of any meeting of the Panel at which the Panel Chairman is not present, and subject to paragraph 2.15.3 may at such a meeting (and if the Panel Chairman so decides, in other circumstances in which the Panel Chairman is not available to do so) exercise such of the powers and functions of the Panel Chairman as the Panel Chairman may from time to time (by notice to all Panel Members) determine.

2.15.3 The Deputy Panel Chairman shall not exercise the power:

- (a) to appoint Panel Members under paragraph 2.5 or 2.6; or
- (b) to determine the remuneration of Panel Members under paragraph 2.11.4.

### **3. POWERS AND FUNCTIONS OF PANEL, ETC**

#### **3.1 General**

3.1.1 The Panel shall have the powers, functions and responsibilities provided in the Code and any Code Subsidiary Document.

3.1.2 Without prejudice to paragraph 3.1.1, the powers, functions and responsibilities of the Panel shall include the following:

- (a) deciding (subject to a reference to or approval of the Authority, as provided in the Code) on the expulsion or suspension of the rights of any Party pursuant to and in accordance with Section H3.2;
- (b) implementing or supervising the implementation of the procedures for modification of the Code in Section F;
- (c) establishing arrangements for the resolution of Trading Disputes in accordance with Section W;
- (d) determining values for parameters (to be applied in the Code) as may be required of the Panel in accordance with any provision of the Code;
- (e) adopting and from time to time revising Code Subsidiary Documents in accordance with Section F3;
- (f) taking steps to ensure that the Code is given effect in accordance with its terms, and (but only where expressly so provided in the Code) taking steps to ensure compliance by Parties with the provisions of the Code;
- (g) providing or arranging for the provision of reports and other information to the Authority in accordance with the further provisions of the Code;
- (h) not used;
- (i) deciding matters which (pursuant to any provision of the Code providing for such referral) are referred to it following any decision or determination of BSCCo or a BSC Agent;
- (j) setting the terms of reference for the BSC Auditor under Section H5 and considering the BSC Audit Report;
- (k) if requested by the Authority, conveying any direction or request of the Authority to any Party, BSCCo, the BSC Auditor or any BSC Agent;
- (l) preparing, considering, recommending changes (if necessary) and approving documents relating to performance assurance in accordance with Section Z and hearing and determining any Risk Management Determination Appeals; and

- (m) approving or rejecting applications for transfer of a Party's Accession Agreement and BSC Party ID in accordance with Section A; and
- (n) implementing or supervising the implementation of the procedures for BSC Sandbox Applications and monitoring BSC Derogations in accordance with Section H10.

3.1.2A Without prejudice to paragraph 3.1.1 and 3.1.2, the Panel may establish arrangements for resolving disputes pursuant to regulation 14(7) of the Warm Home Discount (Reconciliation) Regulations 2011 and regulations 14(1) to 14(5) shall apply to such arrangements with the modifications that references to an appeal shall be treated as references to a dispute and references to the Secretary of State shall be treated as references to the person appointed to resolve the dispute.

3.1.2B Where the Panel establishes a Panel Committee to resolve disputes pursuant to regulation 14(7) of the Warm Home Discount (Reconciliation) Regulations 2011 the provisions of paragraph 5 shall apply to the Panel Committee save for the application of paragraph 1.2 and for the purposes of paragraph 5.5 a decision of such a Panel Committee shall be binding on all Parties.

3.1.3 The Panel may do anything necessary for or reasonably incidental to the discharge of the functions and responsibilities assigned to it in the Code.

## **3.2 Particular powers**

3.2.1 Without prejudice to paragraphs 3.1.1 and 3.1.2, the Panel shall have the power:

- (a) to decide any matter which, under any provision of the Code, is or may be referred to the Panel for decision;
- (b) to establish Panel Committees in accordance with paragraph 5, and (subject to paragraph 5) to delegate any of the Panel's powers, functions and responsibilities to any such Panel Committee.

## **3.3 Provisions relating to data**

3.3.1 The Panel (and, unless otherwise provided in its terms of reference, any Panel Committee) may use and disclose such data as it sees fit, whether provided by or on behalf of Parties or otherwise obtained under the Code, for the purposes of discharging its functions and duties under the Code in accordance with the provisions of paragraph 1.2, but only for those purposes, and subject to paragraph 3.3.3.

3.3.2 The Panel may decide not to disclose (under any provision of the Code other than Section F) any data to any person (other than the Authority) or persons to the extent that and for so long as the disclosure of such data would, in the opinion of the Panel, substantially prejudice the interests of all Parties collectively or of a class of Parties collectively, unless otherwise directed by the Authority.

3.3.3 Where the Panel is intending (pursuant to paragraph 3.3.1) to disclose data obtained under the Code, it shall act with a view to excluding therefrom data relating to the affairs of an individual Party which is, in the Panel's opinion, commercially sensitive, unless:

- (a) the Panel considers that such data should be disclosed in order to fulfil the Panel's functions and duties under the Code in accordance with the objectives set out in paragraph 1.2.1 (other than the objective set out in paragraph 1.2.1(e)); or

- (b) the Party consents to such disclosure.
- 3.3.4 Where a Party considers that data which it is providing under the Code (other than Trading Data) is commercially sensitive and should not be disclosed based on the principle set out in paragraph 3.3.3, the Party shall identify the data as such in writing to the Panel Secretary (specifically and on a case by case basis, and explaining why it is considered to be commercially sensitive) in advance or at the time of the provision of such data, making reference to this paragraph 3.3.4.
- 3.3.5 For the avoidance of doubt, where a Party identifies data pursuant to paragraph 3.3.4, the Panel shall not be bound by the Party's view in determining whether such data is commercially sensitive or whether such data should be disclosed in accordance with paragraph 3.3.3.
- 3.3.6 If the Panel concludes that data referred to in paragraph 3.3.3 is commercially sensitive but should nonetheless be disclosed in accordance with the provisions of that paragraph, the Panel Secretary shall, where reasonably practicable, notify and discuss the timing of such disclosure with the affected Party in advance of such disclosure, and otherwise shall notify the affected Party as soon as practicable after such disclosure.
- 3.3.7 The provisions of paragraphs 3.3.3 and 3.3.9 shall not apply to the disclosure of data:
  - (a) to the Authority, BSCCo, any Panel Committee or (to the extent necessary for the purposes of the Code) any BSC Agent; or
  - (b) where the data is in the public domain; or
  - (c) where the Panel is required or permitted to disclose such data in compliance with any Legal Requirement; or
  - (d) where the disclosure of such data is expressly required under the Code.
- 3.3.8 In relation to any matter falling within the remit of the Performance Assurance Board or the Trading Disputes Committee, no data relating to the affairs of a Party and/or a Qualified Person which might reasonably be considered to be commercially sensitive shall be disclosed save as:
  - (a) expressly provided by the Code; or
  - (b) necessary to perform the functions and duties of the Performance Assurance Board or the Trading Disputes Committee respectively in accordance with the Code; or
  - (c) agreed by that Party or Qualified Person.
- 3.3.9 Notwithstanding paragraph 3.3.1, the Panel shall not be entitled to release Trading Data which, for the purposes of Section V, may only be provided to a "Relevant" Party (as defined in Section V) unless such data is released in a form in which it cannot reasonably be identified as relating to that Party.

### **3.4 Performance Assurance Board**

- 3.4.1 The Panel shall establish a Panel Committee to act as the Performance Assurance Board and the provisions of Section Z shall apply.

### **3.5 Claims Committee**

- 3.5.1 The Panel may establish a Panel Committee or Committees to be called the "Claims Committee(s)", from time to time, in accordance with paragraph 5 to determine applications for compensation made pursuant to Sections G3 and G5.

## **4. PROCEEDINGS OF PANEL**

### **4.1 Meetings**

- 4.1.1 Meetings of the Panel shall be held at regular intervals and (subject to paragraph 4.1.2) at least every month at such time and such place as the Panel shall decide.
- 4.1.2 A regular meeting of the Panel may be cancelled if:
- (a) the Panel Chairman determines that there is no business for the Panel to conduct, and requests the Panel Secretary to cancel the meeting;
  - (b) the Panel Secretary notifies all Panel Members, not less than 5 days before the date for which the meeting is or is to be convened, of the proposal to cancel the meeting, and
  - (c) by the time 3 days before the date for which the meeting is or is to be convened, no Panel Member has notified the Panel Secretary that he objects to such cancellation.
- 4.1.3 At the request of the Panel Chairman or Modification Secretary, the Panel Secretary will convene a meeting of the Panel, before the next regular meeting, in order to transact any Modification Business.
- 4.1.4 If (at the request of any Panel Member or otherwise) the Panel Chairman wishes to hold a special meeting (in addition to regular meetings under paragraph 4.1.1 and any meeting under paragraph 4.1.3) of the Panel:
- (a) he shall request the Panel Secretary to convene such a meeting and inform the Panel Secretary of the matters to be discussed at the meeting;
  - (b) the Panel Secretary shall promptly convene the special meeting for a day as soon as practicable but not less than five days after such request.
- 4.1.5 Any meeting of the Panel shall be convened by the Panel Secretary by notice to each Panel Member:
- (a) setting out the date, time and place of the meeting and (unless the Panel has otherwise decided) given at least 5 days before the date of the meeting, and
  - (b) accompanied by an agenda of the matters for consideration at the meeting and any supporting papers available to the Panel Secretary at the time the notice is given (and the Panel Secretary shall circulate to Panel Members any late papers as and when they are received by him).

- 4.1.6 Subject to paragraph 4.1.13, the Panel Secretary shall send a copy of the notice convening a meeting of the Panel, and the agenda and papers accompanying the notice (and any late papers), to the following persons, at the same time at which the notice is given to Panel Members:
- (a) the Authority or his appointed representative;
  - (b) each Party;
  - (c) any alternate of any Panel Member entitled to receive the same pursuant to paragraph 2.10.6(a)(i);
  - (d) any person appointed by a distribution-representative body in accordance with paragraph 2.13;
  - (e) any other person entitled to receive the same pursuant to any provision of the Code.
- 4.1.7 Where the Panel Secretary considers that any BSC Agent or Market Index Data Provider is or may be required to attend a meeting of the Panel, the Panel Secretary shall send to that BSC Agent or Market Index Data Provider a copy of the notice convening the meeting, and such part of the agenda and such accompanying papers as in the Panel Secretary's opinion concern that BSC Agent or Market Index Data Provider, at the same time at which the notice is given to Panel Members; provided that nothing herein creates any entitlement of any BSC Agent or Market Index Data Provider to receive such notice or papers or to attend such meeting.
- 4.1.8 Any Panel Member may notify matters for consideration at a meeting of the Panel, in addition to those notified by the Panel Secretary under paragraph 4.1.5, by notice to all Panel Members and persons entitled to receive notice under paragraph 4.1.6, not less than 3 days before the date of the meeting.
- 4.1.9 The proceedings of a meeting of the Panel shall not be invalidated by the accidental omission to give or send notice of the meeting or a copy thereof or any of the accompanying agenda or papers to, or any failure to receive the same by, any person entitled to receive such notice, copy, agenda or paper.
- 4.1.10 With the consent of all Panel Members (whether obtained before, at or after any such meeting) the requirements of this paragraph 4.1 as to the manner in and notice on which a meeting of the Panel is convened may be waived or modified; provided that no meeting of the Panel shall be held unless notice of the meeting and its agenda has been sent to the persons entitled to receive the same under paragraph 4.1.6 at least 24 hours before the time of the meeting.
- 4.1.11 Subject to paragraph 4.1.12, no matter shall be resolved at a meeting of the Panel unless such matter was contained in the agenda accompanying the Panel Secretary's notice under paragraph 4.1.5 or was notified in accordance with paragraph 4.1.8.
- 4.1.12 Where:
- (a) any other matter (not contained in the agenda or so notified) is put before a meeting of the Panel, and
  - (b) in the opinion of the Panel it is necessary (in view of the urgency of the matter) that the Panel resolve upon such matter at the meeting

the Panel may so resolve upon such matter, and the Panel shall also determine at such meeting whether the decision of the Panel in relation to such matter should stand until the next following meeting of the Panel, in which case (at such next following meeting) the decision shall be reviewed and confirmed or (but not with effect earlier than that meeting, and only so far as the consequences of such revocation do not make implementation of the Code or compliance by Parties with it impracticable) revoked.

- 4.1.13 If the Panel Secretary considers that it may not be appropriate (having regard to the principles set out in paragraph 3.3) for the agenda for any meeting of the Panel or any accompanying paper to be sent to any class of person (not including the Authority nor any alternate of a Panel Member) under paragraph 4.1.6 or to be made available to third parties on request as provided in Section H4.9:
- (a) such agenda or paper shall not be sent to persons of such class or made available, on request, to third parties at the time at which it is sent to Panel Members;
  - (b) the Panel shall consider at the meeting whether it is appropriate (having regard to the principles set out in paragraph 3.3) for such agenda or paper so to be sent or made available;
  - (c) unless the Panel decides that it is not appropriate, such agenda or paper shall be sent to persons of such class or (as the case may be) made available to third parties on request promptly following the meeting.

## **4.2 Proceedings at meetings**

- 4.2.1 Subject as expressly provided in the Code, the Panel may regulate the conduct of and adjourn and reconvene its meetings as it sees fit.
- 4.2.2 Subject to paragraphs 4.2.3 and 4.2.4, the Panel Chairman shall preside as chairman of every meeting of the Panel.
- 4.2.3 If the Panel Chairman is unable to attend a meeting:
- (a) the Deputy Panel Chairman (if appointed) shall act as chairman of the meeting;
  - (b) if the Deputy Panel Chairman is unable to attend the meeting or no Deputy Panel Chairman is appointed, the Panel Chairman shall nominate another Panel Member to act as chairman of the meeting in his place.
- 4.2.4 If the Panel Chairman or Deputy Panel Chairman or a nominee under paragraph 4.2.3 is not present within 30 minutes after the time for which a Panel Meeting has been convened (and provided the Panel Chairman or Deputy Panel Chairman or nominee, as the case may be, has not notified the Panel Secretary that he has been delayed and is expected to arrive within a reasonable time), the Panel Members present may appoint one of their number to be chairman of the meeting.
- 4.2.5 As soon as practicable after each meeting of the Panel, the Panel Secretary shall prepare and send to Panel Members the minutes of such meeting, which shall be approved (or amended and approved) at the next meeting of the Panel after they were so sent, and when approved the minutes (excluding any matter which the Panel decided was not appropriate for such publication, having regard to the principles set out in paragraph 3.3) shall be placed on the BSC Website.

### **4.3 Quorum**

- 4.3.1 No business shall be transacted at any meeting of the Panel unless a quorum is present at the meeting.
- 4.3.2 Subject to paragraph 4.3.3, a quorum shall be such number of Panel Members present in person or by their alternates as constitute more than 50% of all Panel Members.
- 4.3.3 If within 30 minutes after the time for which a Panel meeting has been convened a quorum is not present (and provided the Panel Secretary has not been notified by Panel Members that they have been delayed and are expected to arrive within a reasonable time):
- (a) the meeting shall be adjourned to the same day in the following week at the same time;
  - (b) the Panel Secretary shall give notice of the adjourned meeting as far as practicable in accordance with paragraph 4.1.5, 4.1.6 and 4.1.7;
  - (c) at the adjourned meeting, if there is not a quorum present within 30 minutes after the time for which the meeting was convened, those present shall be a quorum.

### **4.4 Voting**

- 4.4.1 At any meeting of the Panel any matter to be decided shall be put to a vote of Panel Members upon the request of the chairman of the meeting or of any Panel Member.
- 4.4.2 Subject to paragraphs 2.10.6(b), 4.4.4 and 4.4.5, in deciding any matter at any meeting of the Panel each Panel Member shall cast one vote.
- 4.4.3 Except as otherwise expressly provided in the Code, any matter to be decided at any meeting of the Panel shall be decided by simple majority of the votes cast at the meeting (and an abstention shall not be counted as a cast vote).
- 4.4.4 The Panel Chairman shall not cast a vote as a Panel Member but shall have a casting vote on any matter where votes are otherwise cast equally in favour of and against the relevant motion; provided that where any person other than the Panel Chairman is chairman of a Panel meeting he shall not have a casting vote.
- 4.4.5 The Panel Member appointed by the NETSO shall not cast a vote in relation to any decision to be taken pursuant to Section F in relation to any Modification Proposal.
- 4.4.6 A resolution in writing signed by or on behalf of all of the Panel Members entitled to vote in respect of the matter the subject of the resolution shall be valid and effectual as if it had been passed at a duly convened and quorate meeting of the Panel; and such a resolution may consist of several instruments in like form each signed by or on behalf of one or more Panel Members.
- 4.4.7 Where the Panel Chairman considers it appropriate a meeting of the Panel may be validly held by telephone conference call (or other similar means) where all the Panel members present at such meeting can speak to and hear each other; and any decision taken at such meeting shall be validly taken provided that:
- (a) the provisions of this paragraph 4 have otherwise been complied with; and
  - (b) such decision does not, subject to paragraph 4.6, relate to Modification Business.



#### **4.5 Attendance by other persons**

4.5.1 Subject to paragraph 4.5.2, any meeting of the Panel or of any Panel Committee shall be open to attendance by a representative of any Party and any other person entitled to receive notice of Panel Meetings under paragraph 4.1.6; and any person so attending such a meeting may speak if invited to do so by the chairman of the meeting, but shall not vote at the meeting.

4.5.2 Paragraph 4.5.1 shall not apply:

- (a) to meetings of the Trading Disputes Committee or those meetings of the Performance Assurance Board as stated in Section Z, or to any meeting or part of a meeting of the Panel at which a matter referred and/or appealed to the Panel pursuant to Section W3.5.1 and/or Section Z6.3 (respectively) is to be considered;
- (b) to any other meeting or part of a meeting of the Panel or a Panel Committee at which any particular matter (not including any Modification Business, but without prejudice to paragraph 4.6.1(e)) is to be considered, where the chairman of the meeting considers that it is not appropriate (having regard to the principles set out in paragraph 3.3, or on the grounds of commercial sensitivity in relation to any person which is not a Party) for such matter to be considered in open session; or
- (c) in the case of a meeting held by telephone conference or similar means in accordance with paragraph 4.4.7;

and shall not operate to prevent a resolution from being passed in accordance with paragraph 4.4.6.

4.5.3 The chairman of a meeting of the Panel or Panel Committee may invite any person to attend all or any part of the meeting, and may invite any person attending the meeting to speak at the meeting.

#### **4.6 Urgent Modification Proposals**

4.6.1 Notwithstanding anything to the contrary in the preceding provisions of this paragraph 4, in relation to any Modification Business involving an Urgent Modification Proposal (or a Modification Proposal which the Proposer or BSCCo and/or the NETSO recommend should be treated as an Urgent Modification Proposal):

- (a) the Panel Chairman shall determine the time by which, in his opinion, a decision of the Panel is required in relation to such matter, having regard to the degree of urgency in all the circumstances, and references in this paragraph 4.6 to the 'time available' shall mean the time available, based on any such determination of the Panel Chairman;
- (b) the Panel Secretary shall, at the request of the Panel Chairman, convene a meeting or meetings (including meetings by telephone conference call, where appropriate) of the Panel in such manner and on such notice as the Panel Chairman considers appropriate, and such that, where practicable within the time available, as many Panel Members as possible may attend;
- (c) each Panel Member shall be deemed to have consented, for the purposes of paragraph 4.1.10, to the convening of such meeting(s) in the manner and on the notice determined by the Panel Chairman;

- (d) paragraph 4.1.11 shall not apply to any such Modification Business;
- (e) any such meeting of the Panel may be in closed session if the Panel Chairman considers that it is not reasonably practicable or appropriate in all the circumstances to hold such meetings in open session;
- (f) where:
  - (i) it becomes apparent, in seeking to convene a Panel meeting within the time available, that a quorum will not be present; or
  - (ii) it transpires that the Panel meeting is not quorate and it is not possible to rearrange such meeting within the time available,

the Panel Chairman shall endeavour to contact each Panel Member individually in order to ascertain such Panel Member's vote, and (subject to paragraph (g)) any matter to be decided shall be decided by a majority of those Panel Members who so cast a vote;

- (g) where the Panel Chairman is unable to contact at least 4 Panel Members within the time available, the Panel Chairman may decide the matter (in consultation with the NETSO and with those Panel Members (if any) which he managed to contact) provided that the Panel Chairman shall include details in the relevant Modification Report of the steps which he took to contact other Panel Members first.

4.6.2 The measures to be undertaken by the Panel Chairman under paragraph 4.6.1 shall be undertaken by the Deputy Panel Chairman in the absence of the Panel Chairman, and in the absence of both of them by a Panel Member nominated for the purpose by the Panel Chairman after consultation with the Authority.

#### **4.7 Urgent Panel Meetings**

4.7.1 Notwithstanding anything to the contrary in the preceding provisions of this paragraph 4, if any matter (not being Modification Business) arises which, in the Panel Chairman's opinion is of a sufficiently urgent nature as to require a decision of the Panel earlier than may be possible under paragraph 4.1.10:

- (a) the Panel Chairman shall determine the time by which, in his opinion, a decision of the Panel is required in relation to such matter, having regard to the degree of urgency in all the circumstances, and references in this paragraph 4.7 to the 'time available' shall mean the time available, based on any such determination of the Panel Chairman;
- (b) the Panel Secretary shall, at the request of the Panel Chairman, convene a meeting or meetings (including meetings by telephone conference call, where appropriate) of the Panel in such manner and on such notice (but in any event not less than 1 hours notice) as the Panel Chairman considers appropriate, and such that, where practicable within the time available, as many Panel Members as possible may attend;
- (c) each Panel Member shall be deemed to have consented, for the purposes of paragraph 4.1.10, to the convening of such meeting(s) in the manner and on the notice determined by the Panel Chairman.

## **5. PANEL COMMITTEES**

### **5.1 Establishment**

- 5.1.1 Subject to paragraph 5.1.4, the Panel may establish committees for the purposes of doing or assisting the Panel in doing anything to be done by the Panel pursuant to the Code, and may decide that any such committee (other than one whose establishment is expressly provided for in the Code) shall cease to be established.
- 5.1.2 A Panel Committee may be established on a standing basis or for a fixed period or a finite purpose or otherwise as expressly provided by the Code.
- 5.1.3 Subject to paragraph 5.1.6, the Panel may delegate to any Panel Committee any of the powers, responsibilities and functions of the Panel.
- 5.1.4 A Panel Committee shall not further delegate to any person any of its powers, responsibilities and functions unless the Code or the Panel expressly permits such delegation, and then only to the extent so permitted.
- 5.1.5 The Panel shall establish a Trading Disputes Committee in accordance with Section W; and the provisions of Section W as to the Trading Disputes Committee shall prevail over, so far as in conflict or inconsistent with, those of this paragraph 5.
- 5.1.6 The Panel may not establish Panel Committees for the purpose of the discharge of the functions of the Panel under Section F in relation to Code Modifications (but without prejudice to the provisions of that Section as to Workgroups), and the provisions of this paragraph 5 shall not apply in relation to those functions.

### **5.2 Membership**

- 5.2.1 Any Panel Committee shall be composed of such persons of suitable experience and qualifications as the Panel shall decide (having regard to its duties under paragraph 1.2) and as shall be willing to serve thereon.
- 5.2.2 The members of a Panel Committee may include inter alia any Panel Member, an employee or other nominee of any Party, and any employee of BSCCo.
- 5.2.3 It is expected that each Party shall, to a reasonable level, make available suitably qualified personnel to act as members from time to time of Panel Committees.
- 5.2.4 The Authority shall be entitled to receive notice of, and to appoint one or more representatives to attend and speak, but not to vote, at any meeting of any Panel Committee.

### **5.3 Duties and terms of reference of Panel Committees**

- 5.3.1 Paragraph 1.2 shall apply in relation to any Panel Committee as it applies in relation to the Panel, and paragraph 2.8.1 shall apply in relation to each member of any Panel Committee; and the Panel may (but shall not be required to) obtain confirmation from any member of a Panel Committee and/or the employer of any such member in terms equivalent to those required by paragraph 2.8.2(a) and (b) respectively.
- 5.3.2 The Panel shall provide written terms of reference to each Panel Committee and may modify such terms of reference as the Panel shall determine (unless such terms of reference are prescribed in the Code).

## **5.4 Proceedings of Panel Committees**

- 5.4.1 The Panel may prescribe the manner in which the proceedings and business of any Panel Committee shall be conducted, including any matter which is provided for (in relation to the Panel) in paragraph 4; but the Panel may prescribe that any such matter shall be determined by the Panel Committee itself.
- 5.4.2 To the extent to which the Panel does not prescribe (in accordance with paragraph 5.4.1) the manner in which the proceedings and business of any Panel Committee shall be conducted, the provisions of paragraph 4 (other than paragraphs 4.1.1 to 4.1.4 (inclusive), 4.2, 4.4.5 and 4.6) shall apply, mutatis mutandis, in relation to that Panel Committee.

## **5.5 Decisions of Panel Committee**

- 5.5.1 Where pursuant to the Code or any Code Subsidiary Document a decision of the Panel as to any matter is to have binding effect on any Party or Parties, a decision of a Panel Committee as to that matter shall be binding on Parties only to the extent that:
- (a) the Panel has expressly delegated to the Panel Committee the relevant decision-making powers; or
  - (b) the Panel has approved the decision of the Panel Committee.
- 5.5.2 For the purposes of paragraph 5.5.1(a) the unanimous agreement of all Panel Members present and entitled to vote at the meeting at which such matter is to be decided shall be required in order to delegate the relevant decision-making powers to a Panel Committee.
- 5.5.3 Where (pursuant to paragraph 5.5.1) a decision of a Panel Committee is binding on Parties, that decision shall not be capable of being referred to the Panel unless the Panel so determined when delegating its decision-making powers to the Panel Committee.
- 5.5.4 In addition to those referred to in paragraph 5.1.6, the following decisions of the Panel shall not be delegated to a Panel Committee:
- (a) the decision to approve the Business Strategy (or any revision thereto) pursuant to Section C6.3;
  - (b) the decision to exercise any of its powers in relation to a Defaulting Party pursuant to Section H3.2;
  - (c) the decisions of the Panel as to precedence under Section H1.5 and H1.6.
- 5.5.5 For the avoidance of doubt, the delegation to a Panel Committee of any decision-making powers of the Panel shall not relieve the Panel of its general responsibility to ensure that such powers are exercised in accordance with the Code.

## **6. ANNUAL REPORTS AND ANNUAL BSC MEETING**

### **6.1 Annual report**

6.1.1 The Panel shall prepare and provide to all Parties and the Authority, no later than 30th June in each BSC Year (the "**current**" year), a report summarising the implementation of the Code and the activities of the Panel and its committees and of BSCCo in the preceding BSC Year (the "**report**" year).

6.1.2 The Annual BSC Report shall include:

- (a) a review of the operation of Settlement and the implementation of the Code generally;
- (b) a review of the implementation of the Modification Procedures and the Modification Proposals which have been subject to those procedures;
- (c) a report on the performance by each BSC Agent of its functions under the Code and pursuant to its BSC Agent Contract;
- (d) a review against the Business Strategy for that BSC Year of the activities undertaken by BSCCo, and a review against the Annual Budget for that BSC Year of the expenditure of BSCCo;
- (e) a report on the performance of each SMRS and compliance with the BSC Requirements for the MRA, and a review of arrangements (relevant to implementation of the Code) between Parties and parties to the MRA;
- (f) a report in relation to Trading Disputes as provided in Section W5.2;
- (g) a report on the performance by each Market Index Data Provider of its functions under the Code and pursuant to its Market Index Data Provider Contract;

in and in respect of the report BSC Year.

6.1.3 The report shall be accompanied by:

- (a) the Annual Report and Accounts of BSCCo for the report BSC Year;
- (b) the most recent BSC Audit Report and report of the BM Auditor; and
- (c) the Business Strategy and Annual Budget adopted by BSCCo pursuant to Section C6 for the current BSC Year.

### **6.2 Annual BSC Meeting**

6.2.1 An Annual BSC Meeting shall be held once in each BSC Year, in the month of July.

6.2.2 One or more representatives of each Party shall be entitled to attend and speak at the Annual BSC Meeting.

6.2.3 Any person entitled (other than pursuant to paragraph 4.5.1) to attend and speak at a meeting of the Panel shall be entitled to attend and speak at the Annual BSC Meeting.

6.2.4 The Panel Secretary shall convene the Annual BSC Meeting by giving not less than 28 days' notice, specifying the date, time and place of the meeting, to each Party, each Panel Member, and each person entitled to receive notice of a meeting of the Panel.

- 6.2.5 Each Panel Member (in person and not via an alternate), each Director of BSCCo and the Chief Executive of BSCCo shall attend the Annual BSC Meeting unless prevented from doing so by exceptional circumstances. The Panel Chairman (or in his absence the Deputy Panel Chairman failing whom a Panel Member nominated by the Panel) shall chair the meeting except that any part of any Annual BSC Meeting dealing with Resolutions shall be chaired by BSCCo in accordance with paragraph 3.2.1 of Annex C-2.
- 6.2.6 The purpose of the Annual BSC Meeting shall be for:
- (a) an explanation and discussion of the accounts and reports provided pursuant to paragraph 6.1 for the previous BSC Year, and the Business Strategy and Annual Budget provided pursuant to paragraph 6.1 for the current BSC Year, and a response to any questions which Parties may have in relation to them (including any questions submitted in advance pursuant to paragraph 6.2.8);
  - (b) Not used.
  - (c) Voting Parties to vote on the appointment of certain Directors in accordance with Section C4.1.9; and
  - (d) Voting Parties to vote on any Resolutions raised pursuant to Section C4.9.1 or Section C4.10.1.
- 6.2.7 Subject to paragraph 6.2.6, the Annual BSC Meeting shall not be a general meeting of BSCCo or a meeting of the Directors of BSCCo or of the Panel; and the Annual BSC Meeting shall have no power to take any decision; and no vote on any matter shall be taken at such meeting; and nothing said by any Panel Member or Director of BSCCo at such meeting shall amount to a decision of the Panel or Board of Directors of BSCCo or have any other binding effect.
- 6.2.8 Where a Party wishes the Panel, the Directors of BSCCo and/or the Chief Executive of BSCCo to address a particular question at the Annual BSC Meeting (other than a matter raised pursuant to paragraphs 6.2.6(c) or 6.2.6(d), and having regard to the purpose of the meeting as set out in paragraph 6.2.6), such Party may submit such question to BSCCo in writing in advance of such meeting and BSCCo shall copy such question to all Parties.

**ANNEX B-1: NOT USED.**

## **ANNEX B-2: ELECTION OF INDUSTRY PANEL MEMBERS**

### **1 GENERAL**

#### **1.1 Introduction**

- 1.1.1 This Annex B-2 sets out the basis for election of Industry Panel Members for the purpose of Section B2.2.
- 1.1.2 This Annex B-2 shall apply:
- (a) in relation to each year (the "**election year**") in which the term of office of Industry Panel Members expires, for the purposes of electing Industry Panel Members to hold office with effect from 1<sup>st</sup> October in that year;
  - (b) subject to and in accordance with paragraph 4, upon an Industry Panel Member ceasing to hold office before the expiry of his term of office.
- 1.1.3 For the purposes of an election under paragraph 1.1.2(a), references to Trading Parties are to persons who are Trading Parties as at 20th June in the election year.
- 1.1.4 BSCCo shall administer each election of Industry Panel Members pursuant to this Annex B-2.
- 1.1.5 In this Annex B-2 references to Panel Members are to Industry Panel Members.

#### **1.2 Election timetable**

- 1.2.1 BSCCo shall not later than 1st July in the election year prepare and circulate to all Trading Parties, with a copy to the Authority, an invitation to nominate candidates and a timetable for the election, setting out:
- (a) the date by which nominations of candidates are to be received, which shall not be less than 3 weeks after the timetable is circulated and shall be after the date of the Annual BSC Meeting;
  - (b) the date by which BSCCo will circulate a list of candidates and voting papers;
  - (c) the date by which voting papers are to be submitted, which shall not be less than 3 weeks after the date for circulating voting papers;
  - (d) the date by which the results of the election will be made known, which shall not be later than 15<sup>th</sup> September in the election year.
- 1.2.2 If for any reason it is not practicable to establish an election timetable in accordance with paragraph 1.2.1, or to proceed on the basis of an election timetable which has been established, BSCCo may establish a different timetable, or revise the election timetable, by notice to all Trading Parties, the Panel and the Authority, provided that such timetable or revised timetable shall provide for the election to be completed before 1<sup>st</sup> October in the election year.
- 1.2.3 A nomination or voting paper received by BSCCo later than the respective required date under the election timetable (subject to any revision under paragraph 1.2.2) will be disregarded in the election.

#### **1.3 Publication of Election Results**



- 1.3.1 Subject to paragraph 1.3.3, BSCCo shall as soon as reasonably practicable after the date determined in accordance with paragraph 1.2.1(d), make known the following:
- (a) the total number of voting papers received by BSCCo in accordance with paragraph 3.1, but that have not been disregarded under paragraphs 1.2.3, 3.1.4 or 3.2.6;
  - (b) the total number of first, second and third preference votes allocated to each candidate in all voting papers submitted in accordance with paragraph 3.2 and prior voting rounds;
  - (c) the total number of remaining voting papers in each voting round;
  - (d) the total number of remaining Panel Members to be elected in each voting round;
  - (e) the value of the qualifying total in each voting round; and
  - (f) the total number of qualifying preference votes allocated to each remaining candidate under all remaining voting papers in each voting round.
- 1.3.2 The provisions of paragraph 1.3.1 above shall also apply in the case of an election of any replacement Panel Member in accordance with paragraph 4.2.
- 1.3.3 Where the timetable for an election of a Panel Member is either:
- (a) revised in accordance with paragraph 1.2.2; or
  - (b) expedited in accordance with paragraph 4.2.5;
- then BSCCo shall make known the information described in paragraph 1.3.1 in accordance with such revised or expedited timetable.

## **2. CANDIDATES**

### **2.1 Nominations**

- 2.1.1 Nominations for candidates shall be made in accordance with the election timetable.
- 2.1.2 Subject to paragraph 2.1.3, each Trading Party may nominate one candidate for election by giving notice to BSCCo, accompanied by such documents as BSCCo may reasonably require in order to ascertain that the requirements of Section B2.8.2 are (or will if the candidate is elected) be satisfied.
- 2.1.3 A person shall not be nominated as a candidate:
- (a) if that person would (if a Panel Member) be required to be removed from office under Section B2.7.4(b)(ii), (iii), (iv) or (vi);
  - (b) unless his nomination is accompanied by the documents referred to in paragraph 2.1.2.
- 2.1.4 If a Trading Party nominates more than one candidate:
- (a) BSCCo shall endeavour to contact the Trading Party to establish which candidate it wishes to nominate;

- (b) if BSCCo is unable to do so it will select at random one of the nominations submitted and the others will be disregarded.

## 2.2 List of candidates

- 2.2.1 BSCCo shall draw up a list of the nominated candidates for whom the requirements of paragraph 2.1.3 are satisfied and circulate the list to all Trading Parties by the date specified in the election timetable.
- 2.2.2 The list shall specify the Trading Party by whom each candidate was nominated and any affiliations which the candidate may wish to have drawn to the attention of Trading Parties.
- 2.2.3 If five or fewer candidates (for whom the requirements of paragraph 2.1.3 are satisfied) are nominated (or where paragraph 4 applies only one such candidate is nominated), no further steps in the election shall take place and such candidate(s) shall be treated as elected and paragraph 3.2.4 shall apply in relation to such candidate(s).

## 3. VOTING

### 3.1 Voting papers

- 3.1.1 Voting papers shall be submitted in accordance with the election timetable.
- 3.1.2 Subject to paragraph 3.1.3, each Trading Party may submit one voting paper for each Energy Account which is held by that Trading Party .
- 3.1.3 Only one Trading Party (the "**voting**" Trading Party) in a trading party group may submit voting papers.
- 3.1.4 If more than one Trading Party in a trading party group submits voting papers:
  - (a) BSCCo shall endeavour to contact each of such Trading Parties to establish which of them is to be the voting Trading Party;
  - (b) if one of such Trading Parties is confirmed as the voting Trading Party by each of the Trading Parties which BSCCo contacts, that Trading Party will be the voting Trading Party;
  - (c) otherwise, BSCCo shall select at random one of such Trading Parties to be the voting Trading Party and the others will be disregarded.
- 3.1.5 For the purposes of this paragraph 3, a "**trading party group**" means a Trading Party and every Affiliate of that Trading Party.

### **3.2 Preference votes and voting rounds**

- 3.2.1 Each Trading Party submitting a voting paper shall vote by indicating on the voting paper a first, second and third preference ("**preference votes**") among the candidates.
- 3.2.2 A voting paper need not indicate a second, or a third, preference, but the same candidate may not receive more than one preference vote in a voting paper.
- 3.2.3 Candidates shall be elected in three voting rounds (together where necessary with a further round under paragraph 3.6) in accordance with the further provisions of this paragraph 3.
- 3.2.4 BSCCo will determine which candidates are elected and announce (to the Authority and all Parties) the results of the election in accordance with the election timetable.
- 3.2.5 BSCCo will not disclose the preference votes cast by individual Trading Parties; but a Trading Party may by notice to BSCCo require that the BSC Auditor scrutinise the conduct of the election, provided that such Trading Party shall bear the costs incurred by the BSC Auditor in doing so unless the BSC Auditor recommended that the election results should be annulled.
- 3.2.6 Further references to voting papers in this paragraph 3 do not include voting papers which are invalid or are to be disregarded.

### **3.3 First voting round**

- 3.3.1 In the first voting round:
- (a) the number of first preference votes allocated under all voting papers to each candidate shall be determined.
  - (b) the first round qualifying total shall be:

$$(T / N) + 1$$

where

T is the total number of first preference votes in all voting papers;

N is the number of Panel Members to be elected.

- 3.3.2 If the number of first preference votes allocated to any candidate is equal to or greater than the first round qualifying total, that candidate shall be elected.

### **3.4 Second voting round**

- 3.4.1 In the second voting round:
- (a) the remaining candidates are those which were not elected in the first voting round;
  - (b) the remaining voting papers are voting papers other than those under which the first preference votes were for candidates elected in the first voting round;
  - (c) the number of first and second preference votes allocated under all remaining voting papers to each remaining candidate shall be determined;
  - (d) the second round qualifying total shall be

$$(T' / N') + 1$$

where

T' is the total number of first preference votes and second preference votes allocated under all remaining voting papers;

N' is the number of Panel Members remaining to be elected after the first voting round.

- 3.4.2 If the number of first and second preference votes allocated to any remaining candidate is equal to or greater than the second round qualifying total, that candidate shall be elected.

### **3.5 Third voting round**

- 3.5.1 In the third voting round:

- (a) the remaining candidates are those which were not elected in the first or second voting rounds;
- (b) the remaining voting papers are voting papers other than those under which the first or second preference votes were for candidates elected in the first or second voting rounds;
- (c) the number of first, second and third preference votes allocated under all remaining voting papers to each remaining candidate shall be determined;
- (d) the third round qualifying total shall be

$$(T'' / N'') + 1$$

where

T'' is the total number of first preference votes, second preference votes and third preference votes allocated under all remaining voting papers;

N'' is the number of Panel Members remaining to be elected after the first and second voting rounds.

- 3.5.2 If the number of first, second and third preference votes allocated to any remaining candidate is equal to or greater than the third round qualifying total, that candidate shall be elected.

### **3.6 Further round**

- 3.6.1 If any Panel Member(s) remain to be elected after the third voting round:

- (a) the then remaining candidates shall be ranked in order of the number of first preference votes allocated to them, and the candidate(s) with the greatest number of such votes shall be elected;
- (b) in the event of a tie between two or more candidates within paragraph (a), the candidate(s) (among those tied) with the greatest number of second preference votes shall be elected;

- (c) in the event of a tie between two or more candidates within paragraph (b), BSCCo shall select the candidate(s) (among those tied) to be elected by drawing lots.

## **4. VACANCIES**

### **4.1 General**

- 4.1.1 If a Panel Member (the "**resigning**" Panel Member) ceases to hold office pursuant to Section B2.7.4:

- (a) not less than 6 months before the expiry of the term of his office, paragraph 4.2 shall apply;
- (b) less than 6 months before the expiry of the term of his office, paragraph 4.3 shall apply.

- 4.1.2 The provisions of paragraph 2.1.2 shall apply, mutatis mutandis, to any replacement Panel Member under this paragraph 4.

### **4.2 Replacement for not less than 6 months**

- 4.2.1 Where this paragraph 4.2 applies, a replacement Panel Member shall be elected (for the remainder of the term of office of the resigning Panel Member) in accordance with paragraph 2 and 3 but subject to the further provisions of this paragraph 4.2.
- 4.2.2 Only those Trading Parties who voted for the resigning Panel Member, or who did not vote for (and are not Affiliates of any Trading Party which voted for) any elected Panel Member still serving, shall participate in the election by nominating candidates or submitting voting papers (but without prejudice to paragraph 3.1.3).
- 4.2.3 BSCCo shall circulate to all Trading Parties a list of the Trading Parties who are to participate in the election.
- 4.2.4 For the purposes of this paragraph 4.2 a Trading Party is considered (in any election of Industry Panel Members) to have voted for an elected candidate where that Trading Party indicated a preference vote in favour of that candidate which was counted (under the first or second or third voting round or further round under paragraph 3.6, as the case may be) in electing that candidate.
- 4.2.5 The timetable for the election shall be expedited and BSCCo will prepare and obtain the Panel's approval of a timetable accordingly.

### **4.3 Replacement for less than 6 months**

- 4.3.1 Where this paragraph 4.3 applies, subject to paragraph 4.3.2, the Trading Party which nominated the resigning Panel Member shall be entitled (by notice to BSCCo) to appoint a replacement Panel Member (for the remainder of the term of office of the resigning Panel Member).
- 4.3.2 Paragraph 2.1.3 shall apply for the purposes of paragraph 4.3.1 as though references to the nomination of a candidate were to the appointment of a replacement Panel Member.
- 4.3.3 If such Trading Party does not appoint a replacement, the position shall remain vacant until the next full election.