

DRAFT LEGAL TEXT FOR PROPOSED MODIFICATION 319

SECTION B: THE PANEL (V20.0)

2. APPOINTMENT OF PANEL MEMBERS

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

Amend paragraph 2.7.4 to read as follows:

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~~1985;
 - (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.

3. POWERS AND FUNCTIONS OF PANEL, ETC

3.1 General

Amend paragraph 3.1.2 to read as follows:

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) approving the Business Strategy prepared by BSCCo for each BSC Year, and revisions to that plan;
- (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; and
- (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 ~~Plan~~Determination Appeals.

SECTION Z: PERFORMANCE ASSURANCE (V4.0)

1 INTRODUCTION

1.1 General

Amend paragraph 1.1.1 to read as follows:

1.1.1 This Section Z sets out provisions on:

- (a) the establishment of the Performance Assurance Board;
- (b) the powers, functions, duties and responsibilities of the Performance Assurance Board;
- (c) the proceedings of the Performance Assurance Board;
- (d) performance assurance procedures;
- (e) Risk Management ~~Plan~~Determination Queries and Risk Management ~~Plan~~Determination Appeals; and
- (f) the implementation of Performance Assurance Techniques.

1.3 Indemnity

Amend paragraph 1.3.1 to read as follows:

- 1.3.1 In addition to and without prejudice to paragraph 1.2.3 and Section B2.9, all Trading Parties shall jointly and severally indemnify and keep indemnified:
- (a) the Panel Committee and each member of such committee, (including, for the avoidance of doubt, their respective alternates) from and against any and all costs (including legal costs), charges, expenses, damages or liabilities incurred or suffered by it or him in acting as, and in performing the functions of, the Performance Assurance Board or (as the case may be) a member of the Performance Assurance Board;
 - (b) BSCCo, the Performance Assurance Administrator and any Panel Committee which provides advice to the Performance Assurance Board or the Performance Assurance Administrator or which undertakes work at the request of the Performance Assurance Board, and each member thereof, from and against any and all costs (including legal costs), charges, expenses, damages or liabilities incurred or suffered by it or him in providing such advice or (as the case may be) undertaking such work; and
 - (c) the Panel and each member of the Panel, (including, for the avoidance of doubt, their respective alternates) from and against any and all costs (including legal costs), charges, expenses, damages or liabilities incurred or suffered by it or him in approving proposals by the Performance Assurance Board pursuant to paragraphs 5.5.4 and 5.6.3, or hearing of Risk Management ~~Plan~~Determination Appeals pursuant to paragraph 6.3, or performing such other functions, duties and responsibilities in relation to the Performance Assurance Board that are required to be performed by the Panel or (as the case may be) a member of the Panel.

1.4 Powers and Functions of the Performance Assurance Board

Amend paragraph 1.4.1 to read as follows:

- 1.4.1 The functions of the Performance Assurance Board (the "**PAB Functions**") are:
- (a) the establishment and maintenance of the Risk Evaluation Methodology, the Risk Evaluation Register, and the Risk Operating Plan ~~and the Risk Management Plans~~ in accordance with paragraph 5;
(aa) making and revising Risk Management Determinations in accordance with paragraph 5;
 - (b) the administering of Performance Assurance Techniques in accordance with paragraph 7;
 - (c) the determination of Risk Management ~~Plan~~Determination Queries in accordance with paragraph 6;
 - (d) the preparation of the Annual Performance Assurance Report in accordance with paragraph 8.1;
 - (e) the making of recommendations to the Panel that the Code or a Code Subsidiary Document be modified in accordance with paragraph 8.2; and
 - (f) such other responsibilities and functions as the Panel may delegate to it from time to time.

2 PROCEEDINGS OF THE PERFORMANCE ASSURANCE BOARD

2.1 Panel Committee

Amend paragraph 2.1.2 to read as follows:

2.1.2 Notwithstanding paragraph 2.1.1:

- (a) notice of meetings of the Performance Assurance Board need be given only to members of it and BSCCo except that notice of a meeting within paragraph 2.1.2(h) shall be given to all Performance Assurance Parties, and notice of a meeting within paragraph 2.1.2(i) shall be given to the Performance Assurance Party referred to in that paragraph; and Section B4.1.6 shall be construed accordingly;
- (b) if any member of the Performance Assurance Board wishes to notify additional matters which he wishes to be considered at a meeting of the Performance Assurance Board he shall give notice to all other persons entitled to attend that meeting no later than three (3) Business Days before the date of the meeting (or such lesser period as the Performance Assurance Board may from time to time determine); and Section B4.1.6 shall be construed accordingly;
- (c) minutes of meetings of the Performance Assurance Board shall be confidential and copies of minutes shall be required to be provided only to those persons who were entitled to attend the relevant meeting except in the case of a meeting within paragraph 2.1.2 (i) where only an extract of the minutes for the part of the meeting which a representative of a Performance Assurance Party attends shall be given to such Performance Assurance Party; and Section B4.2.5 shall be construed accordingly;
- (d) the quorum for a meeting of the Performance Assurance Board shall be four (4) of its members present in person or by their respective alternates, and Section B4.3.2 shall be construed accordingly;
- (e) in respect of each meeting of the Performance Assurance Board:
 - (i) the Chief Executive (or his duly appointed representative) shall be entitled and obliged to attend and speak (but not to vote);
 - (ii) a representative of the Authority ~~appointed under Section B2.12~~ shall be entitled to attend and speak (but not to vote);
 - (iii) and a duly appointed representative of each of Citizens Advice and Citizens Advice Scotland shall be entitled to attend and speak (but not to vote);
- (f) upon invitation by the Performance Assurance Board, the BSC Auditor (or his or its respective duly appointed representative) may be entitled to attend and speak at meetings of the Performance Assurance Board and Section B4.5 shall not apply;
- (g) Section B1.2 shall not apply to the Panel Committee established to act as and perform the functions of the Performance Assurance Board;

- (h) in relation to any meeting of the Performance Assurance Board concerning the Risk Evaluation Register at which no confidential information is to be considered all Performance Assurance Parties and other persons entitled to receive notice of such meeting shall be invited to send a representative to such meeting but such representative shall only be entitled to speak at such meeting if so permitted by the chairperson of the meeting (such permission not to be unreasonably withheld); and
- (i) any meetings of the Performance Assurance Board concerning:
 - (i) the Risk Evaluation Register where confidential information will be considered;
 - (ii) the Risk Operating Plan;
 - (iii) any Risk Management ~~DeterminationPlan~~;
 - (iv) the Annual Performance Assurance Report;
 - (v) any Risk Management ~~DeterminationPlan~~ Query; or
 - (vi) the performance of a particular Performance Assurance Party,

shall be held in confidence and shall not be open to attendance by representatives of a Performance Assurance Party; except that where the Performance Assurance Board will discuss a Risk Management ~~DeterminationPlan~~ Query or the performance of a particular Performance Assurance Party, it may invite such Performance Assurance Party to send a representative to attend the relevant part of such meeting.

2.3 Duties of Members

Amend paragraph 2.3.1 to read as follows:

- 2.3.1 For the purposes of paragraph 2.3.2 the following matters are "**relevant matters**" in relation to a member of the Performance Assurance Board:
- (a) the performance of his employer or any Affiliate of his employer;
 - (b) the ~~making or revision~~~~preparation or modification~~ of a Risk Management ~~DeterminationPlan~~ in relation to, or a Risk Management ~~DeterminationPlan~~ Query raised by, his employer or any Affiliate of his employer;
 - (c) the application of any Performance Assurance Technique to his employer or to any Affiliate of his employer; or
 - (d) whether his employer or any Affiliate of his employer should be Qualified (or re-Qualified) and/or whether his employer or any Affiliate of his employer should have their Qualification removed.

5 PERFORMANCE ASSURANCE PROCEDURES

5.1 Settlement Risks, Performance Assurance Parties, SVA Performance Assurance Objectives and Annual Performance Assurance Timetable

Amend paragraph 5.1.1 to read as follows:

- 5.1.1 For the purposes of the Code:

- (a) a "**Settlement Risk**" is a risk of any failure or error in a step or process required under the Code (including in each case a risk which has materialised as an actual failure or an error) for the purpose of effecting Settlement or otherwise required in connection with Settlement in accordance with the provisions of the Code;
- (b) references to the significance of a Settlement Risk are to be construed in terms of both the probability of the failure or error (referred to in paragraph 5.1.1(a)) and its impact on Settlement;
- (c) a "**Performance Assurance Party**" is a Supplier, Meter Operator Agent, Data Collector, Data Aggregator, Meter Administrator, Licensed Distribution System Operator and/or a Registrant;
- (d) a Settlement Risk is "**material**" to a Performance Assurance Party where:
 - (i) there is a risk that the Performance Assurance Party may, by failing (in whole or part) to perform any obligation under the Code or any Code Subsidiary Document, cause or contribute to the occurrence of such Settlement Risk; and
 - (ii) the significance of the Settlement Risk is of a level which the Performance Assurance Board determines (in its opinion) to be material; and
- (e) a "**within-period revision**" means a revision by the Performance Assurance Board of:
 - (i) the Risk Evaluation Register; or
 - (ii) the Risk Operating Plan; ~~or,~~
 - ~~(iii) — a Risk Management Plan,~~
 as applicable in relation to a Performance Assurance Operating Period after such register or plan has been adopted for such Performance Assurance Operating Period;

Amend paragraph 5.1.4 to read as follows:

5.1.4 In the context of Supplier Volume Allocation:

- (a) the Performance Assurance Board when performing the PAB Functions under this Section Z; and
- (b) the Panel when approving the Risk Evaluation Register pursuant to paragraph 5.5.4, approving the Risk Operating Plan pursuant to paragraph 5.6.3 or hearing Risk Management Determination ~~Plan~~ Appeals pursuant to paragraph 6.3,

shall have regard to the following (so far as consistent with the provisions of the Code) save where to do so would, in the opinion of the Performance Assurance Board or Panel as applicable, substantially prejudice the interests of all Performance Assurance Parties collectively or a class of Performance Assurance Parties collectively:

- (i) the efficient, equitable and accurate allocation of energy between Suppliers resulting from the aggregated consumption of Metering Systems for which each Supplier is responsible; and

- (ii) the efficient, accurate and co-ordinated transfer of Metering Systems data by Performance Assurance Parties between Suppliers and Supplier Agents.

Amend paragraph 5.7 to read as follows:

5.7 Risk Management ~~Determination~~Plan

5.7.1 The Performance Assurance Board shall, in relation to each Performance Assurance Party, determine (in accordance with the Risk Evaluation Methodology) which Settlement Risks in the Risk Evaluation Register are material (based on class materiality and individual materiality) in relation to such Performance Assurance Party, and the Performance Assurance Techniques in the Risk Operating Plan to be applied (and the manner in which they are to be applied) in relation to such Performance Assurance Party in respect of each such Settlement Risk ("Risk Management Determination").÷

~~(a) determine (in accordance with the Risk Evaluation Methodology) which Settlement Risks in the Risk Evaluation Register are material (based on class materiality and individual materiality) in relation to such Performance Assurance Party, and the Performance Assurance Techniques in the Risk Operating Plan to be applied (and the manner in which they are to be applied) in relation to such Performance Assurance Party in respect of each such Settlement Risk; and~~

~~(b) prepare and maintain plan(s) ("Risk Management Plan") setting out such Settlement Risks and Performance Assurance Techniques in accordance with paragraph 5.7.2.~~

5.7.2 The Performance Assurance Board shall:

(a) ~~make establish~~ an initial Risk Management ~~Determination~~Plan for each Performance Assurance Party and where applicable ~~the establishment of~~ such Risk Management ~~Determination~~Plan should be ~~made done~~ in conjunction with the Performance Assurance Party (prior to the Performance Assurance Effective Date or as the case may be upon the party becoming a Performance Assurance Party); and

(b) thereafter on an ~~annual and~~ ad-hoc basis review the Risk Management Determination for each Performance Assurance Party and ~~update each such~~(where necessary) make a revised Risk Management ~~Determination~~Plan in consultation with such Performance Assurance Party.

5.7.3 Notwithstanding paragraph 5.7.2(a), the Performance Assurance Board may determine (in its opinion and with the consent of the relevant Performance Assurance Party) that separate Risk Management ~~Determinations~~Plans should be made~~are appropriate~~ in respect of distinct operating unit(s) of the Performance Assurance Party (material business unit(s)) and it:

(a) may ~~make establish~~ an initial Risk Management ~~Determination~~Plan for each material business unit:

- (i) prior to the Performance Assurance Effective Date or upon the party being a Performance Assurance Party as the case may be; or

- (ii) on or after the Performance Assurance Effective Date or after the party becomes a Performance Assurance Party as the case may be and

- (b) shall thereafter on an ~~annual and~~ ad-hoc basis review a Risk Management Determination and (where necessary) make a revised update each such Risk Management Determination Plan.

5.7.4 The Performance Assurance Board shall notify each Performance Assurance Party of a Risk Management Determination and references to the Risk Management Determination are to such determination made or revised by the Performance Assurance Board (as the case may be).~~after the approval and adoption of the Risk Operating Plan, in accordance with the Annual Performance Assurance Timetable:~~

- ~~(a) submit to each Performance Assurance Party their Risk Management Plan; and~~

- ~~(b) subject to paragraph 6, approve and adopt such Risk Management Plan,~~

~~and references to the Risk Management Plan are to such plan as so approved and adopted by the Performance Assurance Board or revised pursuant to paragraph 5.7.5, 5.7.6 or 5.7.7.~~

5.7.5 Where the Performance Assurance Board makes a within-period revision of the Risk Operating Plan, the Performance Assurance Board shall (if necessary) make a revised Risk Management Determination~~for determine and make such corresponding revisions (if any) of the Risk Management Plan of~~ each Performance Assurance Party as it considers appropriate.

5.7.6 Where there is a change in the circumstances of a Performance Assurance Party or it becomes aware of circumstances of which it was not previously aware in relation to ~~the its~~ Risk Management ~~Determination Plan that applies to that Performance Assurance Party~~, the Performance Assurance Party may request a change to its that the Performance Assurance Board make a revised Risk Management Determination Plan, by notice to the Performance Assurance Board setting out the basis (and supporting evidence) on which the Performance Assurance Party considers such revised Risk Management Determination change is justified; and the Performance Assurance Board shall consider the Performance Assurance Party's request and determine (in its discretion) whether or not the requested revised Risk Management Determination change is justified and should be made.

5.7.7 Where the Performance Assurance Board becomes aware of a change in the circumstances of a Performance Assurance Party, or of circumstances which the Performance Assurance Board was not previously aware in relation to the Risk Management ~~Determination Plan~~ of a Performance Assurance Party, the Performance Assurance Board shall be entitled to make a revised within period revision of such Risk Management Determination Plan as it considers appropriate.

5.7.8 The Performance Assurance Technique(s) to be applied ~~(in accordance with under~~ a Risk Management ~~Determination Plan)~~ in respect of any Settlement Risk shall be techniques specified as applicable to such risk in the Risk Operating Plan; but the techniques to be applied (and the manner and extent to which they are to be applied) to individual Performance Assurance Parties of the same class may vary in cases of individual materiality of Settlement Risks.

Amend paragraph 6 to read as follows:

6 RISK MANAGEMENT ~~DETERMINATION PLAN~~ QUERIES AND RISK MANAGEMENT ~~DETERMINATION PLAN~~ APPEALS

6.1 Interpretation

6.1.1 For the purposes of the Code:

- (a) a "Risk Management ~~DeterminationPlan~~ Query" means a query raised by a Performance Assurance Party ~~regarding the relevant~~~~on a part of its~~ Risk Management ~~DeterminationPlan~~ where the Performance Assurance Party disagrees with ~~any aspect of such~~~~such part of its~~ Risk Management ~~DeterminationPlan~~;
- (b) a "Query Response" means a written response from the Performance Assurance Board setting out its decision on a Risk Management ~~DeterminationPlan~~ Query given in accordance with paragraph 6.2.3; and
- (c) a "Risk Management ~~DeterminationPlan~~ Appeal" means an appeal to the Panel in accordance with paragraph 6.3.

6.2 Risk Management ~~DeterminationPlan~~ Query

6.2.1 A Performance Assurance Party may submit in writing a Risk Management ~~DeterminationPlan~~ Query to the Performance Assurance Board within ten (10) Working Days of the Performance Assurance Party receiving notice that the Performance Assurance Board has:

- (a) ~~made adopted~~ the initial Risk Management ~~DeterminationPlan~~ ~~or annually the updated Risk Management Plan as applicable~~;
- (b) ~~revised approved any within period revision of~~ the Risk Management ~~Determination~~ (except for a revision in accordance with paragraph 5.7.6) ~~Plan in accordance with paragraph 5.7.5 or paragraph 5.7.7~~; or
- (c) decided not to make any ~~revision~~~~change~~ of the Risk Management ~~Determination~~ requested by the Performance Assurance Party ~~to the Risk Management Plan~~ pursuant to paragraph 5.7.6.

6.2.2 Where a Performance Assurance Party raises a Risk Management ~~DeterminationPlan~~ Query:

- (a) it shall specify the manner in which it considers that (by reason of the query) ~~the relevant~~~~its~~ Risk Management ~~DeterminationPlan~~ should be ~~revised~~~~modified~~;
- (b) it shall at the same time send the Performance Assurance Board such evidence and information which it reasonably believes supports the Risk Management ~~DeterminationPlan~~ Query;
- (c) the Performance Assurance Board shall ensure that the Risk Management ~~DeterminationPlan~~ Query is on the agenda for the next reasonably practicable monthly meeting of the Performance Assurance Board (the "Query Meeting") and notify the Performance Assurance Party of the date of the Query Meeting;
- (d) the Performance Assurance Board shall invite (but shall not oblige) the Performance Assurance Party to send a representative to attend the relevant part of the Query Meeting;
- (e) the Performance Assurance Party shall provide any additional information reasonably requested by the Performance Assurance Board prior to the date of the Query Meeting; and

- (f) any representative of the Performance Assurance Party which attends that part of the Query Meeting shall be entitled to make representations on behalf of the Performance Assurance Party.

6.2.3 The Performance Assurance Board shall:

- (a) consider all evidence and information submitted by the Performance Assurance Party and any representations which a representative of the Performance Assurance Party makes at the Query Meeting under paragraph 6.2.2;
- (b) determine whether or not it accepts (in whole or in part) the Risk Management ~~DeterminationPlan~~ Query;
- (c) prepare and send the Performance Assurance Party the Query Response; and
- (d) to the extent to which it accepts the Risk Management ~~DeterminationPlan~~ Query; make ~~a revisedthe appropriate revision to the~~ Risk Management ~~DeterminationPlan~~.

6.2.4 The determination of the Performance Assurance Board in respect of a Risk Management ~~DeterminationPlan~~ Query shall be final and binding on the Performance Assurance Party (who shall comply with such determination) unless a Risk Management ~~DeterminationPlan~~ Appeal is submitted in accordance with paragraph 6.3.

6.2.5 The Performance Assurance Board shall adopt such procedures as it believes fit to determine the Risk Management ~~DeterminationPlan~~ Query provided that the Query Meeting shall be held in confidence and Section B4.5 shall not apply.

6.3 Risk Management ~~DeterminationPlan~~ Appeal

6.3.1 Where a Performance Assurance Party disagrees with the determination of the Performance Assurance Board in relation to a Risk Management ~~Determination~~ Query, a Risk Management ~~DeterminationPlan~~ Appeal may be submitted in writing to the Panel within ten (10) Working Days after such Performance Assurance Party received the Query Response, subject to and in accordance with this paragraph 6.3.

6.3.2 A Risk Management ~~DeterminationPlan~~ Appeal may be submitted to the Panel:

- (a) directly by the Performance Assurance Party if it is a Supplier, Registrant or a LDSO;
- (b) by a Performance Assurance Party which is a Supplier, Registrant or a LDSO on behalf of Performance Assurance Party which is a Party Agent where:
 - (i) the Party Agent has requested that the Supplier, Registrant or LDSO submits the Risk Management ~~DeterminationPlan~~ Appeal on its behalf; and
 - (ii) the Supplier, Registrant or LDSO has an interest (deemed by the Panel to be a sufficient interest) in the Settlement Risk affecting the Party Agent and the Risk Management ~~DeterminationPlan~~ Appeal,

provided that the Supplier, Registrant or LDSO shall at the same time it submits the Risk Management ~~DeterminationPlan~~ Appeal state to the Panel why it has an interest in the Settlement Risk and the Risk Management ~~DeterminationPlan~~ Appeal and provide evidence of such interest to the Panel.

6.3.3 A Risk Management ~~DeterminationPlan~~ Appeal may only be made on one or more of the following grounds:

- (a) the Performance Assurance Board has not followed the procedures for the determination of the Risk Management ~~DeterminationPlan~~ Query under this Section Z and any applicable Code Subsidiary Document;
- (b) the Performance Assurance Board has given too little or too much weight to the particular circumstances or evidence submitted or lack of circumstances or evidence submitted by the Performance Assurance Party; or
- (c) the Performance Assurance Board has misinterpreted all or some of the evidence submitted by the Performance Assurance Party.

6.3.4 Where a Risk Management ~~DeterminationPlan~~ Appeal is submitted:

- (a) the Performance Assurance Party shall at the same time provide the Panel with such evidence and information which it reasonably believes supports its Risk Management ~~DeterminationPlan~~ Appeal;
- (b) the Panel Secretary shall place the Risk Management ~~DeterminationPlan~~ Appeal on the confidential section of the agenda for the next reasonably practicable meeting of the Panel (the "**Appeal Meeting**") and shall notify the Performance Assurance Party of the date of the Appeal Meeting;
- (c) the Panel Secretary shall invite (but not oblige) the Performance Assurance Party to send a representative to attend part of the Appeal Meeting and Section B4.1.6 shall be construed accordingly;
- (d) the Performance Assurance Party shall provide any additional information reasonably requested by the Panel prior to the date of the Appeal Meeting;
- (e) any representative of the Performance Assurance Party which attends that part of the Appeal Meeting shall be entitled to make representations on behalf of that Performance Assurance Party; and
- (f) the Panel Secretary shall provide a copy of an extract of the minutes for that part of the meeting which a representative of the Performance Assurance Party attended to the Performance Assurance Party.

6.3.5 The Panel shall adopt such procedures as it believes fit to determine the Risk Management ~~DeterminationPlan~~ Appeal, and the Appeal Meeting shall be held in confidence and Section B4.5 shall not apply.

6.3.6 The Panel shall:

- (a) consider all evidence and information the Performance Assurance Party submits and any representations which a representative of the Performance Assurance Party makes at the Appeal Meeting under paragraph 6.3.4;
- (b) determine whether or not it accepts (in whole or in part) the Risk Management ~~DeterminationPlan~~ Appeal;
- (c) prepare and send the Performance Assurance Party a written response setting out its determination which it shall copy to the Performance Assurance Board; and

- (d) to the extent which it accepts the Risk Management ~~DeterminationPlan~~ Appeal, direct the Performance Assurance Board to make ~~a revised~~~~the appropriate~~ ~~revision to the~~ Risk Management ~~DeterminationPlan~~.

6.3.7 The written response of the Panel shall be final and binding on the Performance Assurance Party whose Risk Management ~~DeterminationPlan~~ was the subject of the Risk Management ~~DeterminationPlan~~ Appeal and the Performance Assurance Party shall comply with it.

6.4 General Provisions applying to Risk Management ~~DeterminationPlan~~ Queries and Risk Management ~~DeterminationPlan~~ Appeals

6.4.1 Where a Performance Assurance Party raises a Risk Management ~~DeterminationPlan~~ Query or a Risk Management ~~DeterminationPlan~~ Appeal in respect of:

- (a) the inclusion in ~~the relevant~~~~its~~ Risk Management ~~DeterminationPlan~~ of a new Performance Assurance Technique established pursuant to a BSC Modification; or
- (b) the application in ~~the relevant~~~~its~~ Risk Management ~~DeterminationPlan~~ of a Performance Assurance Technique to the Performance Assurance Party which has not, or in a manner which has not, previously been applied to such Performance Assurance Party,

the application of such Performance Assurance Technique to the Performance Assurance Party shall be suspended from the date on which the Performance Assurance Party raises the Risk Management ~~DeterminationPlan~~ Query and shall remain suspended if a Risk Management ~~DeterminationPlan~~ Appeal arises from such Risk Management ~~DeterminationPlan~~ Query until such date as the Performance Assurance Board or the Panel as applicable may determine under paragraph 6.4.3 or paragraph 6.4.4.

6.4.2 Notwithstanding the suspension of the Performance Assurance Techniques specified under paragraph 6.4.1 the Performance Assurance Board shall continue to apply the rest of the Performance Assurance Techniques set out in the more recent of:

- (a) the initial Risk Management ~~DeterminationPlan~~; or
- (b) the latest ~~revised~~~~adopted~~ Risk Management ~~DeterminationPlan~~,

of the Performance Assurance Party, provided that where the initial Risk Management ~~DeterminationPlan~~ has been ~~made~~~~adopted~~ as at the date a Risk Management ~~DeterminationPlan~~ Query or Risk Management ~~DeterminationPlan~~ Appeal has been submitted, the existing Performance Assurance Techniques applied to that Performance Assurance Party which are set out in the Code or established pursuant to the Code shall be deemed to comprise the Performance Assurance Party's Risk Management ~~DeterminationPlan~~ and shall continue to apply to it.

6.4.3 If the Performance Assurance Board in the Query Response or the Panel in its written response under paragraph 6.3.6 as the case may be determines that:

- (a) the new Performance Assurance Technique established pursuant to a BSC Modification; or
- (b) the application of a Performance Assurance Technique which has not or in a manner which it has not previously been applied shall apply to the Performance Assurance Party,

the Performance Assurance Board or the Panel as applicable shall determine the date from which the new Performance Assurance Technique(s) or the new application of the Performance Assurance Techniques shall apply.

6.4.4 If:

- (a) the Performance Assurance Board determines not to accept a Risk Management ~~DeterminationPlan~~ Query pursuant to paragraph 6.2.3(b); or
- (b) the Panel determines not to accept a Risk Management ~~DeterminationPlan~~ Appeal pursuant to paragraph 6.3.6(b),

the Performance Assurance Board or the Panel as applicable shall determine the date from which the suspension under paragraph 6.4.1 shall cease.

6.4.5 If:

- (a) the Performance Assurance Board resolves that a Risk Management ~~DeterminationPlan~~ Query; or
- (b) the Panel resolves that a Risk Management ~~DeterminationPlan~~ Appeal,

is of a vexatious or frivolous nature, the Performance Assurance Board or the Panel as applicable may require such Performance Assurance Party which has submitted the Risk Management ~~DeterminationPlan~~ Query or the Risk Management ~~DeterminationPlan~~ Appeal or on behalf of which a Risk Management ~~DeterminationPlan~~ Appeal is submitted to pay to BSCCo an amount (as from time to time approved by the Panel) towards the cost of administration of any such Risk Management ~~DeterminationPlan~~ Query and/or such Risk Management ~~DeterminationPlan~~ Appeal as applicable, and such Performance Assurance Party shall pay such amount.

Amend paragraph 7 to read as follows:

7 PERFORMANCE ASSURANCE TECHNIQUES

7.1 Administering and Implementation of Performance Assurance Techniques

7.1.1 From the Performance Assurance Effective Date, the Performance Assurance Board shall apply and implement (or cause the Performance Assurance Administrator to apply or implement) Performance Assurance Techniques in accordance with the Risk Operating Plan and each Risk Management ~~DeterminationPlan~~.

7.1.2 Without limitation, the Performance Assurance Board shall carry out the following functions, duties and responsibilities:

- (a) the conduct and administration of (including the making of determinations in relation to) the Qualification (or re-Qualification as the case may be) or the removal of Qualification of those persons referred to in Section J2.1.2, and in accordance with Section J3 and BSCP537;
- (b) the determination of whether a Supplier has failed to comply with any of the Serials and of the associated charges payable in accordance with Annex S-1 and such other functions, duties and responsibilities as are accorded to it pursuant to that Annex;
- (c) the conduct and administration of (including the making of determinations under) the performance assurance standards and tests set out or referred to in

BSCP533~~and BSCP534~~, including the conduct and administration of, and publication of the results of, any peer group comparison associated with any such performance assurance standards and tests;

- (d) the conduct and administration of (including the making of determinations under) the error and failure resolution process and requirements as set out in any relevant BSCP;
- (e) the carrying out of those functions, duties and responsibilities accorded to it in BSCP27 and BSCP535 together with such monitoring and technical assurance functions, duties and responsibilities referred to in Section L as are assigned to it by the Panel from time to time;
- (f) the carrying out of such functions, duties and responsibilities assigned to it in relation to the BSC Audit by the Panel from time to time; and
- (g) such other functions, duties and responsibilities as may be accorded to it from time to time under or pursuant to the Code.

ANNEX X-1: GENERAL GLOSSARY (V66.0)

Amend the following definitions:

"Conditional Implementation Date":

means in relation to a Modification Proposal as described in Section F1.3.5(c) the date recommended by the Panel ~~Panel~~ pursuant to Section F2.11;

"Confirmed VNNR":

has the meaning given to that term in P4A.4.~~34~~;

"Implementation Scheme":

means the programme implementation scheme designated by the Secretary of State pursuant to ~~Condition C4 of~~ the Transmission Licence and equivalent conditions of other Licences, as from time to time modified;

"Metering Point":

means the point, determined according to the principles and guidance given at schedule ~~98~~ of the Master Registration Agreement, at which a supply to (export) or from (import) a Distribution System:

- (i) is or is intended to be measured; or
- (ii) where metering equipment has been removed, was or was intended to be measured; or
- (iii) in the case of an Unmetered Supply, is deemed to be measured,

where in each case such measurement is for the purposes of ascertaining the Supplier's Settlement liabilities under the Code;

"Performance Assurance Administrator":

means the person for the time being and from time to time appointed pursuant to ~~Annex B-1~~ Section Z as the Performance Assurance Administrator for the purposes of the Code;

"Performance Assurance Effective Date":

means 1 November 2008 or such other date as may be prescribed in the Annual Performance Assurance Timetable as being the date on which the Performance Assurance Board shall ~~make~~approve each Performance Assurance Party's initial Risk Management ~~Determination~~Plan;

~~**"Risk Management Plan Appeal":**~~

~~has the meaning given to that term in Section Z6.1.1(e);~~

~~**"Risk Management Plan Query":**~~

~~has the meaning given to that term in Section Z6.1.1(a);~~

~~**"Risk Management Plan":**~~

~~has the meaning given to that term in Section Z5.7.1(b);~~

"Sole Trading Unit":

means a Trading Unit comprising a single BM Unit as described in Section K4.1.~~34~~;

Insert the following new definitions in alphabetical order:

"Risk Management Determination Appeal":

has the meaning given to that term in Section Z6.1.1(c);

"Risk Management Determination Query":

has the meaning given to that term in Section Z6.1.1(a);

"Risk Management Determination":

has the meaning given to that term in Section Z5.7.1;