

## **P207 Modification Report Attachment 1**

*INDEX (version 3.0 and redline version of P197 & P209)*

*Amend Annex B:1 of the Index as follows;*

### **Annex B-1 ~~NOT USED. Performance Assurance Board~~**

- ~~1. Establishment of the Performance Assurance Board and Indemnity~~
- ~~2. Panel or Panel Committee as Performance Assurance Board~~
- ~~3. Delegation~~
- ~~4. Responsibilities Owed to Trading Parties Alone~~
- ~~5. Functions of Performance Assurance Administrator~~
- ~~6. Liability of Performance Assurance Board and Performance Assurance Administrator~~

*Amend Annex J:1 so it is deleted in its entirety from the Index as follows;*

### **~~Annex J-1 — Qualification, the Panel and the Performance Assurance Board~~**

- ~~1. Qualification, the Panel and the Performance Assurance Board~~

*Amend the Index by the insertion at the end of the Index of a reference to the new Section Z as follows;*

## **SECTION Z: PERFORMANCE ASSURANCE**

1. Introduction
2. Proceedings of the Performance Assurance Board
3. Performance Assurance Administrator
4. Liability of Performance Assurance Board and Performance Assurance Administrator
5. Performance Assurance Procedures
6. Risk Management Plan Queries and Risk Management Plan Appeals
7. Performance Assurance Techniques
8. Further Functions and Duties

## **SECTION B: THE PANEL (version 11 and redline version of P197 & P209)**

*Insert new paragraph 1.2.4 as follows;*

- 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.

Amend paragraphs 3.1.2 (j), (k) and insert new paragraph 3.1.2 (l) as follows:

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

- (j) setting the terms of reference for the BSC Auditor under Section H5 and considering the BSC Audit Report; ~~and~~
- (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 Appeals.

Amend paragraph 3.4.1 as follows:

3.4.1 The Panel shall ~~act as, or shall~~ establish a Panel Committee to act as; the Performance Assurance Board and the provisions of Section Z~~Annex B-1~~ shall apply.

Amend paragraph 4.5.2 (a) as follows:

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;

Amend Annex B-1 as follows:

**ANNEX B-1: NOT USED.~~Performance Assurance Board~~1. ~~Establishment of the Performance Assurance Board and indemnity~~**

~~1.1 The Panel shall or shall establish a Panel Committee which shall act as, and shall perform the functions of, the Performance Assurance Board.~~

~~1.2 If the Panel establishes a Panel Committee to act as the Performance Assurance Board, the Panel shall delegate relevant decision-making powers to the committee in accordance with Section B 5.5.1(a); and shall not prescribe (pursuant to Section B5.4) the manner in which the proceedings and business of the committee are to be conducted so as to be inconsistent with the application of paragraph 2 in relation to such committee.~~

~~1.3 The costs, fees, expenses, liabilities and losses of, and all other amounts incurred or paid by, the Performance Assurance Board shall be borne or reimbursed by BSCCo.~~

~~1.4 In addition to and without prejudice to paragraph 1.3 and Section B2.9, all Trading Parties shall jointly and severally indemnify and keep indemnified:~~

- ~~(a) the Panel and each of the Panel Members, or 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; and~~

~~(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.~~

~~1.5 The Trading Parties shall, upon request, provide the members of the Performance Assurance Board, the Performance Assurance Administrator and the members of any such Panel Committee with a written deed of indemnity to that effect.~~

~~1.6 Each Party, in any capacity (other than that of an Interested Person, but as though the definition thereof excluded the words "a Party") which that Party may have, and to the fullest extent permitted by law, waives any claims against all of the bodies and persons referred to in paragraphs 1.4(a) and (b) and releases each such body and person from any liability arising from acting as or performing the functions of the Performance Assurance Board or a member thereof of providing advice or undertaking work as therein referred to.~~

~~1.7 BSCCo acknowledges and agrees that it holds the benefit of paragraphs 1.5 and 1.6 as trustee and agent for each Panel Member, the Performance Assurance Administrator and each member of a Panel Committee referred to in paragraph 1.5.~~

~~1.8 The Performance Assurance Board shall have such powers, authorities and discretions as are necessary for or incidental to the performance of the PAB Functions.~~

~~1.9 The Performance Assurance Board shall have the right to develop, implement and amend such working practices and procedures as it considers necessary or appropriate for its proper performance of the PAB Functions provided that such working practices and procedures shall not conflict with any other provisions of this Annex.~~

## ~~2. Panel or Panel Committee as Performance Assurance Board~~

~~2.1 Subject to paragraph 2.2, the following provisions of Section B shall apply in relation to the Panel, each Panel Member, the Panel Secretary, Panel Committee and each members of such a committee when the Panel or such a committee is acting as, and performing the functions of, the Performance Assurance Board: paragraphs 2.9 (indemnity), 2.10 (alternates), 3 (powers) and 4 (proceedings).~~

~~2.2 Notwithstanding paragraph 2.1, but subject to paragraph 1 of Annex J-1:~~

- ~~(a) — notice of meetings of the Performance Assurance Board need be given only to members of it and BSCCo; 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 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 shall be required to be provided only to those persons who were entitled to attend the relevant meeting; and Section B4.2.5 shall be construed accordingly;~~
- ~~(d) — the quorum for a meeting of the Performance Assurance Board shall be four of its members present in person or by their respective alternates; and Section B4.3.2 shall be construed accordingly;~~
- ~~(e) — the Chief Executive (or his duly appointed representative) shall be entitled and obliged, and the BSC Auditor (or his or its respective duly appointed representative) shall be entitled, to attend and speak (but not to vote) at meetings of the Performance Assurance Board; and Section B4.5 shall not apply; and~~
- ~~(f) — Section B1.2 shall not apply in relation to the Panel or a Panel Committee when conducting the business of the Performance Assurance Board.~~

~~2.3 — In this Annex B-1 (and in any of the provisions of Section B referred to in paragraph 2.1) a reference to a member of the Performance Assurance Board is to a Panel Member or member of a Panel Committee in the capacity of a member of the Performance Assurance Board.~~

### ~~3. — Delegation~~

~~3.1 — The Performance Assurance Board shall have the right at any time and from time to time to delegate or procure the delegation of all or any part of the day-to-day administration of the PAB Functions.~~

~~3.2 — BSCCo shall act as Performance Assurance Administrator and the Performance Assurance Board shall be deemed to have delegated to BSCCo the functions of Performance Assurance Administrator pursuant to paragraph 3.1.~~

### ~~4. — Responsibilities owed to Trading Parties alone~~

~~4.1 — The responsibilities of the Performance Assurance Board under the Code are owed exclusively to Trading Parties collectively, and to no other person.~~

### ~~5. — Functions of Performance Assurance Administrator~~

~~5.1 The Performance Assurance Administrator shall perform such functions associated with the day-to-day administration of the PAB Functions as are delegated to it from time to time by the Performance Assurance Board.~~

~~5.2 A copy of any such delegated functions will be made available by the Performance Assurance Board to members of the Performance Assurance Board and to Trading Parties on request.~~

~~5.3 The Performance Assurance Administrator shall keep confidential information that it receives in its capacity as Performance Assurance Administrator on terms agreed from time to time by it with the Performance Assurance Board (acting in accordance with Section B3.3.7).~~

## ~~6. Liability of Performance Assurance Board and Performance Assurance Administrator~~

~~6.1 The total aggregate liability of the Performance Assurance Board, each member of such board and the Performance Assurance Administrator to an Interested Person whether in contract, tort (including negligence or breach of statutory duty) or otherwise arising directly or indirectly out of or in connection with the performance or non-performance of its functions (including the contents of any opinion or report prepared by the Performance Assurance Board or the Performance Assurance Administrator) shall in no circumstances exceed £1,000,000 per claim or series of related claims.~~

~~6.2 Neither the Performance Assurance Board nor any member of such board nor the Performance Assurance Administrator shall be liable to any Interested Person for any loss of profit, loss of revenue, loss of contract, loss of goodwill or any indirect or consequential loss arising out of or in connection with the performance or non-performance of its functions.~~

~~6.3 Paragraphs 6.1 and 6.2 shall not exclude the liability of the Performance Assurance Board or a member thereof or the Performance Assurance Administrator for fraud.~~

~~6.4 The exclusions from and limitations of liability of the Performance Assurance Board, members of such board and the Performance Assurance Administrator under this Annex B-1 shall not apply to death or personal injury caused by the negligence of the relevant one of the Performance Assurance Board, such member or the Performance Assurance Administrator.~~

~~6.5 The exclusions from and limitations of liability of the Performance Assurance Board and members thereof and the Performance Assurance Administrator under this Annex B-1 are reasonable because of (amongst other matters) the likelihood that the amount of damages awardable to the Interested Person from the Performance Assurance Board or a member thereof or the Performance Assurance Administrator would otherwise be disproportionate to the charges which it makes in connection with the performance of its functions and because of the limited resources and expertise of the Performance Assurance Board and the Performance Assurance Administrator.~~

~~6.6 The exclusions from and limitations of liability of the Performance Assurance Board, each member of such board and the Performance Assurance Administrator under this~~

~~Annex B-1 shall be considered severally and the invalidity or unenforceability of any one paragraph shall not affect the validity or enforceability of any other paragraph.~~

## **SECTION F: MODIFICATION PROCEDURES (version 13)**

*Amend paragraph 2.1.1 (d) (v) and insert a new paragraph at 2.1.1 (d) (vi) as follows;*

2.1.1 A proposal to modify the Code may be made by any of the following:

- (a) a Party (other than BSCCo or the BSC Clearer);
- (b) energywatch;
- (c) such other bodies representative of interested third parties as may be designated in writing for this purpose by the Authority from time to time;
- (d) the Panel:
  - (i) on the recommendation of BSCCo in accordance with Section C3.8.8 or Section H9.8;
  - (ii) on the recommendation of BSCCo following receipt by BSCCo of a change request proposing a change to a Core Industry Document and/or the System Operator-Transmission Owner Code which would, if made, have an impact on the Code;
  - (iii) on the recommendation of BSCCo where BSCCo becomes aware of a change in circumstances, since approval of a Proposed Modification, which would make the implementation of that Approved Modification impossible or significantly more costly than anticipated at the time such Modification was approved or no longer relevant;
  - (iv) on the recommendation of BSCCo to rectify manifest errors in or to correct minor inconsistencies (or make other minor consequential changes) to the Code;
  - (v) on the recommendation of the Trading Disputes Committee in consequence of a Trading Dispute; and
  - (vi) on the recommendation of the Performance Assurance Board in accordance with Section Z8.2,

provided that, where the Panel decides to make a proposal in any of the circumstances set out in paragraphs (i) to (vi), such proposal shall be without prejudice to the Panel's decision, pursuant to paragraph 2.7, as to whether or not to recommend to the Authority that such modification should be made.

## **SECTION H: GENERAL (version 11)**

*Amend paragraph 5.1.1 as follows;*

5.1.1 The BSC Auditor shall be appointed in order to undertake, subject to paragraph 5.1.6, an operational audit in relation to each BSC Year (the "**Audit Year**") or such other period of time as the Panel may determine, on behalf of Parties (the

"BSC Audit") and such other ad hoc operational audits as the Panel may direct from time to time.

*Amend paragraph 5.1.3 as follows;*

- 5.1.3 The scope of the BSC Audit (save to the extent covered by the scope of the audit to be carried out by the BM Auditor under paragraph 5.1.6) shall include:
- (a) the submission and application of standing and periodic data, used in connection with Settlement, by Parties and Party Agents;
  - (b) the processes applied to such data pursuant to the Code and Code Subsidiary Documents;
  - (c) the determinations and calculations made by Market Index Data Providers in the provision of Market Index Data (but only to the extent provided in the relevant Market Index Data Provider Contract);
  - (d) the determinations and calculations made by BSC Agents for the purposes of Settlement;
  - (e) the systems, processes and procedures used and applied (by BSC Agents and BSCCo) for the purposes of or in connection with the foregoing.

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

*Amend paragraph 5.4.4 as follows:*

- 5.4.4 The BSC Auditor shall deliver the BSC Audit Report to the Panel, and shall send copies of the report to the Performance Assurance Board, each Trading Party, the Transmission Company and the Authority.

**SECTION J: PARTY AGENTS AND QUALIFICATION UNDER THE CODE (version 10 and redline version of P197 & P209)**

*Amend paragraph 1.4 so that it is deleted in its entirety as follows:*

- ~~**1.4 Establishment and functions of the Performance Assurance Board**~~
- ~~1.4.1 The Performance Assurance Board shall be established in accordance with Annex B-1.~~
- ~~1.4.2 The functions, duties and responsibilities of the Performance Assurance Board shall be:~~
- ~~(a) the conduct and administration of (including the making of determinations in relation to) the removal of Qualification of those persons referred to in 1.2.2, in accordance with paragraph 3 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 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; and~~

~~(e) such other functions, duties and responsibilities as may be accorded to it from time to time under or pursuant to the Code.~~

~~1.4.3 The proceedings of the Performance Assurance Board shall be conducted in accordance with the provisions of Annex B-1, as modified (in the case of its removal of Qualification functions) by Annex J-1.~~

*Amend paragraph 2.3.1 as follows;*

2.3.1 Each Party shall be required to satisfy itself as to the financial condition and prospects and the management and operational ability of any Qualified Person which it intends to appoint as its Party Agent (or as the person carrying out the functions referred to in paragraphs 1.3.2 and 1.3.4) and shall not rely on the fact of Qualification (or the lack of Qualification) as, or infer therefrom, any representation, warranty or other statement or indication on the part of the Panel, the Performance Assurance Board, the Performance Assurance Administrator, any Panel Committee or BSCCo that the Qualified Person has any or any particular financial condition or prospects or level of management or operational ability.

*Amend paragraph 3.1 as follows (and for the avoidance of doubt subparagraph 3.1.4 is to be deleted in its entirety);*

### **3.1 Performance Assurance Board**

3.1.1 The Performance Assurance Board shall be responsible, subject to and in accordance with this Section J and BSCP537, for the Qualification Process relating to those persons referred to in paragraph 2.1.2.

3.1.2 The Performance Assurance Board shall notify BSCCo when a person becomes Qualified.

3.1.3 BSCCo shall maintain an up-to-date list of each person who is Qualified and shall make a copy of such list available to any person on request.

~~3.1.4 For the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this Section J and BSCP537 in relation to the Qualification and re-Qualification Process.~~

*Amend paragraph 3.3.2 (a) and (b) as follows;*

3.3.2 Save where the person which a Party is wishing to or intending to appoint as its Party Agent is already Qualified, each Party shall:



- (a) comply with and ensure that its Party Agents (and any person it appoints to perform the functions referred to in paragraphs 1.3.2 and 1.3.4) comply with the relevant Qualification Requirements and the relevant requirements of the Qualification Process such that the Performance Assurance Board can properly determine whether the relevant person should be Qualified; and
- (b) if applicable, co-operate with and ensure that its Party Agents (and any person it appoints to perform the functions referred to in paragraphs 1.3.2 and 1.3.4) co-operate with the Performance Assurance Board, the Performance Assurance Administrator, BSCCo, the Panel and/or any Panel Committee in the execution of their duties.

*Amend paragraph 3.3.6 as follows;*

- 3.3.6 The Applicant's application to Qualify shall not be accepted or considered until the Applicant has agreed to be bound by and to comply with the Code and has executed, in the case of a Party, the Framework Agreement and, in the case of any other Applicant, a letter agreement in the form and content satisfactory to the Performance Assurance Board.

*Amend paragraph 3.3.9 (c) as follows;*

- 3.3.9 Where the Applicant is also required to undertake the Entry Assessment under the MRA (as defined in the MRA):

- (c) where BSCCo or the Performance Assurance Board have been provided, by or on behalf of the Applicant, with any information, self assessment document, documentation and/or evidence or verification relating thereto (including any test results) which the Applicant has produced for or in relation to its Entry Assessment under the MRA (or for any other relevant industry body), BSCCo or the Performance Assurance Board may when considering:

- (i) the Qualification Document submitted by the Applicant; or
- (ii) whether any further information is required, and if so, the nature of such further information; or
- (iii) whether any evidence or verification (or further evidence or verification) of information contained in the Qualification Document is required including, without limiting the generality of the foregoing, whether any testing or further testing (including systems and communications testing) is required and if so, the nature of such testing or further testing,

take into account such information, self assessment document, documentation and/or evidence or verification relating thereto (including any tests results).

*Amend paragraphs 3.3.10 to 3.3.19 (inclusive) as follows:*

- 3.3.10 When BSCCo is satisfied that the Applicant has fully completed the Qualification Document and provided all appropriate information, documentation, evidence and verification, BSCCo shall provide the Performance Assurance Board with a report in relation to the Applicant's application for Qualification and make a recommendation to the Performance Assurance Board in relation to the same.

The report may include, where appropriate, a recommendation as to whether the Applicant has fully completed the Qualification Document.

3.3.11 BSCCo shall, at the same time as it provides the Performance Assurance Board with its report and recommendation referred to in paragraph 3.3.10, provide a copy of the same to the Applicant.

3.3.12 The Applicant shall be entitled to:

- (a) request the Performance Assurance Board to provide advice or clarification or seek endorsement of the plans described in the Qualification Document; and/or
- (b) in the circumstances described in BSCP537, request the Performance Assurance Board to determine its application for Qualification if the Applicant (acting reasonably) considers that it has satisfied the Qualification Requirements and has completed the Qualification Process.

3.3.13 Subject to paragraphs 3.3.6 and 3.3.14, upon receipt of the report and recommendation referred to in paragraph 3.3.10 or the request from the Applicant referred to in paragraph 3.3.12 (b) the Performance Assurance Board, in accordance with the relevant provisions of the Code and BSCP537, shall make a determination as to whether:

- (a) the Applicant's application for Qualification shall be accepted; or
- (b) the Applicant's application for Qualification shall be accepted, but shall also determine that ~~the Panel requires~~ certain matters are to be complied with or addressed including without limitation a requirement that the Applicant shall undergo a technical assurance check. ~~if the Panel makes such a requirement then the Performance Assurance Board shall ensure that such technical assurance check is completed;~~ or
- (c) the Applicant's application for Qualification shall be deferred (including so that the Applicant can provide further information, documentation, evidence, verification and/or testing) until such time as the Applicant can establish that it has satisfactorily completed the Qualification Process and met the Qualification Requirements.

3.3.14 Without limiting the generality of paragraph 3.3.13(b), the Performance Assurance Board may, where it considers that the Applicant has sufficiently completed the Qualification Process and met the Qualification Requirements despite there being matters or requirements of an insignificant or non-material nature which may not have been fully completed or met by the Applicant, accept the Applicant's application for Qualification but shall also determine that the Applicant completes or meets such matters or requirements to the satisfaction of the Performance Assurance Board at a later date with such later date being mutually agreed between the Applicant and the Performance Assurance Board.

3.3.15 The Applicant may attend that part of a meeting convened by the Performance Assurance Board at which the Applicant's application for Qualification is being presented.

- 3.3.16 The Performance Assurance Board shall ensure that copies of the latest version of this Section J and BSCP537 are made available to the Applicants.
- 3.3.17 Without limiting the generality of paragraph 3.3.11, the Performance Assurance Board shall:
- (a) (unless the Applicant has already been provided with such reports) provide each Applicant with, or arrange for each Applicant to be provided with, a copy of all reports submitted to it by BSCCo in relation to such Applicant's application for Qualification at the same time as the Performance Assurance Board notifies such Applicant whether its application for Qualification has been accepted; and
  - (b) be under no obligation to provide an Applicant with, or arrange for it to be provided with, a copy of any such report at any time before it gives such notification.
- 3.3.18 The Performance Assurance Board shall make available to the Authority all information held by the Performance Assurance Board which the Authority reasonably requires for the purposes of making any determination pursuant to paragraph 3.7.
- 3.3.19 The provisions of Section ZAnnex J-1 shall apply to proceedings of the Performance Assurance Board concerning Qualification pursuant to this Section J.

*Amend paragraph 3.5.4 as follows;*

- 3.5.4 Where the Performance Assurance Board is of the opinion (acting reasonably) that a Qualified Person must re-Qualify for whatever reason (including but not being limited to that Qualified Person having a number of non compliances identified in relation to it) then such person must undertake re-Qualification in accordance with this paragraph 3.5.

*Amend paragraph 3.6.1 as follows;*

- 3.6.1 The Performance Assurance Board shall determine and publish to Applicants, Qualified Persons (and such other persons who reasonably request the same) a Menu of Qualification Fees which may be charged by the Performance Assurance Board for the purposes of Qualification (or re-Qualification), and the Performance Assurance Board shall have the right to revise such fees from time to time.

*Amend paragraphs 3.7.1 and 3.7.2 as follows;*

- 3.7.1 The sole and exclusive remedy of an Applicant who is dissatisfied with any decision of ~~the Panel and/or~~ the Performance Assurance Board in relation to Qualification, re-Qualification or removal of Qualification (as the case may be) (the "**Dissatisfied Person**") shall be to refer the matter to the Authority in accordance with this paragraph 3.7 for determination.
- 3.7.2 For a referral to be valid pursuant to paragraph 3.7.1, the Dissatisfied Person must:
- (a) refer the matter for determination to the Authority in writing (with a copy to the Panel or the Performance Assurance Board in respect of a decision relating to removal of Qualification) no later than 14 days after

receipt by the Dissatisfied Person of the relevant decision of ~~the Panel or~~ the Performance Assurance Board; and

- (b) set out in its referral to the Authority (with reasons in support) the ground or grounds on which the Dissatisfied Person is making its application to the Authority which shall be one or more of the following (and no other):-
- (i) that ~~the Panel or~~ the Performance Assurance Board has not followed the procedures set out in ~~this~~ Section J, Section Z and/or BSCP537; or
  - (ii) that ~~the Panel or~~ the Performance Assurance Board has given undue weight to particular evidence submitted or to the lack of particular evidence; or
  - (iii) that ~~the Panel or~~ the Performance Assurance Board has misinterpreted all or some of the evidence submitted in connection with such application; or
  - (iv) that, notwithstanding any restrictions that the Panel may place on the Performance Assurance Board in respect of any decision relating to the removal of Qualification as to how it is to assess and decide the matter, the Performance Assurance Board should not have taken into account the failure by the Dissatisfied Person to satisfy one or more specified requirements as set out in paragraph 3.4 or BSCP537.

*Amend paragraph 3.7.7 as follows;*

3.7.7 For the avoidance of doubt, neither Section H7 nor Section H8 shall apply in the case where a Qualified Person is dissatisfied with any decision of the ~~Panel or the~~ Performance Assurance Board referred to in paragraph 3.7.1.

*Amend paragraph 3.8 as follows;*

3.8.1 Applicants shall agree to be bound by the Qualification Process, the provisions of ~~this~~ Section J, Section Z and/or BSCP537 ~~and the provisions of Annex B-1~~.

3.8.2 Each Applicant and each Qualified Person represents, warrants and undertakes to BSCCo (for itself and as trustee and agent for each other Party, the Panel, the Performance Assurance Board, any Panel Committee ~~and/~~ or the Performance Assurance Administrator) that:

- (a) all information supplied by or on behalf of the Applicant or Qualified Person to the Panel, the Performance Assurance Board, any Panel Committee, BSCCo or the Performance Assurance Administrator in connection with the Qualification Process is true, complete and accurate and not misleading because of any omission or ambiguity or for any other reason, subject to disclosure, if any, acceptable to the Performance Assurance Board ~~and~~ being made in advance of the provision of the relevant information to the Panel, the Performance Assurance Board, any Panel Committee, BSCCo or the Performance Assurance Administrator;

3.8.3 Without prejudice to the generality of paragraph 3.8.2, each Applicant and each Qualified Person shall confirm in writing to BSCCo (for itself and on behalf of the each other Party, the Panel, the Performance Assurance Board, the Performance Assurance Administrator and/or any Panel Committee) in accordance with BSCP537 that each of the other representations, warranties and undertakings in this paragraph 3.8 are true and have been complied with as at the date on which it has been notified that its application(s) for Qualification will be considered by ~~the Panel~~the Performance Assurance Board.

3.8.4 Each Applicant and each Qualified Person shall co-operate fully with the Panel, BSCCo, the Performance Assurance Board, the Performance Assurance Administrator and/or any Panel Committee, in the Qualification Process and, without prejudice to the generality of the foregoing, shall permit each of them reasonable access to the Applicant's or Qualified Person's business records, working papers and employees for the purposes of the Qualification Process upon not less than three Business Days' advance notice.

3.8.5 Each Applicant and Qualified Person acknowledges and agrees that:

- (a) it shall not, and shall not be entitled to, place any reliance on any working papers, opinion, statement, comment, report or other documentation prepared by or for (or any oral or written interpretation of, or any oral or written advice given in relation to, any such working papers, opinion, report or other documentation by or for) BSCCo, the Panel, the Performance Assurance Board, the Performance Assurance Administrator and/or any Panel Committee in connection with the Qualification Process unless such working papers, opinion, statement, comment, report or other documentation is expressly addressed to such Applicant or Qualified Person; and
- (b) it shall keep confidential on the terms set out in Section H4.2 any working papers, opinions, statements, reports or other documentation referred to in paragraph (a) unless such working papers, opinions, statements, reports or other documentation is expressly addressed to such Applicant or Qualified Person.

3.8.6 It shall be a condition of any Qualification that the Qualified Party complies with the provisions of this Section J and of BSCP537.

*Amend paragraph 3.10.2 as follows:*

3.10.2 A Qualified Person shall not surrender its Qualification (and any surrender notice given seeking to do so shall be ineffective) if the Performance Assurance Board~~and~~ considers that it would be inappropriate for such surrender to take place including but not limited to reasons such as:

*Amend paragraph 7.1.2 as follows:*

7.1.2 The performance of Party Agents, SMRAs and/or a Licensed Distribution System Operators acting in their capacity as an Unmetered Supplies Operators shall be determined by the Performance Assurance Board in accordance with the process and techniques described in Section Z and any~~the~~ relevant BSC Procedures to the extent applicable to such person.

Amend Annex J-1 so that it is deleted in its entirety as follows;

~~**ANNEX J-1: QUALIFICATION, THE PANEL AND THE PERFORMANCE ASSURANCE BOARD**~~

~~**1. QUALIFICATION, THE PANEL AND THE PERFORMANCE ASSURANCE BOARD**~~

~~**1.1 Modification of Proceedings**~~

~~1.1.1 The provisions of this Annex J-1 apply by way of supplement and qualification to other provisions in the Code, relating to matters concerning the Qualification, re-Qualification or removal of Qualification of any person referred to in paragraph 2.1.1.~~

~~1.1.2 Notice of meetings in relation to Qualification, re-Qualification or removal of Qualification shall additionally be given to:~~

~~(a) the Performance Assurance Administrator; and~~

~~(b) insofar as concerns the Qualification, re-Qualification or removal of Qualification of any person, that person (such notice constituting an invitation to that person to attend that meeting).~~

~~1.1.3 If the Performance Assurance Administrator wishes to advise additional matters which it wishes to be considered at a meeting of the Panel or Performance Assurance Board, it shall give notice to all other persons entitled to attend that meeting no later than three Business Days before the date of the meeting (or such lesser period as the Panel or Performance Assurance Board may from time to time determine).~~

~~1.1.4 Insofar as concerns the Qualification, re-Qualification (or removal of Qualification) of any person, a copy extract of that part of the minutes of the relevant meeting as relates to such matter shall additionally be given to that person.~~

~~1.1.5 The Performance Assurance Administrator (or its respective duly appointed representative) shall have the right to attend and speak (but not to vote) at meetings in relation to Qualification, re-Qualification or removal of Qualification.~~

~~1.1.6 In relation to removal of Qualification, a member of the Performance Assurance Board shall not:~~

~~(a) participate as a member of the Performance Assurance Board in the consideration of whether his employer or of any Affiliate of his employer should have their Qualification removed; or~~

~~(b) be counted in ascertaining whether a quorum is present at a meeting of the Performance Assurance Board convened to consider whether his employer or of any Affiliate of his employer should have their Qualification removed; or~~

~~(c) be entitled to receive any working papers, opinions, reports or other documentation which have been prepared for the Performance Assurance Board in connection with the removal of Qualification~~

~~Process insofar as they relate specifically to his employer or any Affiliate of his employer.~~

~~1.1.7 In relation to removal of Qualification, a member of the Performance Assurance Board shall not disclose to his employer or any Affiliate of his employer confidential information which he has received in his capacity as a member of the Performance Assurance Board unless:~~

- ~~(a) required to do so by any Legal Requirement;~~
- ~~(b) in order for his employer or any such Affiliate to comply with the conditions of any Licence with which his employer or any such Affiliate, as the case may be, is required to comply;~~
- ~~(c) required to do so by any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or~~
- ~~(d) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to him or his employer or any such Affiliate, as the case may be,~~

~~in any of which events the member of the Performance Assurance Board shall first be required to give written notice of the required disclosure to the Performance Assurance Board.~~

## ~~1.2 Delegation~~

~~1.2.1 In relation to removal of Qualification, the Performance Assurance Board shall not have the right to delegate the taking of any decision as to whether to remove a Qualified Person Qualification.~~

## ~~1.3 Interpretation~~

~~1.3.1 In this Annex J-1 (and in any of the provisions of Section J) a reference to a member of the Performance Assurance Board is to a Panel Member or member of a Panel Committee in the capacity of a member of the Performance Assurance Board.~~

### **SECTION ANNEX K-1: MASTER REGISTRATION AGREEMENT (version 23 and redline versions of P197 & P209)**

*Amend paragraph 3.1.1 as follows;*

3.1.1 Each Licensed Distribution System Operator shall ensure that it has satisfied the requirements of the SMRS Entry Process in accordance with BSCP53+7 before allowing its Supplier Meter Registration Service to provide services in relation to Supplier Volume Allocation.

### **SECTION L: METERING (version 11)**

*Amend paragraph 7.3.3 as follows;*

7.3.3 Until the Performance Assurance Effective Date, tThe sample ~~shall be~~ selected shall be consistent with the following principles:

- (a) the sample shall allow for:
  - (i) inspection ("**targeted inspection**") of a number of Metering Systems in relation to which non-compliance is suspected, as notified by BSCCo to the TAA or on the basis of the information provided to the TAA by other persons; and/or
  - (ii) inspection ("**re-inspection**") of a number of Metering Systems in relation to which non-compliance was previously identified and has subsequently been reported to have been rectified by the Registrant;

*Insert new paragraph 7.3.4 as follows;*

7.3.4 From the Performance Assurance Effective Date the Panel may determine with respect to the sample of Metering Systems to be selected by the TAA under paragraph 7.3.2:

(a) which of the principles set out in paragraph 7.3.3 shall apply; and/or

(b) such further principles as are appropriate which shall apply.

provided that unless if the Panel decides otherwise with respect to paragraph 7.3.3 (c) the sample shall not be biased towards any one Registrant, Meter Operator Agent, GSP Group or type of Metering Equipment.

*Amend paragraph 7.5 as follows;*

7.5.1 The TAA shall determine in respect of those matters or things (including those associated with or connected to a Metering Systems) which it has been requested to inspect, that ~~a Metering Systems~~ such matter or thing is non-compliant if, after taking account of any applicable Metering Dispensations, the requirements of the Code and the relevant Code(s) of Practice are not being adhered to and/or ~~and~~ if configurable meter parameters are not consistent with the Meter Technical Details supplied by the Registrant.

7.5.2 Where a non-compliance has been determined in accordance with paragraph 7.5.1 ~~Metering System has been determined to be non-compliant~~ the Registrant shall:

- (a) ensure that the non-compliance is rectified, to the extent to which it can be rectified directly by the Meter Operator Agent;
- (b) otherwise, take all reasonable steps to ensure that a person which can directly rectify the non-compliance does so.

7.5.3 Following the rectification of a non-compliance (as determined in accordance with paragraph 7.5.1) ~~Metering System~~ which is materially non-compliant, BSCCo shall, where in its discretion it considers it appropriate to do so having regard to the nature of such rectification, require the Registrant to carry out the relevant Code of Practice Four tests and validation testing in accordance with the relevant BSC Procedures and the TAA may attend and/or request details of any such testing carried out.

7.5.4 For the purposes of paragraph 7.5.3, a non-compliance (as determined in accordance with paragraph 7.5.1) ~~Metering System~~ is "materially non-compliant" if the TAA considers that the non-compliance ~~of that Metering System~~ is likely to affect the quality of data used in Settlement.



7.5.5 The Registrant of a Metering System determined by the TAA to be non-compliant (or of a Metering System in respect of which a matter or thing has been determined to be non-compliant in accordance with paragraph 7.5.1) following an inspection may refer to the Panel the question of whether the requirements referred to in paragraph 7.5.1 are being adhered to in relation to the Metering System.

*Amend paragraph 7.6.2 as follows;*

7.6.2 Where a non-compliance has been Metering System is determined in accordance with paragraph 7.5.1 by an inspection to be non-compliant, the TAA shall provide the Registrant with a report detailing the areas of non-compliance.

## **NEW SECTION TO THE CODE**

*Insert a new Section Z to the Code as follows;*

### **SECTION Z: PERFORMANCE ASSURANCE**

#### **1 Introduction**

##### **1.1 General**

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 Queries and Risk Management Plan Appeals; and
- (f) the implementation of Performance Assurance Techniques.

##### **1.2 Performance Assurance Board**

1.2.1 The Panel shall establish a Panel Committee which shall act as, and shall perform the functions of, the Performance Assurance Board.

1.2.2 The Panel shall delegate relevant decision-making powers to the Performance Assurance Board in accordance with Section B 5.5.1(a); and shall not prescribe (pursuant to Section B5.4) the manner in which the proceedings and business of the committee are to be conducted so as to be inconsistent with the application of paragraph 2 in relation to such committee.

1.2.3 The costs, fees, expenses, liabilities and losses of, and all other amounts incurred or paid by, the Performance Assurance Board shall be borne or reimbursed by BSCCo.

##### **1.3 Indemnity**

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 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.

1.3.2 The Trading Parties shall, upon request, provide the members of the Panel, Performance Assurance Board, the Performance Assurance Administrator and the members of any Panel Committee which provides advice to the Performance Assurance Board with a written deed of indemnity to that effect.

1.3.3 Each Party, in any capacity (other than that of an Interested Person, but as though the definition thereof excluded the words "a Party") which that Party may have, and to the fullest extent permitted by law, waives any claims against all of the bodies and persons referred to in paragraph 1.3.1 and releases each such body and person from any liability arising from acting as or performing the functions of the Performance Assurance Board or a member thereof or providing advice or undertaking work as therein referred to.

1.3.4 BSCCo acknowledges and agrees that it holds the benefit of paragraphs 1.3.2 and 1.3.3 as trustee and agent for each member of the Performance Assurance Board, each Panel member, the Performance Assurance Administrator and each member of a Panel Committee referred to in paragraph 1.3.2.

#### **1.4 Powers and functions of the Performance Assurance Board**

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, the Risk Operating Plan and the Risk Management Plans in accordance with paragraph 5;
- (b) the administering of Performance Assurance Techniques in accordance with paragraph 7;
- (c) the determination of Risk Management Plan 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.

1.4.2 The Performance Assurance Board shall have such powers, authorities and discretions as are necessary for or incidental to the performance of the PAB Functions and such other powers that are delegated to it by the Panel from time to time.

1.4.3 The Performance Assurance Board shall have the right to develop, implement and amend such working practices and procedures as it considers necessary or appropriate for its proper performance of the PAB Functions provided that such working practices and procedures shall not conflict with any other provisions of this Section Z.

## **1.5 Delegation**

1.5.1 The Performance Assurance Board shall have the right at any time and from time to time to delegate or procure the delegation of all or any part of the day-to-day administration of the PAB Functions.

1.5.2 BSCCo shall act as Performance Assurance Administrator and the Performance Assurance Board shall be deemed to have delegated to BSCCo the functions of Performance Assurance Administrator pursuant to paragraph 1.5.1.

1.5.3 The Performance Assurance Board shall not have the right to delegate any decision as to whether an Applicant should be Qualified (or re-Qualified) or as to whether an Applicant's Qualification should be removed.

## **1.6 Responsibilities owed to Trading Parties alone**

1.6.1 The responsibilities of the Performance Assurance Board under the Code are owed exclusively to Trading Parties collectively, and to no other person.

## **2 Proceedings of the Performance Assurance Board**

### **2.1 Panel Committee**

2.1.1 Subject to paragraph 2.1.2, the following provisions of Section B shall apply in relation to the Panel Committee and each member of such Panel Committee when it is acting as, and performing the functions of, the Performance Assurance Board: paragraphs 2.9 (indemnity), 2.10 (alternates), 3 (powers) and 4 (proceedings).

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) the Chief Executive (or his duly appointed representative) shall be entitled and obliged to attend and speak (but not to vote) at meetings of the Performance Assurance Board; a representative of the Authority appointed under Section B2.12; and a duly appointed representative of energywatch shall also 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 Plan;

(iv) the Annual Performance Assurance Report;

(v) any Risk Management Plan 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 Plan 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.

## **2.2 Modification of Proceedings in relation to Qualification**

2.2.1 This paragraph 2.2 applies by way of supplement and qualification to this Section Z, relating to matters concerning Qualification, re-Qualification or removal of Qualification of any person referred to in paragraph Section J 2.1.1.

2.2.2 Notice of meetings in relation to Qualification, re-Qualification or removal of Qualification shall additionally be given to:

- (a) the Performance Assurance Administrator; and
- (b) insofar as concerns the Qualification, re-Qualification or removal of Qualification of any Applicant, a representative of that Applicant (such notice constituting an invitation to the Applicant that they may send a representative to attend part of such meeting).

2.2.3 If the Performance Assurance Administrator wishes to advise additional matters which it wishes to be considered at a meeting of the Performance Assurance Board, it 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).

2.2.4 Insofar as concerns the Qualification, re-Qualification (or removal of Qualification) of any Applicant, a copy extract of that part of the minutes of the relevant meeting as relates to such matter shall additionally be given to that Applicant.

2.2.5 The Performance Assurance Administrator (or its duly appointed representative) shall have the right to attend and speak (but not to vote) at meetings of the Performance Assurance Board in relation to Qualification, re-Qualification or removal of Qualification.

## **2.3 Duties of Members**

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 preparation or modification of a Risk Management Plan in relation to, or a Risk Management Plan 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.

2.3.2 A member of the Performance Assurance Board shall not:

- (a) participate as a member of the Performance Assurance Board in the consideration of any relevant matter;

(b) be counted in ascertaining whether a quorum is present at a meeting of the Performance Assurance Board convened to consider any relevant matter; or

(c) be entitled to receive any working papers, opinions, reports or other documentation which have been prepared for the Performance Assurance Board in connection with any relevant matter insofar as they relate specifically to his employer or any Affiliate of his employer.

2.3.3 A member of the Performance Assurance Board shall not disclose to his employer or any Affiliate of his employer confidential information which he has received in his capacity as a member of the Performance Assurance Board unless required to do so:

(a) by any Legal Requirement;

(b) in order for his employer or any such Affiliate to comply with the conditions of any Licence with which his employer or any such Affiliate, as the case may be, is required to comply;

(c) by any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or

(d) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to him or his employer or any such Affiliate, as the case may be,

in any of which events the member of the Performance Assurance Board shall first be required to give written notice of the required disclosure to the Performance Assurance Board.

2.3.4 In this Section Z (and in any of the provisions of Section B referred to in paragraph 2.1.1) a reference to a member of the Performance Assurance Board is to a member of a Panel Committee in the capacity of a member of the Performance Assurance Board.

### **3 Performance Assurance Administrator**

#### **3.1 Functions of Performance Assurance Administrator**

3.1.1 The Performance Assurance Administrator shall perform such functions associated with the day-to-day administration of the PAB Functions as are delegated to it from time to time by the Performance Assurance Board.

3.1.2 A copy of any such delegated functions will be made available by the Performance Assurance Board to members of the Performance Assurance Board and to Trading Parties on request.

#### **3.2 Confidentiality**

3.2.1 The Performance Assurance Administrator shall keep confidential information that it receives in its capacity as Performance Assurance Administrator on terms agreed from time to time by it with the Performance Assurance Board (acting in accordance with Section B3.3.7).

## 4 Liability of Performance Assurance Board and Performance Assurance Administrator

### 4.1 Limit and Exclusion of Liability

4.1.1 The total aggregate liability of the Performance Assurance Board, each member of such board and the Performance Assurance Administrator to an Interested Person whether in contract, tort (including negligence or breach of statutory duty) or otherwise arising directly or indirectly out of or in connection with the performance or non-performance of its functions (including the contents of any opinion or report prepared by the Performance Assurance Board or the Performance Assurance Administrator) shall in no circumstances exceed £1,000,000 per claim or series of related claims.

4.1.2 Neither the Performance Assurance Board nor any member of such board nor the Performance Assurance Administrator shall be liable to any Interested Person for any loss of profit, loss of revenue, loss of contract, loss of goodwill or any indirect or consequential loss arising out of or in connection with the performance or non-performance of its functions.

### 4.2 Further Provisions

4.2.1 Paragraphs 4.1.1 and 4.1.2 shall not exclude the liability of the Performance Assurance Board or a member thereof or the Performance Assurance Administrator for fraud.

4.2.2 The exclusions from and limitations of liability of the Performance Assurance Board, members of such board and the Performance Assurance Administrator under this Section Z shall not apply to death or personal injury caused by the negligence of the relevant one of the Performance Assurance Board, such member or the Performance Assurance Administrator.

4.2.3 The exclusions from and limitations of liability of the Performance Assurance Board and members thereof and the Performance Assurance Administrator under this Section Z are reasonable because of (amongst other matters) the likelihood that the amount of damages awardable to the Interested Person from the Performance Assurance Board or a member thereof or the Performance Assurance Administrator would otherwise be disproportionate to the charges which it makes in connection with the performance of its functions and because of the limited resources and expertise of the Performance Assurance Board and the Performance Assurance Administrator.

4.2.4 The exclusions from and limitations of liability of the Performance Assurance Board, each member of such board and the Performance Assurance Administrator under this Section Z shall be considered severally and the invalidity or unenforceability of any one paragraph shall not affect the validity or enforceability of any other paragraph.

## 5 Performance Assurance Procedures

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

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;

(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;

5.1.2 A Settlement Risk may be material to a Performance Assurance Party by reason of factors or circumstances:

(a) relating to Performance Assurance Parties of a class to which the Performance Assurance Party belongs ("**class materiality**") ; or

(b) relating to the Performance Assurance Party individually ("**individual materiality**").

5.1.3 All Settlement Risks which affect Central Volume Allocation shall be deemed to be significant in terms of both probability of failure and impact on Settlement.

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 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.

## **5.2 Annual Performance Assurance Timetable**

5.2.1 The Panel shall establish and may from time to time revise an annual timetable ("**Annual Performance Assurance Timetable**") for the carrying out in relation to each Performance Assurance Operating Period of the procedures in paragraphs 5.4 to 5.7.

5.2.2 The Annual Performance Assurance Timetable shall be published on the BSCCo website.

## **5.3 Performance Assurance Techniques**

5.3.1 The Panel shall prepare, and may from time to time amend, a list setting out those provisions of the Code, and/or processes established pursuant to provisions of the Code, which the Panel considers can mitigate (by detecting or preventing the occurrence, or correcting the effects, of) Settlement Risks.

5.3.2 For the purposes of the Code a "**Performance Assurance Technique**" is the implementation of any provision or process for the time being set out in the list established by the Panel under paragraph 5.3.1.

5.3.3 The list of Performance Assurance Techniques (and any amendments to such list) shall be published on the BSCCo website.

## **5.4 Risk Evaluation Methodology**

5.4.1 The Performance Assurance Board shall establish and maintain a methodology (the "**Risk Evaluation Methodology**") for:

- (a) identifying risks which are Settlement Risks;
- (b) evaluating risks which have been identified as Settlement Risks; and
- (c) assessing the materiality of such Settlement Risks in relation to Performance Assurance Parties.

5.4.2 The Performance Assurance Board shall establish the initial Risk Evaluation Methodology, and thereafter on an annual basis review and update the Risk Evaluation Methodology in accordance with paragraph 5.4.3.

5.4.3 The Performance Assurance Board shall, in accordance with the Annual Performance Assurance Timetable:

- (a) submit a draft of the proposed Risk Evaluation Methodology to all Performance Assurance Parties and other interested persons;

(b) after considering comments received from Performance Assurance Parties and other interested persons, make such changes (if any) to the proposed Risk Evaluation Methodology which are (in its opinion) appropriate; and

(c) approve and adopt the Risk Evaluation Methodology.;

and references to the Risk Evaluation Methodology are to such methodology as so approved and adopted by the Performance Assurance Board.

5.4.4 The Performance Assurance Board shall publish the Risk Evaluation Methodology on the BSCCo website.

## **5.5 Risk Evaluation Register**

5.5.1 The Performance Assurance Board shall:

(a) identify and evaluate risks which are Settlement Risks, by applying the Risk Evaluation Methodology; and

(b) prepare and maintain a document (the "**Risk Evaluation Register**") setting out Settlement Risks, and the significance of each such Settlement Risk.

5.5.2 The Risk Evaluation Register will identify and evaluate Settlement Risks generically (and/or by references to classes of Performance Assurance Party) rather than by reference to particular Performance Assurance Parties.

5.5.3 The Performance Assurance Board shall establish the initial Risk Evaluation Register, and thereafter on an annual basis review and update the Risk Evaluation Register, in accordance with paragraph 5.5.4; and may on an ad-hoc basis revise the Risk Evaluation Register in accordance with paragraph 5.5.5.

5.5.4 The Performance Assurance Board shall, after the approval and adoption of the Risk Evaluation Methodology, in accordance with the Annual Performance Assurance Timetable:

(a) submit a draft of the proposed Risk Evaluation Register to all Performance Assurance Parties and other interested persons;

(b) after considering any comments (including suggestions as to what may constitute a Settlement Risk) received from any Performance Assurance Parties and other interested persons, prepare and submit to the Panel for its approval a final proposed Risk Evaluation Register;

(c) make such changes (if any) to the proposed Risk Evaluation Register as the Panel may direct; and

(d) adopt the Risk Evaluation Register as so changed and approved by the Panel.

and references to the Risk Evaluation Register are to such register as so approved and adopted or revised pursuant to paragraph 5.5.5.

5.5.5 The Performance Assurance Board may on an ad-hoc basis propose a within-period revision of the Risk Evaluation Register in relation to a Performance Assurance Operating Period, after it has been adopted under paragraph 5.5.4, where the Performance Assurance Board identifies a further Settlement Risk or changes its definition or evaluation of an existing Settlement Risk.

5.5.6 The procedures in paragraph 5.5.4 shall apply in relation to a proposed within-period revision of the Risk Evaluation Register, except that if the Performance Assurance Board considers that the revision is not significant it need not provide a draft of the proposed revised Risk Evaluation Register to Performance Assurance Parties and other interested persons.

5.5.7 The Performance Assurance Board shall publish the Risk Evaluation Register (and any within-period revision of it) on the BSCCo website.

## **5.6 Risk Operating Plan**

5.6.1 The Performance Assurance Board shall:

(a) determine what Performance Assurance Technique(s) it considers should be applied in relation to each Settlement Risk identified in the Risk Evaluation Register; and

(b) prepare a plan (the "**Risk Operating Plan**") setting out:

(i) such Settlement Risks and the Performance Assurance Technique(s) that it has determined should be applied to each such Settlement Risk; and

(ii) the estimated overall cost to BSCCo of implementing such Performance Assurance Technique(s) in the current Performance Assurance Operating Period.

5.6.2 The Performance Assurance Board shall establish the initial Risk Operating Plan, and thereafter shall on an annual basis in accordance with paragraph 5.6.3 and may on a within-period basis review and update the Risk Operating Plan in accordance with paragraph 5.6.4.

5.6.3 The Performance Assurance Board shall, after the approval and adoption of the Risk Evaluation Register, in accordance with the Annual Performance Assurance Timetable:

(a) publish the proposed Risk Operating Plan on the BSCCo website so that any Performance Assurance Parties and other interested persons may comment on it;

(b) submit the proposed Risk Operating Plan to the Panel for its approval together with any comments received from Performance Assurance Parties and other interested persons;

(c) make such changes (if any) to the proposed Risk Operating Plan as the Panel may direct; and

(d) adopt the Risk Operating Plan as so changed and approved by the Panel.

and references to the Risk Operating Plan are to such plan as so approved and adopted or revised pursuant to paragraph 5.6.4.

5.6.4 Where the Performance Assurance Board makes a within-period revision of the Risk Evaluation Register, the Performance Assurance Board shall determine and make such corresponding revisions (if any) of the Risk Operating Plan as it considers appropriate, and the approval of the Panel shall not be required for such within-period revisions.

5.6.5 The Performance Assurance Board shall publish the Risk Operating Plan (and any within-period revision of it) on the BSCCo website.

## 5.7 Risk Management Plan

5.7.1 The Performance Assurance Board shall, in relation to each Performance Assurance Party:

- (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) establish an initial Risk Management Plan for each Performance Assurance Party and where applicable the establishment of such Risk Management Plan should be 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 and update each such Risk Management 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 Plans are appropriate in respect of distinct operating unit(s) of the Performance Assurance Party (material business unit(s)) it:

- (a) may establish an initial Risk Management 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 and update each such Risk Management Plan.

5.7.4 The Performance Assurance Board shall, 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 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 its Risk Management Plan, the Performance Assurance Party may request a change to its Risk Management Plan, by notice to the Performance Assurance Board setting out the basis (and supporting evidence) on which the Performance Assurance Party considers such 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 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 Plan of a Performance Assurance Party, the Performance Assurance Board shall be entitled to make a within-period revision of such Risk Management Plan as it considers appropriate.

5.7.8 The Performance Assurance Technique(s) to be applied (under a Risk Management 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.

## **6 Risk Management Plan Queries and Risk Management Plan Appeals**

### **6.1 Interpretation**

6.1.1 For the purposes of the Code:

(a) a "Risk Management Plan Query" means a query raised by a Performance Assurance Party on a part of its Risk Management Plan where the Performance Assurance Party disagrees with such part of its Risk Management Plan;

(b) a "Query Response" means a written response from the Performance Assurance Board setting out its decision on a Risk Management Plan Query given in accordance with paragraph 6.2.3; and

(c) a "Risk Management Plan Appeal" means an appeal to the Panel in accordance with paragraph 6.3.

### **6.2 Risk Management Plan Query**

6.2.1 A Performance Assurance Party may submit in writing a Risk Management Plan 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) adopted the initial Risk Management Plan or annually the updated Risk Management Plan as applicable;
- (b) approved any within-period revision of the Risk Management Plan in accordance with paragraph 5.7.5 or paragraph 5.7.7; or
- (c) decided not to make any change 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 Plan Query:

- (a) it shall specify the manner in which it considers that (by reason of the query) its Risk Management Plan should be 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 Plan Query;
- (c) the Performance Assurance Board shall ensure that the Risk Management Plan 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 Query;
- (c) prepare and send the Performance Assurance Party the Query Response; and
- (d) to the extent to which it accepts the Risk Management Plan Query; make the appropriate revision to the Risk Management Plan.

6.2.4 The determination of the Performance Assurance Board in respect of a Risk Management Plan Query shall be final and binding on the Performance Assurance Party (who shall comply with such determination) unless a Risk Management Plan 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 Plan Query provided that the Query Meeting shall be held in confidence and Section B4.5 shall not apply.

### 6.3 Risk Management Plan Appeal

6.3.1 Where a Performance Assurance Party disagrees with the determination of the Performance Assurance Board in relation to a Risk Management Query, a Risk Management Plan 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 Plan 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 Plan 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 Plan Appeal,

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

6.3.3 A Risk Management Plan 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 Plan 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 Plan 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 Plan Appeal;
- (b) the Panel Secretary shall place the Risk Management Plan 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 Plan 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 Plan 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 Plan Appeal, direct the Performance Assurance Board to make the appropriate revision to the Risk Management Plan.

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

#### **6.4 General Provisions applying to Risk Management Plan Queries and Risk Management Plan Appeals**

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

- (a) the inclusion in its Risk Management Plan of a new Performance Assurance Technique established pursuant to a BSC Modification; or
- (b) the application in its Risk Management Plan 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 Plan Query and shall remain suspended if a Risk Management Plan Appeal arises from such Risk Management Plan 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 the:

- (a) the initial Risk Management Plan; or
- (b) the latest adopted Risk Management Plan,

of the Performance Assurance Party, provided that where the initial Risk Management Plan has been adopted as at the date a Risk Management Plan Query or Risk Management Plan 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 Plan 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 Plan Query pursuant to paragraph 6.2.3(b); or
- (b) the Panel determines not to accept a Risk Management Plan 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 Plan Query; or
- (b) the Panel resolves that a Risk Management Plan 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 Plan Query or the Risk Management Plan Appeal or on behalf of which a Risk Management Plan 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 Plan Query and/or such Risk Management Plan Appeal as applicable, and such Performance Assurance Party shall pay such amount.

## 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 Plan.

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.

## 8 Further Functions and Duties

### 8.1 Annual Performance Assurance Report

8.1.1 The Performance Assurance Board shall prepare an annual report on performance assurance (the "**Annual Performance Assurance Report**") which shall set out the following information in respect of the previous Performance Assurance Operating Period:

- (a) the results of the risk evaluation and risk assurance procedures, in particular, the extent to which the application of Performance Assurance Techniques mitigated the Settlement Risks in the Risk Evaluation Register;

- (b) the actual costs of BSCCo in implementing the Performance Assurance Techniques and a comparison against the estimated costs set out in the Risk Operating Plan for the previous year and an explanation of any differences;
- (c) any recommendations to modify existing Performance Assurance Techniques or establish new Performance Assurance Techniques; and
- (d) the benefits of any modifications to Performance Assurance Techniques including cost-saving benefits.

8.1.2 The Annual Performance Assurance Report shall be published on the BSCCo website.

## **8.2 Recommendations**

8.2.1 The Performance Assurance Board may make a recommendation to the Panel at any time that the Code or any Code Subsidiary Document be modified in order to:

- (a) remedy any error, ambiguity, inconsistency or deficiency therein which emerges as a result of the exercise of the Performance Assurance Board's functions; or
- (b) establish a new Performance Assurance Technique or modify an existing Performance Assurance Technique.

8.2.2 Where the Panel receives a recommendation from the Performance Assurance Board pursuant to paragraph 8.2.1, the Panel shall decide whether to propose a modification to the Code and/or a modification to a Code Subsidiary Document consistent with such recommendation in accordance with Section F.

### **SECTION X-1: GENERAL GLOSSARY (version 34 and redline version of P197 & P209)**

*Insert new definitions Annual Performance Assurance Report and Annual Performance Assurance Timetable after the definition of "Annual SVA Costs" as follows:*

**"Annual Performance Assurance Report"**: has the meaning given to that term in Section Z8.1;

**"Annual Performance Assurance Timetable"**: has the meaning given to that term in Section Z5.2.1;

*Insert new definition Appeal Meeting after the definition of "Apparatus" as follows:*

**"Appeal Meeting"**: has the meaning given to that term in Section Z6.3.4(b);

*Amend the definition of PAB Functions as follows;*

**"PAB Functions"**: means the functions, duties, and responsibilities of the Performance Assurance Board set out or referred to in Section ~~Z~~1.4.1;

Amend the definition of Performance Assurance Board as follows;

**"Performance Assurance Board":** means the ~~Panel (or, where the Panel decides to delegate such functions to a~~ Panel Committee established under , that Panel Committee) when acting pursuant to Annex B-1 and performing the functions described in Section J ~~or otherwise ascribed to the performance Assurance Board under the Code;~~

Insert new definitions Performance Assurance Effective Date and Performance Assurance Party after the definition "Performance Assurance Board"

**"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 approve each Performance Assurance Party's initial Risk Management Plan;

**"Performance Assurance Party":** has the meaning given to that term in Section Z5.1.1(c);

Insert new definitions Performance Assurance Technique and Performance Assurance Operating Period after the definition "Performance Assurance Reporting and Monitoring System or PARMS" as follows;

**"Performance Assurance Technique":** has the meaning given to that term in Section Z5.3.2;

**"Performance Assurance Operating Period":** means the period of time detailed as such in the Annual Performance Assurance Timetable from time to time;

Insert new definition Query Meeting after the definition of "Quarterly 1998 Programme Charge" as follows;

**"Query Meeting":** has the meaning given to that term in Section Z6.2.2 (c);

Insert new definition Query Response after the definition of "Query Period" as follows;

**"Query Response":** has the meaning given to that term in Section Z6.1.1(b);

Insert new definitions Risk Evaluation Methodology, Risk Evaluation Register, Risk Management Plan, Risk Management Plan Appeal, Risk Management Plan Query and Risk Operating Plan after the definition "Retail Price Index" as follows;

**"Risk Evaluation Methodology":** has the meaning given to that term in Section Z5.4.1;

**"Risk Evaluation Register":** has the meaning given to that term in Section Z5.5.1(b);

<b><u>"Risk Management Plan":</u></b>	<u>has the meaning given to that term in Section Z5.7.1(b):</u>
<b><u>"Risk Management Plan Appeal":</u></b>	<u>has the meaning given to that term in Section Z6.1.1(c):</u>
<b><u>"Risk Management Plan Query":</u></b>	<u>has the meaning given to that term in Section Z6.1.1(a):</u>
<b><u>"Risk Operating Plan":</u></b>	<u>has the meaning given to that term in Section Z5.6.1 (b):</u>

*Insert new definition Settlement Risk after the definition "Settlement Period" as follows;*

<b><u>"Settlement Risk":</u></b>	<u>has the meaning given to that term in Section Z5.1.1(a):</u>
----------------------------------	---