

February 2002

**MODIFICATION REPORT**  
**MODIFICATION PROPOSAL P39-**  
**Improvements in the**  
**Administration of the Payment**  
**Default Process**

**Prepared by ELEXON on behalf of the Balancing  
and Settlement Code Panel**

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### b Distribution

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Each BSC Agent	Various
The Gas and Electricity Markets Authority	Ofgem
Each BSC Panel Member	Various
energywatch	Energywatch
Core Industry Document Owners	Various

### c Related Documentation

Reference	Document
Reference 1	Assessment Report Modification Proposal P39 'Improvements to the Administration of the Payment Default Process' (V1.0 8 February 2002)

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## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Recommendation

On the basis of the analysis, consultation and assessment undertaken in respect of this Modification Proposal during the Assessment Procedure, and the resultant findings of this report, the Panel recommends that:

**The Proposed Modification, as set out in Section 5 of this Modification Report is approved, with an Implementation Date of 12 August 2002 and applies to all payments processed from that date, including payments relating to Settlement Days prior to the Implementation Date.**

### 1.2 Background

The BSC Panel raised Modification Proposal P39, on the recommendation of the BSCCo, on 20 September 2001. This was raised in accordance with Section F2.1.1 (d) of the Code, on the basis that the proposal would better facilitate achievement of the objective in Condition C3 (3) (d) of the Transmission Licence, i.e. promoting efficiency in the implementation and administration of the balancing and settlement arrangements. The proposal seeks to revise the payment procedure (section N8 of the Code) and the payment default procedure (section N9 of the Code) to remove inconsistencies between the Code and the banking procedures. Section 5.3 of this report describes the Modification Proposal in detail.

The Panel agreed that Modification Proposal P39 should be submitted to the Definition Procedure (pursuant to Section F2.5 of the Code). A Definition Report was prepared by a Modification Group formed from members of the Imbalance Settlement Group (ISG), and presented to the Panel at the meeting on 18 October 2001. The Panel endorsed the Modification Group's recommendation to progress the proposal to the Assessment Procedure (pursuant to Section F2.6 of the Code), and that the Assessment Report should be presented to the Panel meeting on 17 January 2002.

As part of the Assessment Procedure, legal text was drafted and issued for consultation. Following the consultation, further detailed legal and financial issues came to light. The Modification Group therefore agreed that further assessment of these additional issues was required. The Panel meeting on the 17 January 2002 agreed that the Assessment Procedure should be extended by one month to allow these additional issues to be investigated.

The Assessment Report was submitted to the Panel meeting on 14 February 2002. The Panel endorsed the recommendations of the Modification Group and agreed that a draft Modification Report be prepared and consulted on with a recommendation that the Proposed Modification be approved with a 'calendar day Implementation Date 12 August 2002. This has the effect of applying the changes to all payments processed from that date, including payments relating to Settlement Days prior to the proposed Implementation Date<sup>1</sup>.

### 1.3 Rationale for Recommendations

The payment timescales currently defined in the Code do not reflect current banking practice. Therefore it is not practical for Parties to have to adhere to these timescales. By modifying the timescales in the Code, the FAA will be able to administer the payment process more efficiently and Parties will not be required to meet timescales that are outside their control.

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<sup>1</sup> The FAA operates after the Settlement Run process so that the payment processes are inherently on a calendar day basis rather than a Settlement Day basis.

In addition, Modification Proposal P39 will allow the FAA to call on Credit Cover earlier if a Party is already in default. Again, this will allow the FAA to manage the payment default process more efficiently and should minimise the use of the borrowing facility.

For these reasons the Panel felt that Modification Proposal P39 would better facilitate achievement of the Applicable BSC Objective in Condition C3 (3) (d) of the Transmission Licence, i.e. promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

## **2 INTRODUCTION**

This Report has been prepared by ELEXON Ltd., on behalf of the Balancing and Settlement Code Panel ('the Panel'), in accordance with the terms of the Balancing and Settlement Code ('BSC'). The BSC is the legal document containing the rules of the balancing mechanism and imbalance settlement process and related governance provisions. ELEXON is the company that performs the role and functions of the BSCCo, as defined in the BSC.

This Modification Report is addressed and furnished to the Gas and Electricity Markets Authority ('the Authority') and none of the facts, opinions or statements contained herein may be relied upon by any other person.

An electronic copy of this document can be found on the BSC website, at [www.elexon.co.uk](http://www.elexon.co.uk)

## **3 HISTORY OF PROPOSED MODIFICATION**

Modification Proposal P39 was raised by the Panel on 20 September 2001 on the recommendation of the BSCCo. It was submitted to the Definition Procedure and a Definition Report was presented to the Panel at the meeting on 18 October 2001. The Panel submitted the Modification Proposal to the Assessment Procedure. The Definition Procedure and the Assessment Procedure were carried out by a Modification Group formed from members of the Imbalance Settlement Group (ISG) augmented by Treasury experience.

As part of the Assessment Procedure, legal text was drafted and issued for consultation. Following the consultation, further detailed legal and financial issues came to light. The Modification Group concluded that further assessment of these additional issues was required. The Panel meeting on the 17 January 2002 agreed that the Assessment Procedure should be extended by one month to allow these additional issues to be investigated.

The Assessment Report was submitted to the Panel meeting on 14 February 2002. The Panel endorsed the recommendations of the Modification Group and agreed that a draft Modification Report be prepared and consulted on with a recommendation that the Proposed Modification be approved with a "calendar day" Implementation Date of 12 August 2002.

## **4 DESCRIPTION OF PROPOSED MODIFICATION**

A full description of Modification Proposal P39 can be found in section 4.2 of the P39 Assessment Report. There are a number of steps for the FAA to carry out on each Payment Date. Timings of these actions are defined in section N8 of the Code. The Code currently specifies a series of times across the day at which actions will be undertaken. In practice Parties are unable to guarantee the specific time of day that such transfers are carried out. Furthermore the deadline for payment to a Collection Bank is earlier than the deadline for payment to the BSC Bank, reflecting the time for the relevant Collection Bank to transfer the funds to the BSC Bank. Whilst a later time could be specified for the BSC Bank, introducing two separate deadlines would not aid clarity and therefore, the same deadline should be

specified for all transfers. The Modification Proposal also allows Credit Cover to be called immediately if a Party is already in payment default (in accordance with Section H of the Code).

## 5 RATIONALE FOR PANEL RECOMMENDATIONS

The payment timescales currently defined in the Code do not reflect current banking practice. Therefore it is not practical for Parties to have to adhere to these timescales. By modifying the timescales in the Code, the FAA will be able to administer the payment process more efficiently and Parties will not be required to meet timescales that are outside their control.

In addition, Modification Proposal P39 will permit the FAA to call on Credit Cover earlier if a Party is already in default, so allowing the FAA to manage the payment default process more efficiently. This should minimise the use of the borrowing facility.

The Panel agreed with the Modification Group's view that these improvements would better facilitate achievement of the Applicable BSC Objectives defined in Condition C3 of the Transmission Licence, particularly Condition C3(3)(d), in that it met the objective of "Promoting efficiency in the implementation and administration of the Balancing and Settlement arrangements".

## 6 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION

Changes will be required to Section N, Clearing Invoicing and Payment, of the Code to give effect to Modification Proposal P39. The proposed legal text can be found in Annex 2 of this document<sup>2</sup>.

- Annex A2.1 contains a conformed version of the text; and
- Annex A2.2 contains a clean version of the text.

## 7 ASSESSMENT

Modification Proposal P39 was raised by the BSC Panel on the recommendation of the BSCCo, in accordance with section F2.1.1 (d) and assessed by a Modification Group formed from members of the Imbalance Settlement Group (ISG). The Modification Group held three meetings on 2 October 2001, 30 October 2002 and 22 January 2002.

The proposal is to modify the timescales relating to payment of Trading Charges to account for the time delay in processing funds. The change will align operating practices with the processes set out in the Code.

The original view of the Modification Group was that the introduction of payment default thresholds would allow the FAA to handle late payments more efficiently, without the need to draw on Credit Cover and issue default notices for insignificant default amounts. However in light of the legal advice, the Modification Group agreed that all payment defaults should be progressed in the same way, regardless of the size of the default. The Modification Group believed that this might increase administration costs in the short term. However in the long term it should promote timely payment and therefore increase the efficiency in the administration of the payment default process.

The Modification Proposal also allows Credit Cover to be called immediately if a Party is already in default (in accordance with Section H of the Code). The Modification Group believed that this would allow the FAA to process Payment Defaults more effectively, as they would no longer be required to

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<sup>2</sup> Please note that this text has been modified since the Assessment Procedure consultation. The changes are described in Annex 3 of this document.

wait two days before calling on a defaulting party's Credit Cover. The original view of the Modification Group was that adding an explicit statement to the Code relating to foreign transfer charges would increase efficiency as it would be clear to all Parties that they are liable for any additional charges. However, in light of legal advice, the Modification Group agreed that an explicit statement should not be added to the Code as this might undermine the general requirement that payment in full is required. This, in turn, could lead to more explicit statements being required relating to other specific charges.

The payment timescales currently defined in the Code do not reflect current banking practice. Therefore it is not practical for Parties to have to adhere to these timescales. By modifying the timescales in the Code, the FAA will be able to administer the payment process more efficiently and Parties will not be required to meet timescales that are outside their control.

In addition, Modification Proposal P39 will allow the FAA to call on Credit Cover earlier if a Party is already in default. Again, this will allow the FAA to manage the payment default process more efficiently and should minimise the use of the borrowing facility.

The Modification Group agreed that, in the light of the above, Modification Proposal P39 would better facilitate achievement of the Applicable BSC Objective in Condition C3 (3) (d) of the Transmission Licence, i.e. promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

## **8 SUMMARY OF REPRESENTATIONS**

Pending receipt of Draft Modification Report Consultation.

## ANNEX 1 – REPRESENTATIONS

Pending receipt of consultation responses on the Draft Modification Report.

## ANNEX 2 – LEGAL TEXT TO GIVE EFFECT TO MODIFICATION PROPOSAL P39

The proposed amendments to Section N of the Code are shown below. Section A2.1 is the confirmed version, which is change marked against the current version (BSC/V1.1) of Section N, while A2.2 is the clean version.

### A2.1 – Conformed Version

#### SECTION N: CLEARING, INVOICING & PAYMENT

##### 4. BANKING ARRANGEMENTS

##### 4.6 Reserve Account

4.6.3 The FAA on behalf of the BSC Clearer shall pay or repay the following amounts at the times indicated from the Reserve Account to each Payment Party:

(a) (subject to paragraph 4.6.6) quarterly the amount of interest referred to in paragraph 4.6.4;

(b) an amount requested in accordance with Section M2.3; and

(c) ~~(b)~~ If that Payment Party is a Discontinuing Party (as defined in Section A), on the Discontinuance Date the cash paid by or on behalf of that Discontinuing Party credited to the Reserve Account and not subsequently withdrawn or repaid in accordance with this Section N.

##### 8. PAYMENT PROCEDURE

##### 8.1 Instructions for payment

8.1.1 Each BSC Debtor shall, in respect of each Payment Date on which it is under an obligation to make a payment under this Section N, make such arrangements as will ensure that the payment is credited to the relevant Collection Account ~~by 12.00~~ as soon as practicable and in any event no later than 15.30 hours on that Payment Date.

##### 8.2 FAA's responsibilities

8.2.1 As soon as practicable and in any event not later than ~~13.00~~ 16.00 hours on each Payment Date the FAA shall find out whether all amounts required to be credited to each Collection Account on such Payment Date have been so credited.

8.2.2 As soon as practicable and in any event not later than ~~13.30~~ 16.00 hours on each Payment Date the FAA shall take such action as is required to ensure that all amounts credited to each Collection Account on such Payment Date in accordance with paragraph 8.1 have been remitted to the Clearing Account.

8.2.3 As soon as practicable and in any event not later than ~~14.30~~ 16.00 hours on each Payment Date the FAA shall reconcile the actual amounts credited to each Collection Account and remitted to the Clearing Account on or before ~~13.30~~ 16.00 hours on that Payment Date and the aggregate of such amounts.

### 8.3 Non-payment

- 8.3.1 If any BSC Debtor becomes aware that a payment for which it is responsible will not be credited to the relevant Collection Account by ~~1215:0030~~ hours on the relevant Payment Date, it will immediately notify the FAA of the non-payment and the reasons therefor.

### 8.4 Excess payments

- 8.4.1 If by ~~12:30~~15.30 hours on any Payment Date the FAA is advised by a Collection Bank that it has received from a BSC Debtor a payment in excess of the amount notified to that BSC Debtor pursuant to paragraph 7.1 in respect of that Payment Date, or if the BSC Banker notifies the FAA by ~~13:30~~15.30 hours that amounts greater than the amounts notified to the BSC Banker pursuant to paragraph 7.1.3(b) have been credited to the Clearing Account, the FAA shall use its reasonable endeavours to ascertain the nature of the excess payment, to calculate the entitlement to such payment and to instruct the BSC Banker by ~~14:30~~16.00 hours that day to credit the relevant BSC Debtor's Settlement Account or (if so requested by the BSC Debtor) the Reserve Account or such other account authorised by BSCCo.

### 8.5 Payment to BSC Creditors

- 8.5.1 ~~The FAA shall, prior to 1430~~At about 15.00 hours on each Payment Date ~~the FAA shall:~~
- ~~(a) estimate the aggregate amounts which will be credited to Collection Accounts in accordance with paragraph 8.1;~~
  - ~~(b) subject to paragraph 8.5.4, on the basis of such estimate, calculate the amounts available for payment by the BSC Clearer to BSC Creditors, taking account of paragraph 2-7, 2.7 and anticipating the steps (where relevant) in paragraph 9.2, on that Payment Date;~~
  - ~~(c) for the purposes of paragraph 8.5.4, determine, by reference only to the amounts which have by that time on the Payment Date already been credited to Collection Accounts:~~
    - ~~(i) the amount (if any) which would be required to be drawn on the Credit Facility in order to enable full payment to be made of the amounts due to BSC Creditors;~~
    - ~~(ii) whether, and if so the amount ("possible shortfall amount") by which, the amount in paragraph (i) exceeds the amount then remaining available for drawing on the Credit Facility; after allowing for any amounts which the FAA is satisfied will be paid into the Clearing Account on the Payment Date pursuant to paragraphs 9.2.2(b) and (c).~~
- 8.5.2 ~~As~~Subject to paragraph 8.5.4, as soon as practicable and not later than ~~1430~~16.00 hours ~~on that day~~the Payment Date the FAA shall arrange for the remittance from the Clearing Account to the relevant Settlement Accounts maintained by the BSC Creditors of the aggregate of amounts determined by the FAA to be available for payment to BSC Creditors and, if required, arrange for the transfer of amounts from the Reserve Account or ~~the (subject to paragraph 8.5.3) the~~ Borrowing Account ~~to the Clearing Account~~ to the Clearing Account or vice versa.
- 8.5.3 Subject to paragraph 8.5.4, any differences between the amount of the FAA's estimate under paragraph 8.5.1(a) and the aggregate amount actually credited to Collection Accounts in accordance with paragraph 8.1 on the Payment Date shall be addressed by way of adjustment (later on the Payment Date) to the amount of any drawing on the Credit Facility, and the FAA shall arrange for such adjustment to be

made in respect of the transfer of any amount from the Borrowing Account to the Clearing Account or vice versa.

8.5.4 If the FAA determines that there is a possible shortfall amount, the FAA shall calculate the amounts under paragraph 8.5.1(b) assuming the reduction of payments (by the BSC Clearer to BSC Creditors) under paragraph 9.2.2(d) by an aggregate amount equal to the possible shortfall amount, and arrange remittances under paragraph 8.5.2 accordingly.

## 9. PAYMENT DEFAULT

### 9.1 General

9.1.1 For the purposes of this paragraph 9:

- (a) an "**Amount in Default**" is all or any part of any amount due and payable from a BSC Debtor to the BSC Clearer which is not remitted to the relevant Collection Account by ~~13.30~~15.30 hours on the relevant Payment Date and, at any time thereafter, together with interest payable by that Non-paying BSC Debtor pursuant to paragraph 9.4 and less any amounts paid or recovered (as defined in paragraph 9.3.1) in respect thereof at that time;
- (b) ...

### 9.2 Affected Date

9.2.2 Where this paragraph 9.2.2 applies, subject to paragraphs 8.5.4 and 9.2.5, the FAA shall, on behalf of the BSC Clearer, act in accordance with the following provisions (or whichever of them shall apply) in the order in which they appear, until the FAA is satisfied that the Clearing Account will clear to zero not later than the close of business on the Affected Date:

- (a) – (d) ...
- (e) notify BSCCo and (in the case of action under paragraph (b) or (c)) the Non-paying BSC Debtor ~~and BSCCo by close of business on the Affected Date~~ as soon as reasonably practicable of the action taken.

9.2.3 For the purposes of this paragraph 9, the amount of the reduction pursuant to paragraph 9.2.2(d) plus interest at the Default Rate from time to time in respect of each Shortfall Creditor is a "**Shortfall Amount**".

9.2.4 It is acknowledged for the avoidance of doubt that the FAA may (for the purposes of paragraph 9.2.1) have reason to believe, before a given Payment Date, that there will on that Payment Date be an Amount in Default in respect of a BSC Debtor; and in such case the FAA may (if it is feasible to do so) take steps before such date to implement paragraph 9.2.2(b) or (c) on that date.

9.2.5 Where there is an Amount in Default on a Payment Date in respect of a BSC Debtor which is a Defaulting Party, the order in which the FAA shall act in accordance with the provisions (or whichever of them shall apply) of the sub-paragraphs of paragraph 9.2.2 shall be as follows: (b), (c), (a), (d) (and references therein to the application of prior paragraphs shall be construed accordingly).

### 9.3 Amount in Default

9.3.1 For the purposes of this Section N, an Amount in Default shall be "**paid or recovered**" on any Business Day, only if, and to the extent that:

(a) an amount has been paid to the BSC Clearer by ~~1330~~15.30 hours on that Business Day and applied by the FAA on behalf of the BSC Clearer to that Amount in Default; or

(b) ...

**9.5 D+1**

9.5.1 ~~Paragraph~~Subject to paragraph 9.6.2A, paragraphs 9.5.2 to 9.5.4 (inclusive) shall apply if:

(a) ...

9.5.3 On the next Business Day following receipt of such proceeds under a Letter of Credit in accordance with paragraph 9.5.2 (b), the FAA shall pay on behalf of the BSC Clearer such amounts as have been credited to the Reserve Account to the Shortfall Creditors in full or (as the case may be) in proportion to their respective Shortfall Amounts, except where paragraph 9.6.8 applies.

9.5.4 Where ~~this paragraph~~paragraphs 9.5.2 to 9.5.4 apply, the FAA shall promptly notify Shortfall Creditors and BSCCo and (where it takes action under paragraph 9.5.2(b)) the Non-paying BSC Debtor.

**9.6 D+2**

9.6.1 ~~Paragraph~~Subject to paragraph 9.6.2A, paragraph 9.6.2 shall apply if:

(a) ...

9.6.2A Where (on the Affected Date) the Non-paying Debtor was a Defaulting Party:

(a) paragraphs 9.6.1 and 9.6.2 shall apply on the basis that the reference in paragraph 9.6.1(b) to the second Business Day after the Affected Date is to the first Business Day after the Affected Date (and references to D+2 shall be construed accordingly);

(b) the FAA shall act in accordance with paragraph 9.6.2 (on such basis) before acting in accordance with paragraph 9.5.2 (if applicable).

9.6.3 ~~Paragraph~~Subject to paragraph 9.6.3A, paragraph 9.6.4 shall apply if:

(a) ...

9.6.3A Where:

(a) the Non-paying BSC Debtor has provided Cash Cover but for any reason the Reserve Account has not yet been debited in accordance with paragraph 9.5.2(a) or 9.6.2(a), and/or

(b) the Non-paying BSC Debtor has provided Letter(s) of Credit, the FAA has (in accordance with paragraph 9.5.2(b) or 9.6.2(b)) made call(s) thereon which have not yet been paid, but the FAA has no reason to believe such call(s) will not be paid; and

(c) the sum of the available amount of such Cash Cover and/or (otherwise uncalled) amounts of such Letter(s) of Credit subject to such call is sufficient to enable the outstanding Amount in Default to be paid or recovered.

the FAA, with the approval of BSCCo, may defer acting in accordance with paragraph 9.6.4 for a period not exceeding 3 Business Days; and accordingly the reference in paragraph 9.6.3 to D+2 shall be a reference to such later day as the FAA shall determine, not being later than the 5<sup>th</sup> Business Day after the Affected Date.

- 9.6.6 Each Payment Party shall be liable to pay or (where the amount under paragraph 9.6.5(b)(i) is greater than the amount under paragraph 9.6.5(a)) entitled to receive the amount set out in the relevant Advice Note calculated in accordance with paragraph 9.6.5 (a) or if applicable, paragraph 9.6.5(b)(ii), not later than ~~12~~15:30 on the second Business Day (the "Default Payment Date") after the date of the Advice Note and any payment made by a Payment Party to the BSC Clearer in accordance with this paragraph is a limited recourse loan on which interest is payable and which is repayable only to the extent set out in paragraph 9.6.8.

## A2.2 Clean Version

### SECTION N: CLEARING, INVOICING & PAYMENT

#### 4. BANKING ARRANGEMENTS

##### 4.6 Reserve Account

- 4.6.3 The FAA on behalf of the BSC Clearer shall pay or repay the following amounts at the times indicated from the Reserve Account to each Payment Party:
- (a) (subject to paragraph 4.6.6) quarterly the amount of interest referred to in paragraph 4.6.4;
  - (b) an amount requested in accordance with Section M2.3; and
  - (c) if that Payment Party is a Discontinuing Party (as defined in Section A), on the Discontinuance Date the cash paid by or on behalf of that Discontinuing Party credited to the Reserve Account and not subsequently withdrawn or repaid in accordance with this Section N.

#### 8. PAYMENT PROCEDURE

##### 8.1 Instructions for payment

- 8.1.1 Each BSC Debtor shall, in respect of each Payment Date on which it is under an obligation to make a payment under this Section N, make such arrangements as will ensure that the payment is credited to the relevant Collection Account as soon as practicable and in any event no later than 15.30 hours on that Payment Date.

##### 8.2 FAA's responsibilities

- 8.2.1 As soon as practicable and in any event not later than 16.00 hours on each Payment Date the FAA shall find out whether all amounts required to be credited to each Collection Account on such Payment Date have been so credited.
- 8.2.2 As soon as practicable and in any event not later than 16.00 hours on each Payment Date the FAA shall take such action as is required to ensure that all amounts credited to each Collection Account on such Payment Date in accordance with paragraph 8.1 have been remitted to the Clearing Account.
- 8.2.3 As soon as practicable and in any event not later than 16.00 hours on each Payment Date the FAA shall reconcile the actual amounts credited to each Collection Account and remitted

to the Clearing Account on or before 16.00 hours on that Payment Date and the aggregate of such amounts.

### 8.3 Non-payment

- 8.3.1 If any BSC Debtor becomes aware that a payment for which it is responsible will not be credited to the relevant Collection Account by 15:30 hours on the relevant Payment Date, it will immediately notify the FAA of the non-payment and the reasons therefor.

### 8.4 Excess payments

- 8.4.1 If by 15.30 hours on any Payment Date the FAA is advised by a Collection Bank that it has received from a BSC Debtor a payment in excess of the amount notified to that BSC Debtor pursuant to paragraph 7.1 in respect of that Payment Date, or if the BSC Banker notifies the FAA by 15.30 hours that amounts greater than the amounts notified to the BSC Banker pursuant to paragraph 7.1.3(b) have been credited to the Clearing Account, the FAA shall use its reasonable endeavours to ascertain the nature of the excess payment, to calculate the entitlement to such payment and to instruct the BSC Banker by 16.00 hours that day to credit the relevant BSC Debtor's Settlement Account or (if so requested by the BSC Debtor) the Reserve Account or such other account authorised by BSCCo.

### 8.5 Payment to BSC Creditors

- 8.5.1 At about 15.00 hours on each Payment Date the FAA shall:
- (a) estimate the aggregate amounts which will be credited to Collection Accounts in accordance with paragraph 8.1;
  - (b) subject to paragraph 8.5.4, on the basis of such estimate, calculate the amounts available for payment by the BSC Clearer to BSC Creditors, taking account of paragraph 2.7 and anticipating the steps (where relevant) in paragraph 9.2, on that Payment Date;
  - (c) for the purposes of paragraph 8.5.4, determine, by reference only to the amounts which have by that time on the Payment Date already been credited to Collection Accounts:
    - (i) the amount (if any) which would be required to be drawn on the Credit Facility in order to enable full payment to be made of the amounts due to BSC Creditors;
    - (i) whether, and if so the amount ("**possible shortfall amount**") by which, the amount in paragraph (i) exceeds the amount then remaining available for drawing on the Credit Facility;after allowing for any amounts which the FAA is satisfied will be paid into the Clearing Account on the Payment Date pursuant to paragraphs 9.2.2(b) and (c).
- 8.5.2 Subject to paragraph 8.5.4, as soon as practicable and not later than 16.00 on the Payment Date the FAA shall arrange for the remittance from the Clearing Account to the relevant Settlement Accounts maintained by the BSC Creditors of the aggregate of amounts determined by the FAA to be available for payment to BSC Creditors and, if required, arrange for the transfer of amounts from the Reserve Account or (subject to paragraph 8.5.3) the Borrowing Account to the Clearing Account or vice versa.
- 8.5.3 Subject to paragraph 8.5.4, any differences between the amount of the FAA's estimate under paragraph 8.5.1(a) and the aggregate amount actually credited to Collection Accounts in accordance with paragraph 8.1 on the Payment Date shall be addressed by way of adjustment (later on the Payment Date) to the amount of any drawing on the Credit Facility, and the FAA shall arrange for such adjustment to be

made in respect of the transfer of any amount from the Borrowing Account to the Clearing Account or vice versa.

- 8.5.4 If the FAA determines that there is a possible shortfall amount, the FAA shall calculate the amounts under paragraph 8.5.1(b) assuming the reduction of payments (by the BSC Clearer to BSC Creditors) under paragraph 9.2.2(d) by an aggregate amount equal to the possible shortfall amount, and arrange remittances under paragraph 8.5.2 accordingly.

## **9. PAYMENT DEFAULT**

### **9.1 General**

- 9.1.1 For the purposes of this paragraph 9:

(a) an "**Amount in Default**" is all or any part of any amount due and payable from a BSC Debtor to the BSC Clearer which is not remitted to the relevant Collection Account by 15.30 hours on the relevant Payment Date and, at any time thereafter, together with interest payable by that Non-paying BSC Debtor pursuant to paragraph 9.4 and less any amounts paid or recovered (as defined in paragraph 9.3.1) in respect thereof at that time;

(b) ...

### **9.2 Affected Date**

- 9.2.2 Where this paragraph 9.2.2 applies, subject to paragraphs 8.5.4 and 9.2.5, the FAA shall, on behalf of the BSC Clearer, act in accordance with the following provisions (or whichever of them shall apply) in the order in which they appear, until the FAA is satisfied that the Clearing Account will clear to zero not later than the close of business on the Affected Date:

(a) – (d) ...

(e) notify BSCCo and (in the case of action under paragraph (b) or (c)) the Non-paying BSC Debtor as soon as reasonably practicable of the action taken.

- 9.2.3 For the purposes of this paragraph 9, the amount of the reduction pursuant to paragraph 9.2.2(d) plus interest at the Default Rate from time to time in respect of each Shortfall Creditor is a "**Shortfall Amount**".

- 9.2.4 It is acknowledged for the avoidance of doubt that the FAA may (for the purposes of paragraph 9.2.1) have reason to believe, before a given Payment Date, that there will on that Payment Date be an Amount in Default in respect of a BSC Debtor; and in such case the FAA may (if it is feasible to do so) take steps before such date to implement paragraph 9.2.2(b) or (c) on that date.

- 9.2.5 Where there is an Amount in Default on a Payment Date in respect of a BSC Debtor which is a Defaulting Party, the order in which the FAA shall act in accordance with the provisions (or whichever of them shall apply) of the sub-paragraphs of paragraph 9.2.2 shall be as follows: (b), (c), (a), (d) (and references therein to the application of prior paragraphs shall be construed accordingly).

### **9.3 Amount in Default**

- 9.3.1 For the purposes of this Section N, an Amount in Default shall be "**paid or recovered**" on any Business Day, only if, and to the extent that:

(a) an amount has been paid to the BSC Clearer by 15.30 hours on that Business Day and applied by the FAA on behalf of the BSC Clearer to that Amount in Default; or

(b) ...

**9.5 D+1**

9.5.1 Subject to paragraph 9.6.2A, paragraphs 9.5.2 to 9.5.4 (inclusive) shall apply if:

(a) ...

9.5.3 On the next Business Day following receipt of such proceeds under a Letter of Credit in accordance with paragraph 9.5.2(b), the FAA shall pay on behalf of the BSC Clearer such amounts as have been credited to the Reserve Account to the Shortfall Creditors in full or (as the case may be) in proportion to their respective Shortfall Amounts, except where paragraph 9.6.8 applies.

9.5.4 Where paragraphs 9.5.2 to 9.5.4 apply, the FAA shall promptly notify Shortfall Creditors and BSCCo and (where it takes action under paragraph 9.5.2(b)) the Non-paying BSC Debtor.

**9.6 D+2**

9.6.1 Subject to paragraph 9.6.2A, paragraph 9.6.2 shall apply if:

(a) ...

9.6.2A Where (on the Affected Date) the Non-paying Debtor was a Defaulting Party:

(a) paragraphs 9.6.1 and 9.6.2 shall apply on the basis that the reference in paragraph 9.6.1(b) to the second Business Day after the Affected Date is to the first Business Day after the Affected Date (and references to D+2 shall be construed accordingly);

(b) the FAA shall act in accordance with paragraph 9.6.2 (on such basis) before acting in accordance with paragraph 9.5.2 (if applicable).

9.6.3 Subject to paragraph 9.6.3A, paragraph 9.6.4 shall apply if:

(a) ...

9.6.3A Where:

(a) the Non-paying BSC Debtor has provided Cash Cover but for any reason the Reserve Account has not yet been debited in accordance with paragraph 9.5.2(a) or 9.6.2(a), and/or

(b) the Non-paying BSC Debtor has provided Letter(s) of Credit, the FAA has (in accordance with paragraph 9.5.2(b) or 9.6.2(b)) made call(s) thereon which have not yet been paid, but the FAA has no reason to believe such call(s) will not be paid; and

(c) the sum of the available amount of such Cash Cover and/or (otherwise uncalled) amounts of such Letter(s) of Credit subject to such call is sufficient to enable the outstanding Amount in Default to be paid or recovered,

the FAA, with the approval of BSCCo, may defer acting in accordance with paragraph 9.6.4 for a period not exceeding 3 Business Days; and accordingly the reference in paragraph

9.6.3 to D+2 shall be a reference to such later day as the FAA shall determine, not being later than the 5<sup>th</sup> Business Day after the Affected Date.

- 9.6.6 Each Payment Party shall be liable to pay or (where the amount under paragraph 9.6.5(b)(i) is greater than the amount under paragraph 9.6.5(a)) entitled to receive the amount set out in the relevant Advice Note calculated in accordance with paragraph 9.6.5(a) or if applicable, paragraph 9.6.5(b)(ii), not later than 15:30 on the second Business Day (the "**Default Payment Date**") after the date of the Advice Note and any payment made by a Payment Party to the BSC Clearer in accordance with this paragraph is a limited recourse loan on which interest is payable and which is repayable only to the extent set out in paragraph 9.6.8.

## **ANNEX 3 CHANGES TO LEGAL TEXT – IMPACT ASSESSMENT**

In light of the Impact Assessment received from the FAA during the Assessment Procedure, ELEXON met the FAA and the legal advisors to agree final amendments to the legal text. The text has subsequently been revised and the final version of the legal text is shown in Annex 2 of this document. This section contains details of the issues raised by the FAA and the conclusions of the meeting referred to above. The changes to the legal text were reviewed and agreed by the Modification Group.

### **Payment Procedure (N8.1.1)**

#### **FAA Impact Assessment**

Crediting the collection account at 16.00 on a Payment Date would mean that payments made at 16.00 would miss the cut off time for the Clearing House Automated Payment System (CHAPS) and may not be transferred into the clearing account from the relevant collection account on that Payment Date. The FAA therefore proposed that 15.30 be used instead of 16.00.

#### **Conclusions**

This raised the issue that it is possible for funds to arrive in the relevant Collection Account shortly before 16:00 hours and not be processed in time for them to be transferred to the BSC Banker. In this situation the FAA would be required to make a drawing on the Borrowing Account even though the Party would not officially have an amount in default (in accordance with Section N9.1.1(a) of the Code).

It was agreed that a deadline of 15:30 was therefore more appropriate. ELEXON's legal advisors also confirmed that if payment were received on the Payment Date, but after the 15:30 deadline, the FAA would not be required to make a drawing on the borrowing facility, although it was acknowledged that in some cases payment might be received too late for the FAA to transfer money back to the Borrowing Account.

### **Excess Payments (N8.4)**

#### **FAA Impact Assessment**

If on a Payment Date excess funds are received from a BSC Debtor and the FAA has ascertained that the funds do not relate to that particular Payment Date but to another Payment Date do the excess funds need to be credited back to the BSC Debtors settlement account?

#### **Conclusions**

ELEXON's legal advisors confirmed that section N8.4 allows excess payments to be credited to the relevant Party's Reserve Account or such other account authorised by the BSCCo upon request from the BSC Debtor. ELEXON has agreed that if requested, excess payments can be credited to the BSC Banker's Collection Account. This will allow excess payments to be taken into account on subsequent Payment Dates. ELEXON will issue a Circular to explain this to Parties.

### **Section N8.5.1**

#### **FAA Impact Assessment**

With reference to section 8.3.1, section 8.5.1 should be changed to read "At about 16.00 hours ...."

#### **Conclusions**

Section N8.5.1 relates to the transfer of funds to BSC Creditors. This section has been modified under P39 to account for the fact that in practise funds are transferred to Parties before the full amount has

been received from the BSC Debtors. The FAA therefore agreed that this section should not be amended (should be left as 15:00 hours) as it represents a time which is earlier than the payment deadline to be expected.

#### **Section N9.2.2 (b)**

##### FAA Impact Assessment

By putting the Reserve Account funds on overnight deposit to improve the interest earned, the ability to have access to the Cash Cover in the Reserve Account is prejudiced as the funds will have been put onto overnight deposit before 16.00 hours

##### Conclusions

In order to earn more interest the FAA put funds from the Reserve Accounts in overnight deposit. However this is not a requirement under the Code. It was agreed that if the FAA were in any doubt that there was enough money in the Borrowing Account to cover non-payment, then they would not place Reserve Account funds on overnight deposit. Therefore a Trading Party's Credit Cover should usually be available on the affected date, if required.

#### **Section N9.2.2 (c)**

##### FAA Impact Assessment

This section is not possible due to the Uniform Customs and Practice for Documentary Credits. Banks can take seven days to sort out the claim.

##### Conclusions

Based on experience with the default of Enron Capital and Trade Resources Ltd, it has become apparent that there is likely to be a delay on the initial calling of a Letter of Credit. Therefore it is unlikely that this clause would be invoked. However it was noted that there was a possibility that funds could be available on the affected date, especially if the Party was in default (in accordance with section H of the Code) and the Letter of Credit was being called on a daily basis. The FAA therefore agreed that the section should not be removed.

#### **Section N9.2.5**

##### FAA Impact Assessment

The FAA proposes that Section N9.2.5 should be removed. If the default occurs over a number of days and each Letter of Credit draw down takes 7 days to process there would be heavy usage of option d (scaledown). Rather than having to work out repayments to creditors the FAA would prefer to be able to use the borrowing account.

##### Conclusions

This point highlights an issue whereby the new Section N9.2.5 allows Credit Cover to be called on the affected date in certain situations. However it is still unlikely that the Letter of Credit will be paid on the affected date as it is not possible to prove that funds will not be received from the BSC Debtor until the end of the day. With the current drafting Section N9.2.5 states that if the funds are not received on the day the FAA should scale back payments to BSC Creditors. It was agreed that this was not the intention of the additional section and that the text should be revised to allow funds to be debited from the Borrowing Account if Credit Cover was not available on the affected date i.e. changing the order of sections 9.2.2 (a) – (d) rather than missing (a) out altogether.

Additionally it was noted that extra wording was required to allow Credit Cover to be called on D + 1 for a Defaulting Party in case it is not received on the affected date.

#### **Other Points**

Other points were discussed relating to the legal text. It was agreed that Section N9.2.2 (e) should just state that the BSCCo and the non-paying BSC Debtor should be informed as soon as practicable as it may not always be possible for BSCCo to be informed that the Borrowing Account has been used until the following day.

Finally it was suggested by the legal advisors that Section N9.5.2 (a) should be removed. This paragraph was initially added under P39 to prevent Parties Credit Cover being called to pay back Shortfall Creditors if funds had become available in the Borrowing Account. This seemed appropriate when P39 planned to introduce payment default thresholds as it could delay Credit Cover being called for several days. However now that P39 aims to enforce payment on the day with Credit Cover called on D + 2 at the latest, this paragraph does not seem appropriate.