

MODIFICATION P330

PROPOSED LEGAL TEXT [Strawman]

SECTION C: BSCCO AND ITS SUBSIDIARIES (version [18.0])

ANNEX C-1: PERMISSIBLE ACTIVITIES

Insert new paragraph 2 to read as follows:

Uniform Network Code Gas Performance Assurance Framework Administrator (PAFA) role

2.1 General

2.1.1 BSCCo shall be entitled to [establish/acquire] PAFACo for the purpose of investigating and, if the Board of PAFACo decides to do so, participating in a PAFA Tender, and if successful in such PAFA Tender, performing the functions and responsibilities of the PAFA Role, provided that the total consideration for the payment in respect of all of the allotted shares of PAFACo shall not exceed [£1.00].

2.2 PAFA tender

2.2.1 Subject to paragraphs 2.2.3 and 2.3, BSCCo may provide a loan or grant credit to PAFACo on such terms as the Board may approve, from time to time, provided always that the maximum amount of the loan or credit granted shall not in any event exceed the total aggregate sum of [£100,000.00] to enable PAFACo to pay, in aggregate in connection with a PAFA Tender:

(a) its third party costs (including in respect of professional advisors), expenses, other outgoings and liabilities incurred in connection with the planning, preparation, negotiation and award (or any other process leading to an award), of the PAFA Role; and

(b) its overhead costs (including, without limitation, personnel costs), provided that such costs shall in the first instance be incurred by BSCCo on behalf of PAFACo,

(together, “PAFA Tender Costs”).

2.2.2 Subject to paragraph 2.2.1, PAFA Tender Costs may be incurred over successive BSC Years.

2.2.3 PAFA Tender Costs shall be BSC Costs and BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.

2.2.4 BSCCo shall submit any report it receives from PAFACo pursuant to paragraph 2.4.6(c) to the Panel at its next available meeting and every quarter thereafter until repayment of the Aggregate PAFA Tender Costs or the loan is written off in accordance with paragraph 2.3.6 (as the case may be).

2.2.5 BSCCo shall ensure that PAFA Tender Costs are subject to a statutory audit and such findings are reported to the Panel and Parties.

2.3 Reimbursement of PAFA Tender Costs to Trading Parties

2.3.1 The amounts recoverable by BSCCo as PAFA Tender Costs are amounts expended or funded by or on behalf of Trading Parties pursuant to paragraph 2.2 and any amounts which are otherwise described in the Code as PAFA Tender Costs.

2.3.2 BSCCo shall procure the agreement of PAFACo that in the event PAFACo is successful in a PAFA Tender exercise PAFACo shall repay Aggregate PAFA Tender Costs to BSCCo within the PAFA Tender Recovery Period.

2.3.3 Subject to paragraphs 2.3.2, 2.3.5 and 2.3.6, Trading Parties shall be entitled to recover Aggregate PAFA Tender Costs in accordance with their respective Main Funding Shares at that time.

2.3.4 As soon as reasonably practicable after receipt of the statement referred to in paragraph 2.4.5(c), BSCCo shall determine the Aggregate PAFA Tender Costs and the recovery share for each Trading Party and provide its own statement of account to the Panel, the Authority and all Parties (excluding commercially sensitive information). Subject to the Panel's approval, such statement of account shall be final and binding in the absence of manifest error (provided that such error must be notified no later than six months following receipt of the statement of account, failing which the statement of account shall be a final determination for the purposes of the Code).

2.3.5 Subject to paragraph 2.3.6 it is acknowledged that:

(a) in the event PAFACo is unsuccessful in a PAFA Tender exercise, it is unlikely that BSCCo will be able to recover Aggregate PAFA Tender Costs (in whole or in part) from PAFACo; and

(b) if BSCCo were obliged to reimburse Aggregate PAFA Tender Costs to Trading Parties the financial consequences of such reimbursement would be borne by Trading Parties themselves.

2.3.6 Notwithstanding Section C3.4.6, in accordance with paragraph 2.3.5, the Parties agree that:

(a) subject to paragraph 2.3.6(b), any loan arrangements agreed pursuant to this paragraph 2 may provide that the Board may, in its absolute discretion, resolve to write off any loan or credit provided to PAFACo for PAFA Tender Costs which relates to an unsuccessful PAFA Tender exercise, provided the amount written off shall not exceed the total cumulative amount of [£100,000.00] plus interest at a market rate which would otherwise have been receivable; and

(b) for the purposes of the Code, such loan arrangements as referred to in paragraph 2.3.6(a) which permit the Board to write off a loan or credit to PAFACo shall be treated as arrangements concluded at arm's length and on normal commercial terms.

2.3.7 For the avoidance of doubt, BSCCo shall procure that any PAFA Tender Costs provided pursuant to paragraph 2.2.1(a) which are underspent shall be refunded to BSCCo.

2.4 Shareholder arrangements with PAFACo

2.4.1 At all times BSCCo shall be the registered holder of all of the issued share capital in PAFACo.

2.4.2 For the avoidance of doubt, the form of the Memorandum and Articles of Association of PAFACo shall not form part of the Code, but shall be subject to Board approval.

2.4.3 Subject to the provision of PAFA Tender Costs, but without limitation to paragraph 2.4.4, BSCCo shall not provide any finance or financial support to PAFACo.

2.4.4 BSCCo agrees and undertakes that it shall not cause PAFACo to be in default of the Legal Requirements of the PAFA Role by reason of any act or omission in connection with its capacity as the PAFACo Shareholder, and each Party agrees that BSCCo may contract or otherwise put in place arrangements with PAFACo on such basis, unless:

(i) BSCCo is required to take such step by reason of a Legal Requirement and/or the Code; and

(ii) BSCCo has first notified and, where practicable, consulted with PAFACo in relation to such step.

2.4.5 In its capacity as the PAFACo Shareholder, BSCCo shall ensure PAFACo's contractual agreement, that:

(a) subject always to paragraph 2.4.4:

(i) the Board shall appoint the chairman of the PAFACo Board from time to time;

(ii) the initial chairman of the PAFACo Board shall, in consultation with the Panel, appoint the other initial directors of PAFACo;

(iii) BSCCo, in its capacity as PAFACo Shareholder, shall have the power to appoint or remove directors of PAFACo; and

- (iv) BSCCo, in its capacity as PAFACo Shareholder, shall approve or reject the appointment of directors of PAFACo;
- (b) PAFACo shall provide a quarterly summary of PAFA Tender Costs to BSCCo, provided that PAFACo shall:
 - (i) ensure that it reports on total costs and, subject to paragraph 2.4.5(b)(ii), provides in sufficient detail a breakdown of the costs such as to provide BSC Parties with a reasonable level transparency in respect of the scope and level of expenditure; and
 - (ii) be entitled to exclude any information from the breakdown of costs provided to Parties which relates to the affairs of PAFACo, a BSC Company or any other third party and is in PAFACo's reasonable opinion confidential and/or commercially sensitive in connection with a PAFA Tender; and
- (c) without prejudice to paragraph 2.4.5(b), PAFACo shall, as soon as reasonable practicable after it is notified of its success or not (as the case may be) in a PAFA Tender exercise, submit a statement of its costs incurred in accordance with paragraph 2.2.1(b) to BSCCo;

SECTION X: DEFINITIONS AND INTERPRETATION (version 55.0)

ANNEX X-1: GENERAL GLOSSARY

Amend Section X by inserting the following definitions in alphabetical order into Annex X – 1 General Glossary:

“Aggregate PAFA Tender Costs”:

means the aggregate amount of PAFA Tender Costs incurred in respect of a successful PAFA Tender exercise comprising each amount of PAFA Tender Costs pursuant to:

- (i) Annex C-1 paragraph 2.2.1(a) repayable together with interest at a market commercial rate from the first day of the month after the month in which such amount was paid to PAFACo until the re-payment date; and
- (ii) Annex C-1 paragraph 2.2.1(b) repayable on a capital repayment basis based on BSCCo’s statement of account provided in accordance with paragraph 2.3.4;

“PAFA Tender”:

means all activities, by or on behalf of PAFACo, in connection with the planning, preparation, negotiation and award of, or any other process leading to an award of, the PAFA Role;

“PAFA Tender Costs”:

has the meaning given to that term in Annex C-1 paragraph 2.2.1;

“PAFA Tender Recovery Period”:

means the period commencing on the date PAFA Tender Costs are first paid to PAFACo and ending a maximum of 5 years thereafter;

<u>“PAFACo”</u>	<u>means [REDACTED], a company duly incorporated in England and Wales (registration number [REDACTED]);</u>
<u>“PAFACo Board”:</u>	<u>means the board of directors of PAFACo;</u>
<u>“PAFACo Shareholder”:</u>	<u>means BSCCo in its capacity as holder of all of the issued share capital of PAFACo;</u>
<u>“PAFA Role”:</u>	<u>means the role of ‘Performance Assurance Framework Administrator’ to be awarded under the Uniform Network Code;</u>