

## **MODIFICATION PROPOSAL P209 - ATTACHMENT 1 - DRAFT LEGAL TEXT**

### **SECTION J: PARTY AGENTS AND QUALIFICATION UNDER THE CODE** (version 9.0)

*Amend paragraph 1.4.2 as follows:*

- 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 ~~BSCP534~~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.

*Amend paragraph 3 as follows:*

- 3.1.1 The Panel shall be responsible, subject to and in accordance with this Section J and ~~BSCP534~~BSCP537, for the Qualification Process relating to those persons referred to in paragraph 2.1.2.
- 3.1.2 The Panel 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 ~~BSCP534~~BSCP537 in relation to the Qualification and re-Qualification Process.

### **3.3 Qualification Process**

- 3.3.1 The Qualification Process shall be conducted in accordance with this Section J and ~~BSCP534~~BSCP537.

- 3.3.7 Following receipt of an Applicant's application for Qualification pursuant to paragraph 3.3.3 BSCCo shall:
- (a) meet or communicate with the Applicant to explain the Qualification Process (including but not limited to the requirement for the Applicant to complete and submit a Qualification Document to BSCCo); and
  - (b) provide appropriate guidance and support to the Applicant (if requested) during the course of the progress of the application for Qualification, provided that notwithstanding any such guidance or support, the responsibility for the management, progression and completion of the application for Qualification and for establishing the Applicant's compliance with the Qualification Requirements is that of the Applicant. The amount of guidance and support provided to the Applicant (if any) shall be at the reasonable discretion of BSCCo or as set out in ~~BSCP531~~BSCP537.
- 3.3.12 The Applicant shall be entitled to:
- (a) request the Panel to provide advice or clarification or seek endorsement of the plans described in the Qualification Document; and/or
  - (b) in the circumstances described in ~~BSCP531~~BSCP537, request the Panel 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 Panel, in accordance with the relevant provisions of the Code and ~~BSCP531~~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 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.
- 3.3.16 The Panel shall ensure that copies of the latest version of this Section J and ~~BSCP531~~BSCP537 are made available to the Applicants.

#### **3.4 Removal of Qualification**

- 3.4.1 The Performance Assurance Board shall have the right at any time and from time to time in accordance with and in the circumstances set out in this paragraph 3.4

and ~~BSCP531~~~~BSCP537~~ to remove the Qualification of any Qualified Person (other than a Party acting in its capacity as a Supplier, SMRA or UMSO), whereupon such person shall cease to be Qualified.

- 3.4.3 The Performance Assurance Board shall notify (in accordance with ~~BSCP531~~~~BSCP537~~) the Qualified Person where it is satisfied that the Qualified Person is failing to comply with the requirements and/or standards for performance referred to in paragraph 3.4.2 such that consideration is being given or is likely to be given to the removal of the Qualification of the Qualified Person.
- 3.4.5 If the Performance Assurance Board (acting reasonably) refuses to approve the rectification plan referred to in paragraph 3.4.4 (or any revision thereof by the Qualified Person) or considers that the Qualified Person is still failing to comply with the requirements and/or standards for performance referred to in paragraph 3.4.2 and/or has not complied with or adequately complied with the steps described in the rectification plan approved by the Performance Assurance Board, the Performance Assurance Board may notify any relevant Parties in accordance with ~~BSCP531~~~~BSCP537~~ that consideration is being given or is likely to be given to the removal of the Qualification of the Qualified Person.
- 3.4.7 Relevant parties shall be notified as set out in and in accordance with ~~BSCP531~~~~BSCP537~~ where the Qualification of a Qualified Person has been removed in accordance with this paragraph 3.4.
- 3.4.9 Nothing in this Section J or ~~BSCP531~~~~BSCP537~~ shall prevent any person whose Qualification has been terminated, removed or surrendered, from re-applying for Qualification at any time.

### **3.5 Re-Qualification**

- 3.5.1 With the exception of a Supplier (in relation to its participation capacity as a Supplier), each Qualified Person shall be required to re-Qualify prior to it being subject to a Material Change. ~~BSCP531~~~~BSCP537~~ may set out details or criteria as to what events may constitute a Material Change. These details or criteria may include but shall not be limited to:
- (a) process, staff or system changes; or
  - (b) in the case of Party Agents (except Meter Administrators) and SMRAs a significant increase in the number of Metering Systems in relation to which that person performs or intends to perform the relevant functions described under the Code.
- 3.5.3 When a Qualified Person is required to re-Qualify it shall submit the appropriate application (as described in ~~BSCP531~~~~BSCP537~~) to BSCCo and paragraphs 3.3.1 to 3.3.19 (inclusive) shall apply as if references therein to “Qualification”, “Qualify” and “Qualified” were references to “re-Qualification”, “re-Qualify” and re-Qualified”.
- 3.5.5 If any such Qualified Person is not so re-Qualified in accordance with this Section J and/or ~~BSCP531~~~~BSCP537~~, such Qualified Person’s Qualification shall automatically lapse to the extent that the Qualified Person is only allowed to operate and perform their functions, activities, responsibilities and obligations under the Code (as the case may be) in accordance with and to the level of their most recent previously approved Qualification.

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 and ~~BSCP53~~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 ~~BSCP53~~BSCP537.

3.8.1 Applicants shall agree to be bound by the Qualification Process, the provisions of this Section J and ~~BSCP53~~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, any Panel Committee or the Performance Assurance Administrator) that:

- (a) all information supplied by or on behalf of the Applicant or Qualified Person to the Panel, 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 Panel being made in advance of the provision of the relevant information to the Panel, any Panel Committee, BSCCo or the Performance Assurance Administrator;
- (b) completion of all documentation by or on behalf of the Applicant or Qualified Person in connection with the Qualification Process is and will remain the sole responsibility of the Applicant or Qualified Person;
- (c) the Applicant or Qualified Person will duly complete all such documentation and provide all the information required by the

Qualification Process within the time periods prescribed by ~~BSCP531~~BSCP537; and

- (d) the Qualified Person has had the opportunity to take its own legal and other professional advice regarding the Qualification Process;

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, and/or any Panel Committee) in accordance with ~~BSCP531~~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.

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 ~~BSCP531~~BSCP537.

### **3.9 Derogations**

3.9.1 The Panel may issue a derogation, in accordance with ~~BSCP531~~BSCP537, to any Qualified Person in respect of the Qualification of such Qualified Person.

*Amend paragraph 5.1.1 as follows:*

5.1.1 Each Supplier shall ensure that it and each of its Supplier Agents who are to be responsible for SVA Metering Systems within a SMRS has satisfied the requirements of the Supplier Qualification Process in accordance with this Section J and ~~BSCP531~~BSCP537 before any registration of that Supplier in respect of a SVA Metering System in that SMRS becomes effective.

### **ANNEX K-1: MASTER REGISTRATION AGREEMENT (version 22.0)**

*Amend paragraph 3.2.1 as follows:*

3.2.1 Each Licensed Distribution System Operator shall provide all reasonable assistance to each Supplier and its Supplier Agents in accordance with Section J and ~~BSCP531~~BSCP537 as may be required by the relevant Supplier and/or its Supplier Agents for it or them to satisfy the requirements of the Qualification Process.

### **SECTION S: SUPPLIER VOLUME ALLOCATION (version 13.0)**

*Amend paragraph 6.1.1 as follows:*

6.1.1 A Half Hourly Data Aggregator shall be Qualified:

- (a) to aggregate energy values per Supplier BM Unit in accordance with paragraph 3.6 of Annex S-2; and/or
- (b) to aggregate energy values per Supplier per GSP Group in accordance with paragraph 3.5.9 to 3.5.12 of Annex S-2,

as further provided in this paragraph 6.1 and, in each case, in accordance with the provisions of Section J and ~~BSCP531~~BSCP537 applicable to the function (as described in paragraphs (a) and (b)) which such Data Aggregator is to perform.

*Amend paragraph 8.2.15 as follows:*

8.2.15 Each Licensed Distribution System Operator shall ensure that it (or any person performing the relevant functions of an UMSO on its behalf) is Qualified to perform the functions of an UMSO in accordance with Section J and ~~BSCP-531~~ 537 before it (or any person performing the relevant functions on its behalf) provides the functions set out in this paragraph 8.2.

**ANNEX X-1: GENERAL GLOSSARY** (*version 32.0*)

*Amend the definitions set out below as follows:*

<b>"Material Change":</b>	means a change to a person's systems or processes which is of such a type or magnitude as to raise the reasonable expectation of an impact on that person's ability to meet its obligations under the Code and any Material Changes described as such in Section J and/or <del>BSCP-531</del> <u>537</u> ;
<b>"Menu of Qualification Fees":</b>	means the scale of fees to be charged in connection with the Qualification Process, as set out in <del>BSCP531</del> <u>BSCP537</u> ;
<b>"Qualification Process":</b>	means the process set out in Section J and <del>BSCP531</del> <u>BSCP537</u> whereby an Applicant is assessed to determine whether it satisfies the Qualification Requirements (and for the avoidance of doubt where the context allows also includes re-Qualification);
<b>"Qualification Document":</b>	means the Qualification Document (as annexed to <del>BSCP531</del> <u>BSCP537</u> ) that is to be completed by the Applicant in accordance with Section J3.3.5 and which once completed describes how the Applicant will meet its obligations under the Code and any relevant BSCP.
<b>"Qualification Requirements":</b>	means, in relation to an Applicant, the requirements which that Applicant is required to satisfy in order to perform the specific activities or functions for which it is applying to be Qualified being one or more of the activities or functions for which Qualification is required pursuant to Section J, Section S and <del>BSCP531</del> <u>BSCP537</u> ;