

DRAFT LEGAL TEXT FOR PROPOSED MODIFICATION 318

SECTION A: PARTIES AND PARTICIPATION (V6.0)

1. GENERAL

Amend paragraph 1.1 to read as follows:

1.1 Introduction

1.1.1 This Section A sets out:

- (a) the capacities which a Party may have under the Code;
- (b) the arrangements for admission of new Parties to the Code;
- (c) the requirement to provide Party Details to BSCCo and to update Party Details from time to time;
- (d) the requirement to register as a Party with the CRA; and
- (e) the provisions as to withdrawal ~~or~~ expulsion or transfer of a Party from the Code.

2. ACCESSION

Insert new paragraph 2.7 as follows:

2.7 Novation Procedure

2.7.1 A person wishing to be admitted as a party to the Framework Agreement by novation (a "Novation Applicant") shall submit to BSCCo:

- (a) a duly completed application form in such form as BSCCo may from time to time prescribe, signed by an Authorised Person, giving its Party Details as at the time of its application and enclosing a Novation Agreement signed by the Novation Applicant and the Party wishing to transfer its rights and obligations under an Accession Agreement ("Transferring Party");
- (b) an undertaking from the Novation Applicant (in the form prescribed in the application form) that the Party Details of such Novation Applicant are complete and accurate in all material respects; and
- (c) the Novation Fee.

2.7.2 Upon receipt of the items referred to in paragraph 2.7.1, BSCCo shall as soon as reasonably practicable:

- (a) check that the application form has been duly completed by the Novation Applicant and the documentation required by paragraph 2.7.1 and the Novation Fee have been duly provided;
- (b) notify:

(i) each Panel Member;

(ii) each Party; and

(iii) the Authority

of the name of the Novation Applicant and the Transferring Party, and the participation capacities (if any) notified by the Party Applicant in its Party Details; and

(c) attend a Panel meeting held in accordance with paragraph 2.7.3.

2.7.3 If:

(a) a Novation Applicant has fulfilled the requirements in paragraph 2.7.1; and

(b) at a meeting of the Panel the Panel determines, in its absolute discretion, that a novation request under paragraph 2.7.1 should be granted,

then such Novation Applicant shall be admitted as a party to the Framework Agreement and BSCCo shall forthwith date, execute and deliver a Novation Agreement, duly executed by the Novation Applicant, in order to effect such admission and give notice of the admission of such Novation Applicant as a Party, and the replacement of the Transferring Party, to:

(i) the Novation Applicant;

(ii) each Panel Member;

(iii) each Party;

(iv) the Authority; and

(v) each BSC Agent.

2.7.4 A decision of the Panel pursuant to paragraph 2.7.3 shall be final and binding on the Novation Applicant and the Novation Applicant shall have no right of appeal. The Panel may at a hearing held under paragraph 2.7.3 request further information be provided by a Novation Applicant. In such an event the Novation Applicant shall provide such information and a further hearing or hearings shall be then held prior to the Panel making its decision under paragraph 2.7.3.

2.7.5 Subject to and in accordance with the provisions of this paragraph 2.7, each Party hereby irrevocably and unconditionally authorises BSCCo to date, execute and deliver on behalf of such Party any Novation Agreement duly executed by a Novation Applicant and a Transferring Party, to admit any Novation Applicant as a Party as of the date of its Novation Agreement ("**Novation Date**"), to transfer the BSC Party ID and any authorisations and qualifications obtained under the Code from the Transferring Party to the new Party, and to release any Transferring Party under the provisions of paragraph 5.3.

2.7.6 The Panel shall from time to time set the fee payable by Novation Applicants in connection with an application by novation as a party to the Framework Agreement ("**Novation Fee**"). The Novation Fee shall not exceed the amount which in the Panel's opinion (at the time of setting such fee) represents the reasonable average costs of BSCCo in processing an application by novation as a party to the Framework Agreement. The Novation Fee paid by a Party Applicant shall not be refunded to such Party Applicant for any reason.

4. PARTY REGISTRATION

4.3 Initial registration in CRS

Amend paragraph 4.3 to read as follows:

- 4.3.1 A Party shall apply for registration in CRS by submitting to the CRA in accordance with BSCP-65 its Party Registration Data and the date from which it wishes its registration to be effective.
- 4.3.2 Upon receiving a Party's application for registration in CRS, the CRA shall seek confirmation from BSCCo that such Party is a party to the Framework Agreement, that its application pursuant to paragraph 4.3.1 is consistent with the Party Details held by BSCCo in respect of such Party and that it has complied with the requirements referred to in paragraph 4.1.5.
- 4.3.3 Subject to receiving confirmation from BSCCo as to the matters in paragraph 4.3.2, the CRA shall in accordance with BSCP-65:
- (a) enter and maintain the Party Registration Data in CRS;
 - (b) allocate a registration identity to such Party; and
 - (c) where the Party wishes or (by virtue of paragraph 1.4) is required to hold Energy Accounts, allocate a Production Energy Account and a Consumption Energy Account to such Party.

4.4 Changes to the Party Registration Data

Amend paragraph 4.4.1 to read as follows:

- 4.4.1 If at any time:
- (a) there is any change in the participation capacities of a Party;
 - (b) the Party Registration Data of a Party otherwise ceases for whatever reason to be accurate and complete in all material respects; or
 - (c) a Party wishes to become a Trading Party, or (not being required to be a Trading Party by virtue of paragraph 1.4) wishes to cease to be a Trading Party,
- such Party shall apply to the CRA in accordance with BSCP-65 to revise its registration in order to reflect such change, specifying the date from which such change is to be effective.

4.5 General Provisions

Amend paragraph 4.5.2 to read as follows:

- 4.5.2 Following entry or revision of any Party's Party Registration Data in CRS pursuant to paragraph 4.3.3 or 4.4.2, the CRA shall notify:
- (a) such Party;
 - (b) BSCCo;
 - (c) each BSC Agent

of the Party's registration identity and Energy Account details in accordance with BSCP 65.

5. EXIT

5.3 General provisions

Amend paragraph 5.3 to read as follows:

5.3.1 Where a Party (the "**Discontinuing Party**"):

- (a) withdraws from the Code and ceases to be a party to the Framework Agreement pursuant to paragraph 5.1; ~~or~~
- (b) is expelled from the Code and ceases to be a party to the Framework Agreement pursuant to paragraph 5.2; or
- (c) transfers its Accession Agreement and ceases to be a party to the Framework Agreement pursuant to paragraph 2.7;

the provisions of this paragraph 5.3 shall apply.

5.3.2 With effect from the Withdrawal Date, ~~or~~ Expulsion Date or Novation Date (as the case may be) (the "**Discontinuance Date**"):

- (a) the Discontinuing Party shall, subject to the provisions of paragraph 5.3.3, be automatically released and discharged from all its obligations and liabilities under the Code (including the Code Subsidiary Documents) and the Framework Agreement;
- (b) each other Party shall, subject to the provisions of paragraph 5.3.3, be automatically released and discharged from all its obligations and liabilities to the Discontinuing Party under the Code (including the Code Subsidiary Documents) and the Framework Agreement; and
- (c) (without prejudice to paragraph 5.1.3(d)) any registrations and authorisations made by the Discontinuing Party under the Code (other than those transferred by a Transferring Party under a Novation Agreement) shall cease to be effective.

5.3.3 Any release and discharge referred to in paragraph 5.3.2 other than a release and discharge of a Transferring Party shall not extend to:

- (a) the rights and liabilities (whether actual, contingent, accrued or otherwise) of a Party as at the Discontinuance Date (including, in the case of the expulsion of a Party, any accrued rights of each other Party in respect of the circumstances giving rise to such expulsion);
- (b) any rights and liabilities (whether actual, contingent, accrued or otherwise) of a Party which may accrue pursuant to any Reconciliation Settlement Run or Extra Settlement Determination relating to any Settlement Day up to and including the last Settlement Day;
- (c) the obligations of the Discontinuing Party under Section H4.2.

- 5.3.4 Save as provided in paragraph 5.3.2, the Framework Agreement and Code shall, upon the withdrawal ~~or~~ expulsion or exit by transfer (as the case may be) of any Party, remain in full force and effect and binding on each of the other Parties.
- 5.3.5 BSCCo shall, where possible before and in any event promptly upon the withdrawal ~~or~~ expulsion or exit by transfer of such Party, notify the same to:
- (a) each other Party;
 - (b) each Panel Member;
 - (c) the Authority; and
 - (d) each BSC Agent.

SECTION B: THE PANEL (V20.0)

3. POWERS AND FUNCTIONS OF PANEL, ETC

3.1 General

Amend paragraph 3.1.2 to read as follows:

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

- (a) deciding (subject to a reference to or approval of the Authority, as provided in the Code) on the expulsion or suspension of the rights of any Party pursuant to and in accordance with Section H3.2;
- (b) implementing or supervising the implementation of the procedures for modification of the Code in Section F;
- (c) establishing arrangements for the resolution of Trading Disputes in accordance with Section W;
- (d) determining values for parameters (to be applied in the Code) as may be required of the Panel in accordance with any provision of the Code;
- (e) adopting and from time to time revising Code Subsidiary Documents in accordance with Section F3;
- (f) taking steps to ensure that the Code is given effect in accordance with its terms, and (but only where expressly so provided in the Code) taking steps to ensure compliance by Parties with the provisions of the Code;
- (g) providing or arranging for the provision of reports and other information to the Authority in accordance with the further provisions of the Code;
- (h) approving the Business Strategy prepared by BSCCo for each BSC Year, and revisions to that plan;
- (i) deciding matters which (pursuant to any provision of the Code providing for such referral) are referred to it following any decision or determination of BSCCo or a BSC Agent;
- (j) setting the terms of reference for the BSC Auditor under Section H5 and considering the BSC Audit Report;
- (k) if requested by the Authority, conveying any direction or request of the Authority to any Party, BSCCo, the BSC Auditor or any BSC Agent; ~~and~~
- (l) preparing, considering, recommending changes (if necessary) and approving documents relating to performance assurance in accordance with Section Z and hearing and determining any Risk Management Determination Appeals; ~~and~~
- (m) approving or rejecting applications for transfer of a Party's Accession Agreement and BSC Party ID in accordance with Section A.

SECTION C: BSCCO AND ITS SUBSIDIARIES (V18.0)

3. POWERS AND FUNCTIONS OF BSCCO

3.1 General

Amend paragraph 3.1.1 to read as follows:

3.1.1 Without prejudice to paragraph 1.2.2, BSCCo shall have the following powers, functions and responsibilities:

- (a) to enter into, manage and enforce contracts with service providers (as BSC Agents) for the supply of the services required by BSC Service Descriptions, and negotiate and agree amendments to such contracts, as further provided in Section E and, where relevant, paragraph 10.1.5;
- (b) to advise the Panel and keep it advised as to and in respect of the matters which it is necessary or appropriate that the Panel should consider in order to discharge the Panel's functions and responsibilities in accordance with the Code;
- (c) to provide or arrange the provision of such facilities, resources and other support as may be required by the Panel to enable the Panel or any Panel Committee or Workgroup to discharge its functions and responsibilities under the Code;
- (d) to provide secretarial and administrative services in connection with meetings of the Panel and Panel Committees and Workgroups, including the convening and holding of such meetings, and taking and circulation of minutes;
- (e) to provide and make available to Parties such facilities, services and information in connection with the implementation of the Code as the Code may provide or the Panel may require;
- (f) to provide or arrange the provision of facilities, resources and other support in connection with the procedures for modification of the Code in accordance with Section F;
- (g) to enter into contracts (in terms complying with any applicable provisions of Section B) of employment or other engagement with persons from time to time to be appointed as Panel Chairman or Panel Members under Section B2.5;
- (h) to indemnify against liability and, if relevant, to reimburse the expenses of, Panel Members, members of Panel Committees, members of Workgroups and others as provided in the Code or as otherwise required in BSCCo's discretion in connection with any BSC Agent Contract;
- (i) to enter on behalf of all Parties into Accession Agreements with new Parties in accordance with Section A2.2, and to enter on behalf of all Parties into Novation Agreements with Novation Applicants and Transferring Parties in accordance with Section A2.7;
- (j) to act as BSC Agent for the purposes of the Master Registration Agreement in accordance with Annex K-1;
- (k) to act as shareholder of the BSC Clearer in accordance with paragraph 7;

- (l) to receive, collect and hold such data and information, and to prepare and maintain such books and records, as may be required under the Code or reasonably necessary to enable BSCCo to comply with its functions and responsibilities under the Code; and to provide data and information held by it to the Panel upon request and to other persons in accordance with any express provision of the Code;
- (m) without prejudice to the generality of paragraph (l), where it is not the function of a BSC Agent to do so, to maintain records of the extent to which Parties have satisfied requirements of the kind referred to in Section A4.5.3, and to provide details thereof to BSC Agents and other persons as required for the purposes of the Code;
- (n) to monitor whether any Party is, or with the lapse of time or giving of notice would be, in Default (in accordance with Section H3), and to give to any Party any notice the giving of which will result in that Party being in Default (but not for the avoidance of doubt to give any notice consequent upon a Party's being in Default unless expressly authorised to do so by the Panel or by a provision of the Code);
- (o) to act as the Performance Assurance Administrator;
- (p) to prepare and/or (as the Panel may require) assist the Panel to prepare the Annual BSC Report for each BSC Year in accordance with Section B6.1;
- (q) to make recommendations to the Panel as to possible Modification Proposals in the circumstances mentioned in paragraph 3.8.8 and Section F2.1.1(d)(ii) and (iii);
- (r) to the extent provided in and in accordance with the policy from time to time established by the Panel, to act as a point of contact for persons from other countries interested in, and to explain to such persons, the arrangements for and developments in wholesale trading of electricity in Great Britain and/or Offshore, and to participate in institutional comparative discussions of such arrangements and developments in other countries;
- (s) to provide Profile Administration Services (with the consent of the Panel) and to enter into, manage and (subject to the Code) enforce contracts with service providers for the supply of Profile Administration Services in accordance with Section C9;
- (t) in conjunction with the other code administrators identified in the Code Administration Code of Practice, to maintain, publish, review and where appropriate (but subject always to the approval of the Authority) amend the Code Administration Code of Practice; and
- (u) to delegate responsibility for performance of the powers, functions and responsibilities specified in this paragraph 3.1.1 and otherwise provided for in the Code, to the BSC Services Manager (save in respect of paragraph (k) and its obligations and responsibilities under Section E, paragraph 4).

SECTION H: GENERAL (V19.0)

9. GENERAL

9.1 Assignment

Amend paragraph 9.1.1 to read as follows:

- | 9.1.1 Unless permitted to do so pursuant to Section A2.7, Aa Party shall not assign and/or transfer and shall not purport to assign or transfer any of its rights or obligations under the Code or the Framework Agreement, provided that a Party may assign, subject to Section N2.4 to 2.7 (inclusive), by way of security only all or any of its rights over receivables arising under the Code.

9.9 Jurisdiction

Amend paragraph 9.9.3 to read as follows:

- | 9.9.3 Any Party which is not a company incorporated under the Companies Act ~~1985-2006~~ shall immediately on becoming a Party (or upon ceasing to be a company so incorporated) provide to BSCCo an address in Great Britain for service of process on its behalf in any proceedings provided that if any such Party fails at any time to provide such address, such Party shall be deemed to have appointed BSCCo as its agent to accept service of process on its behalf until and unless such Party provides BSCCo with an alternative address in Great Britain for these purposes.

ANNEX X-1: GENERAL GLOSSARY (V67.0)

Insert the following new definitions in alphabetical order:

<u>"BSC Party ID":</u>	<u>means an alphanumeric, unique identifier, assigned to a Party by BSCCo;</u>
<u>"Novation Agreement":</u>	<u>means an agreement in the form prescribed by BSCCo whereby a Party transfers its rights and obligations under an Accession Agreement including its BSC Party ID to a Novation Applicant ;</u>
<u>"Novation Applicant":</u>	<u>has the meaning given to that term in Section A2.7.1;</u>
<u>"Novation Date":</u>	<u>has the meaning given to that term in Section A2.7.5;</u>
<u>"Novation Fee":</u>	<u>means the application fee (if any) set by the Panel from time to time in accordance with Section A2.7.6 as the fee payable by a Novation Applicant;</u>
<u>"Transferring Party":</u>	<u>has the meaning given to that term in Section A2.7.1(a);</u>