



Making a positive difference
for energy consumers

BSC Parties, National Grid
Electricity Transmission Limited,
Elexon Limited and other
interested parties

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Dear Colleagues,

Consultation on a potential licence modification to enable future expansion of the role of Elexon Limited

This consultation seeks your views on a potential modification to standard condition C3 'The Balancing and Settlement Code' (SLC C3) of the electricity transmission licence.¹ The modification would change the transmission licence provisions to allow the industry to explore options for potential expansion of Elexon Limited's (Elexon) role, if appropriate. Appendix 1 contains indicative drafting showing what this change might look like.

Background

In April 2012, we published a letter² about the potential expansion of Elexon's role and vires. Elexon is the Balancing and Settlement Code Company (BSCCo), and administers the Balancing and Settlement Code (BSC), delivering electricity balancing and settlement services. The BSCCo's constitution, powers and functions are set out in Section C of the BSC.³ BSC Section C 1.2.2 prevents the BSCCo from undertaking any activity not provided for in the BSC. Annex X-1 of the BSC defines the BSCCo as Elexon Limited (or any successor to that company acting in the capacity as the BSCCo). The aim of expanding its vires is to enable it to potentially take on additional work beyond what is currently in the BSC, in appropriate circumstances.

Since we published that letter, a number of potential expansion models have been considered.⁴ It has been highlighted (including in the recent independent review of Elexon's governance)⁵ that a change to the electricity transmission licence may be needed to facilitate potential Elexon expansion, if appropriate.

Elexon already does some work outside the BSC's core remit: it administers the government's Warm Home Discount (WHD) scheme and has recently become the Electricity

¹ <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>.

² <https://www.ofgem.gov.uk/ofgem-publications/61697/elexon-expansion-way-forward-letter-300412.pdf>.

³ The BSC and related documents are here: <http://www.elexon.co.uk/bsc-related-documents/balancing-settlement-code/consolidated-bsc/>.

⁴ P284 Expansion of Elexon's role via the 'contract model': <http://www.elexon.co.uk/mod-proposal/p284/> and P289 Enabling Elexon to participate in tendering for the DCC Licensee role via a subsidiary: <http://www.elexon.co.uk/mod-proposal/p289/>.

⁵ 'The Governance of Elexon': <http://www.elexon.co.uk/wp-content/uploads/2013/07/The-Governance-of-ELEXON-Final-Report.pdf>.

Market Reform (EMR) settlement service provider. It was given these roles by the Secretary of State, through changes made to the transmission licence.⁶

Elexon has previously come to the Authority with proposals to change its corporate structure and expand its role in order to undertake activities outside of the BSC. Two BSC modifications were raised in 2012 (P284 and P289)⁷ seeking to enable Elexon to participate in the competition run by the Department of Energy and Climate Change to appoint the Data and Communications Company and other smart metering roles. In our decision on P289 we noted that, in the absence of an appropriate licence amendment, we do not consider that the power to modify the BSC⁸ can properly be used to introduce provisions into the BSC that bear no relation to the BSC's purpose.

In 2013, Elexon's Board and the BSC Panel jointly commissioned an independent review of Elexon's governance. This was carried out by Bill Knight and published in July 2013.⁹ The review identified a number of issues and made recommendations aiming to improve Elexon's governance. We note that Elexon's Board and the BSC Panel are in the process of considering the review's recommendations and developing options for change. As well as considering Elexon's governance, the review considered Elexon's vires and one of its recommendations was that Ofgem should consider a change to National Grid Electricity Transmission's (NGET) licence. We responded in our October 2013 letter¹⁰ that we would engage in discussions regarding a potential change to the transmission licence.

The changes proposed in this consultation do not affect the Elexon governance issues that Elexon's Board and the BSC Panel are considering. We think it is important that these governance issues are addressed in a timely way. We understand that Elexon have made it a priority to address these issues and that they regard them as separate to any vires considerations. We agree that addressing the governance concerns should take priority, and welcome that this work is being taken forward.

The proposed licence changes also do not necessitate a change to the BSC (so as to expand Elexon's role) and are not driven by any particular future role that Elexon may take on. Rather, this would be an enabling change, allowing the industry to explore options for expansion if appropriate.

Effects of the proposed licence modifications

The changes we propose to make to the electricity transmission licence would:

- insert a high level description of the BSCCo in the licence. We consider that it would be beneficial to clarify the difference between the BSCCo (Elexon Limited) itself, and the 'role' of code administrator, which is undertaken by the BSCCo and was introduced into the licence by Ofgem's Code Governance Review (CGR) in 2010¹¹
- allow the BSCCo to undertake activities that are not directly related to the balancing and settlement arrangements, subject to Authority consent, therefore allowing BSC parties to raise modifications to the BSC which propose to extend Elexon's role.

BSCCo as 'code administrator'

The code administrator is a particular role, as required in the transmission licence (paragraph 1(e) of Condition C3), that is carried out by Elexon. The function of the code

⁶ These changes were made under section 12(1) for WHD and sections 26, 37 and 64(8), (9) and (13) for EMR of the Energy Act 2010.

⁷ See footnote 4.

⁸ Under SLC C3(5)(a) of the electricity transmission licence.

⁹ See footnote 5.

¹⁰ <https://www.ofgem.gov.uk/publications-and-updates/review-elexon-governance>.

¹¹ CGR final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-final-proposals-4310>.

administrator, as required by the licence, is to facilitate the code's modification procedures and assist parties with their involvement in the modification procedures, as well as any other powers, duties and functions that may be in the BSC itself.

The drafting in Appendix 1 introduces the concept of the BSCCo into the licence. It aims to provide clarity on the BSCCo's different roles, one of which is as the code administrator. It aims to clarify that Elexon's roles as WHD scheme administrator and EMR settlement service provider are separate to its role as the BSC code administrator.

Self-governance procedure

In our drafting of the proposed paragraph 13AA, we aim to make it clear that any proposed modification to the BSC to expand the range of activities that can be undertaken by the BSCCo cannot follow the self-governance procedure. Any such modifications must come to the Authority for consent.

The self-governance procedure was inserted into the BSC following Ofgem's Code Governance Review.¹² It was introduced to allow non-material changes to be made to the code without the need to seek Authority consent. We believe that any change to the BSC which proposes to expand Elexon's role would be a material change and would therefore not meet the self-governance criteria.¹³ But the proposed drafting in paragraph 13AA aims to make clear that changes to Elexon's role would require Authority consent in all cases.

Prerequisite conditions

In our April 2012 letter on the potential expansion of Elexon's role, we concluded that any diversification must meet certain prerequisite conditions. We still consider that those conditions are relevant to any expansion of Elexon's role and are not considering our conditions as part of this consultation. However, our existing conditions, and any other potential conditions and criteria that may be relevant to any potential new activities, could be considered at a later stage if appropriate.

Consultation questions

We would like your responses to these questions:

Question 1: Do you agree with the intent of this consultation?

Question 2: Does the licence drafting in Appendix 1 fulfil the intent of the modification?

Question 3: Do you have any other suggestions for the drafting?

Question 4: Does the licence drafting distinguish clearly between the BSCCo (Elexon) and the code administrator (a role that is fulfilled by Elexon)?

Question 5: Do you think there would be any unintended consequences of inserting a reference to the BSCCo into the transmission licence?

Question 6: Do you agree that paragraph 13AA is helpful/needed?

¹² P262 Code Governance Review: Significant Code Reviews, Self Governance and Code Administration Code of Practice: <http://www.elexon.co.uk/mod-proposal/p262-code-governance-review-significant-code-reviews-self-governance-and-code-administration-code-of-practice/>.

¹³ The self-governance criteria for the BSC are defined in condition C3, paragraph 14 of the transmission licence.

Next steps

If you'd like to respond to this consultation, please email your response to rory.p.edwards@ofgem.gov.uk by 21 November 2014. We will publish consultation responses on our website. Please mark your response as confidential if you do not want it to be published. After we've considered responses, if we decide to proceed with a licence modification we will publish a statutory consultation in due course.

Yours sincerely

Lesley Nugent
Head of Industry Codes and Licensing

Appendix 1 – Proposed licence drafting to the Electricity Transmission standard licence conditions

Condition C3: Balancing and Settlement Code (BSC)

1. The licensee shall at all times have in force a BSC, being a document
 - (a) setting out the terms of the balancing and settlement arrangements described in paragraph 2;
 - (b) designed so that the balancing and settlement arrangements facilitate achievement of the objectives set out in paragraph 3;
 - (c) including the modification procedures required by paragraphs 4, 4A to 4C, 13A and 13D;
 - (d) including the matters required by paragraph 6;
 - (e) establishing a secretarial or administrative person or body, as specified in the BSC, (the "code administrator") and setting out the code administrator's powers, duties and functions, which shall:
 - (i) include a requirement that, in conjunction with other code administrators, the code administrator will maintain, publish, review and (where appropriate) amend from time to time the Code of Practice approved by the Authority and any amendments to the Code of Practice are to be approved by the Authority;
 - (ii) include facilitating the matters required by paragraphs 4 and 6;
 - (iii) have regard to and, in particular to the extent that they are relevant, be consistent with the principles contained in, the Code of Practice;
 - ~~(iv) not prevent or restrict the code administrator or an affiliate of the code administrator from operating the reconciliation mechanism referred to in paragraph 1A(a);~~
 - ~~(v) not prevent or restrict the code administrator or an affiliate of the code administrator from undertaking the calculation, collection, administration and settlement of amounts payable or arising in respect of contracts for difference and capacity agreements entered into pursuant to EMR legislation.~~

(f) establishing a panel body, as specified in the BSC, (the "panel") whose functions shall include the matters required by this condition, and whose composition shall include;

(i) an independent chairperson approved by the Authority; and

(ii) a consumer representative (appointed by Citizens Advice or Citizens Advice Scotland, or any successor body) who has a vote as specified in the BSC,

and the licensee shall be taken to comply with this paragraph by modifying from time to time in accordance with the provisions of paragraphs 4 and 5 and the transition modification provisions, the document known as the BSC which existed and the licensee maintained pursuant to this licence immediately prior to the start of the transition period.

1A. The BSC may also include provisions about

(a) arrangements for the operation of any reconciliation mechanism established by the Secretary of State under section 11 of the Energy Act 2010 in connection with a scheme for reducing fuel poverty, where the operator of the reconciliation mechanism is ~~the code administrator or an affiliate of the code administrator BSCCo (as referred to in paragraph 1B) or an affiliate of the BSCCo;~~ and

(b) arrangements that facilitate the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation.

1B. The licensee shall establish a Balancing and Settlement Code Company (BSCCo) to provide and procure facilities, resources and services required for the proper, effective and efficient implementation of the BSC.

1C. The BSC shall not include provisions that prevent or restrict the BSCCo or any affiliate of the BSCCo from:

(a) operating the reconciliation mechanism referred to in paragraph 1A(a); or

(b) undertaking the calculation, collection, administration and settlement of amounts payable or arising in respect of contracts for difference and capacity agreements entered into pursuant to EMR legislation.

1D. The BSC may include provisions allowing the BSCCo or any affiliate of the BSCCo to undertake activities other than those referred to in paragraphs 1, 1A and 1B above, subject to Authority consent.

2. The balancing and settlement arrangements are
 - (a) arrangements pursuant to which BSC parties may make, and the licensee may accept, offers or bids to increase or decrease the quantities of electricity to be delivered to or taken off the total system at any time or during any period so as to assist the licensee in co-ordinating and directing the flow of electricity onto and over the national electricity transmission system and balancing the national electricity transmission system; and for the settlement of financial obligations (between BSC parties, or between BSC parties and the licensee) arising from the acceptance of such offers or bids; and
 - (b) arrangements:
 - (i) for the determination and allocation to BSC parties of the quantities of electricity delivered to and taken off the total system, and
 - (ii) which set, and provide for the determination and financial settlement of, obligations between BSC parties, or (in relation to the system operator's role in co-ordinating and directing the flow of electricity onto and over the national electricity transmission system) between BSC parties and the licensee, arising by reference to the quantities referred to in sub-paragraph (i), including the imbalances (after taking account of the arrangements referred to in sub-paragraph (a)) between such quantities and the quantities of electricity contracted for sale and purchase between BSC parties.
3. The objectives referred to in paragraph 1(b) are:
 - (a) the efficient discharge by the licensee of the obligations imposed upon it by this licence;
 - (b) the efficient, economic and co-ordinated operation of the national electricity transmission system;
 - (c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
 - (d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements described in paragraph 2;
 - (e) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and

- (f) implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation.
4. The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide:
- (a) subject to paragraphs 4A and 4B, for proposals for modification of the BSC to be made by the licensee, BSC parties, the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency), and such other persons or bodies as the BSC may provide;
 - (aa) for proposals for modification of the BSC to be made by the licensee in accordance with a direction issued by the Authority pursuant to paragraphs 4(ae), 4C (the "significant code review route") and 10(b);
 - (ab) for the implementation of modification proposals without the Authority's approval in accordance with paragraphs 13A (the "self-governance route") and 13C;
 - (ac) for the provision by the code administrator of assistance, insofar as is reasonably practicable and on reasonable request, to parties (including, in particular, small participants and consumer representatives) that request the code administrator's assistance in relation to the BSC including, but not limited to, assistance with:
 - (i) drafting a modification proposal;
 - (ii) understanding the operation of the BSC;
 - (iii) their involvement in, and representation during, the modification procedure processes (including but not limited to panel and/or workgroup meetings) as required by this condition, specified in the BSC, or described in the Code of Practice; and
 - (iv) accessing information relating to modification proposals and/or modifications;
 - (ad) for modification proposals made by the Authority or the licensee in accordance with paragraphs 4(a), 4(aa) and 4(ae)(i) respectively which the Authority reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency;

- (i) to be accepted into the BSC modification procedures by the panel;
 - (ii) where they are raised by the licensee, not to be withdrawn without the Authority's prior consent; and
 - (iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 4(ae);
- (ae) for compliance by the licensee and (where applicable) the panel with any directions(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification proposal which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant binding decisions of the European Commission and/or the Agency) for the:
- (i) licensee to raise a modification proposal; and/or
 - (ii) completion of each of the proposal steps outlined in paragraph 4, to the extent that they are relevant; and/or
 - (iii) implementation of a modification.
- (af) for the implementation of modification proposals without the Authority's approval in accordance with paragraph 13D (the "fast track self-governance route");
- (b) except in the case of a modification falling within the scope of paragraph 13D, where a proposal is made in accordance with paragraphs 4(a), 4(aa) and, unless otherwise directed by the Authority, 4(ab),
- (i) for bringing the proposal to the attention of BSC parties and such other persons as may have an appropriate interest in it (including consumer representatives);
 - (ii) for proper consideration of any representations on the proposal including representations made by small participants and/or consumer representatives;
 - (iiA) for properly evaluating the suitability of the significant code review or self-governance route for a particular modification proposal
 - (iii) for properly evaluating whether the proposed modification would better facilitate achieving the applicable BSC objective(s), provided that so far as any such evaluation requires information which is not generally available

concerning the licensee or the national electricity transmission system, such evaluation shall be made on the basis of the licensee's proper assessment (which the licensee shall make available for these purposes) of the effect of the proposed modification on the matters referred to in paragraphs 3(a) and (b);

(iv) for the development and consideration of any alternative modifications which may, as compared with the proposed modification, better facilitate achieving the applicable BSC objective(s), provided that:

- the alternative proposals are made as described in the Code of Practice and as further specified in the BSC; and
- unless an extension of time has been approved by the panel and not objected to by the Authority after receiving notice, any workgroup stage shall last for a maximum period (as specified in the BSC) from the date on which the original modification was proposed,

(ivA) for the evaluation required under paragraph 4(b)(iii) (and, if applicable paragraph 4(b)(iv)) in respect of the applicable BSC objective(s) to include, where the impact is likely to be material, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions, to be conducted in accordance with such guidance (on the treatment of carbon costs and evaluation of the greenhouse gas emissions) as may be issued by the Authority from time to time,

(v) for the preparation of a panel report:

- setting out the proposed modification and, separately, any alternatives,
- evaluating the proposed modification and, separately, any alternatives,
- assessing the extent to which the proposed modification or any alternative would better facilitate achieving the applicable BSC objective(s) and providing a detailed explanation of the panel's reasons for that assessment (such assessment to include, where applicable, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions in accordance with 4(b)(ivA)),

- assessing the impact of the modification and any alternative on the core industry documents and the changes expected to be required to such documents as a consequence of such modification,
 - setting out a timetable for implementation of the modification and any alternative, including the date with effect from which such modification and any alternative (if made) would take effect; and
- (vi) for the submission of the report to the Authority as soon after the proposal is made as is appropriate (taking into account the complexity, importance and urgency of the modification, and in accordance with the time periods specified in the BSC, which shall not be extended unless approved by the panel and not objected to by the Authority after receiving notice) for the proper execution and completion of the steps in sub-paragraphs (i) to (v);
- (vii) for the revision and re-submission of the panel report provided under sub-paragraphs (v) and (vi), such re-submission to be made, if required by a direction issued by the Authority under paragraph 5(aa), as soon after the Authority's direction as is appropriate (taking into account the complexity, importance and urgency of the modification),
- (c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any modification to be either:
- (i) in accordance with any direction(s) issued by the Authority under paragraph 4(ae)(iii); or
 - (ii) where no direction has been issued by the Authority under paragraph 4(ae)(iii)

such as will enable the modification to take effect as soon as practicable after the Authority has directed or, in the case of a proposal falling under paragraphs 4(ab) and 13A, the panel has determined that such modification should be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended or shortened with the consent of or as directed by the Authority after those persons likely to be affected by the revision of the timetable have been consulted;

- (d) for empowering the licensee to secure, if so directed by the Authority in circumstances specified in the BSC,

- (i) that the modification procedures are complied with in respect of any particular modification in accordance with the terms of the direction;
 - (ii) that, where a modification has been made but not implemented in accordance with its terms, all reasonable steps are taken to implement it in accordance with the terms of the direction;
 - (iii) that the licensee can recover its reasonable costs and expenses properly incurred in complying with the direction, and
- (e) for each of the procedural steps outlined in this paragraph 4, to the extent that they are relevant, to be consistent with the principles contained in the Code of Practice.
- (f) for the completion of each of the procedural steps outlined in this paragraph 4, to the extent that they are relevant, to be in accordance with any timetable(s) directed by the Authority under paragraph 4(ae).
- 4A. The procedures for the modification of the BSC shall provide that proposals for modification of the BSC falling within the scope of a significant code review may not be made by the parties listed in paragraph 4(a) during the significant code review phase, except where:
- (a) the Authority determines that the modification proposal may be made, having taken into account (among other things) the urgency of the subject matter of the proposal; or
 - (b) the modification proposal is made by the licensee in accordance with paragraphs 4(aa) and 4C or 4(ae)(i); or
 - (c) the modification proposal is made by the Authority in accordance with paragraph 4(a).
- 4B. The procedures for the modification of the BSC shall provide that where a modification proposal is made during the significant code review phase, unless otherwise exempted by the Authority, the panel shall:
- (a) comply with the steps in paragraph 4(b) subject to sub-paragraph (c) of this paragraph; and
 - (b) as soon as practicable notify the Authority of:
 - (i) any representations received in relation to the suitability of the significant code review route; and

- (ii) the panel's assessment of whether the proposal falls within the scope of a significant code review and the applicability of the exceptions under paragraph 4A(a) or (b), and its reasons for that assessment; and
 - (c) not proceed with the modification proposal without at the Authority's direction.
- 4C. The procedures for the modification of the BSC shall provide that if within twenty-eight (28) days after the Authority has published its significant code review conclusions, the Authority issues to the licensee:
 - (a) directions, the licensee shall comply with those directions;
 - (b) a statement that no directions under sub-paragraph (a) will be issued in relation to the BSC, the licensee shall treat the significant code review phase as ended;
 - (c) neither directions under sub-paragraph (a), or a statement under sub-paragraph (b), the significant code review phase will be deemed to have ended.

The Authority's published conclusions and directions to the licensee shall not fetter the voting rights of the members of the panel or the recommendation procedures informing the report described at paragraph 4(b)(v).

5.

- (a) Without prejudice to paragraph 13A, if a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vi), and the Authority is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the applicable BSC objective(s), the Authority may direct the licensee to make that modification
- (aa) If a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vi) and if the Authority determines that the report prepared in accordance with paragraph 4(b)(v) is such that the Authority cannot properly form an opinion in accordance with paragraph 5(a), the Authority may issue a direction to the panel:
 - (i) specifying the additional steps (including drafting or amending existing drafting of the modification to the BSC), revision (including revision to the timetable), analysis and/or information that it requires in order to form such an opinion; and
 - (ii) requiring the report to be revised and be re-submitted in accordance with paragraph 4(b)(vii).

- (b) The licensee shall, upon receipt of a direction from the Secretary of State to do so, modify the BSC so as to incorporate any changes directed by the Secretary of State pursuant to section 90 of the Energy Act 2004 during or before the offshore transmission implementation period.
- (d) [Not used]
- (e) [Not used]
- (f) Without prejudice to paragraph 4A, only the licensee shall have power to modify the BSC.

6. The BSC shall provide for:

- (a) a copy of the BSC to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy;
- (b) the licensee to refer to the Authority for determination, whether of its own motion or as provided in the BSC, such matters arising under the BSC as may be specified in the BSC;
- (c) information about the operation of the BSC and the balancing and settlement arrangements
 - (i) to be provided to the Authority and/or
 - (ii) to be published,

and for the licensee to be empowered to secure compliance with these requirements if so directed by the Authority.

7. [Not used]

- (a) [Not used]
- (b) [Not used]

8. The provisions of paragraphs 6 and 11 shall not limit the matters which may be provided for in the BSC.

9. The Authority may direct the licensee to procure the provision to the Authority of, or the publication of, such information about the operation of the BSC and/or the

balancing and settlement arrangements as is referred to in paragraph 6(c) and specified in the direction.

10. The licensee shall comply with:

- (a) the BSC; and
- (b) any direction to the licensee made pursuant to this condition.

11.

- (a) The licensee shall be a party to the BSC Framework Agreement.
- (b) The BSC and/or the BSC Framework Agreement shall contain provisions:
 - (i) for admitting as an additional party to the BSC Framework Agreement any person who accepts the terms and fulfils the conditions (each as specified in the BSC) on which accession to the BSC Framework Agreement is offered;
 - (ii) for the licensee to refer to the Authority for determination, whether of its own motion or as provided in the BSC any dispute which shall arise as to whether a person seeking to be admitted as a party to the BSC Framework Agreement has fulfilled any accession conditions; and if the Authority determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the BSC Framework Agreement;
 - (i) for persons to be admitted as additional parties to the BSC Framework Agreement by either
 - a representative (who need not be a BSC party) appointed thereunder to act on behalf of all parties to it, or
 - if there is no such representative or if the representative fails to act, the licensee acting on behalf of all parties to it.
- (c) If, following a determination of the Authority as referred to in sub-paragraph (b)(ii), the representative referred to in sub-paragraph (b)(iii) fails to act on behalf of all parties to admit such person, the licensee shall act on behalf of all parties to admit such person if directed to do so by the Authority.

12. The licensee shall take all reasonable measures to secure and implement (consistently with the procedures applicable under or in relation to the core industry documents

and/or industry codes to which it is party (or in relation to which it holds rights in respect of amendment)), and shall not take any steps to prevent or unduly delay, changes to those documents, such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the BSC, including, but not limited to, changes that are appropriate in order to avoid conflict or inconsistency as between the BSC and any core industry document or industry code.

13. For the avoidance of doubt, paragraph 12 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the documents referred to in paragraph 12 which the Authority may have.

13A. The procedures for the modification of the BSC shall provide that modification proposals shall only be implemented without the Authority's approval pursuant to this paragraph 13A where:

(a)

(i) in the view of the panel, the modification proposal meets, all of the self-governance criteria, and the panel has submitted to the Authority in respect of the modification proposal and not withdrawn a self-governance statement; or

(ii) if a self-governance statement has not been made, or has been withdrawn, the Authority has determined that the self-governance criteria are satisfied and the modification proposal is suitable for the self-governance route; and

(b) unless otherwise exempted by the Authority, the panel has sent copies of all consultation responses to the Authority at least seven (7) days before the panel intends to make its determination under paragraph 13A(d); and

(c) the Authority has not directed that the Authority's decision is required prior to the panel's determination under paragraph 13A(d); and

(d) the panel has, no earlier than seven (7) days after sending the consultation responses referred to at paragraph 13A(b), determined, in accordance with paragraphs 4(b)(i) to (v) of this condition as applicable, that the modification proposal or any alternative should be implemented on the basis that it would, as compared with the then existing provisions of the BSC and any other modifications proposed in accordance with paragraph 4(b)(iv), better facilitate the achievement of the applicable BSC objective(s); and

(e)

- (i) no appeal has been raised up to and including 15 working days after the panel's determination under paragraph 13A(d) in respect of such modification proposal and any alternative in accordance with paragraph 13B; or
- (ii) an appeal has been raised in respect of such a modification proposal and any alternative in accordance with paragraph 13B and the Authority has not quashed the panel's determination referred to at paragraph 13A(d) of this condition and either remitted the relevant modification proposal and any alternative back to the panel for reconsideration or taken the decision on the relevant modification proposal and any alternative itself following the appeal.

13AA. In no circumstances can the self-governance procedure set out in paragraph 13A be used to amend the BSC to expand the range of activities that can be undertaken by the BSCCo as contemplated by paragraph 1D above.

13B. The procedures for the modification of the BSC shall provide that those persons set out at paragraph 4(a) may appeal to the Authority the approval or rejection by the panel of a modification proposal and any alternative falling under the self-governance route, provided the appeal has been made up to and including 15 working days after the approval or rejection and in accordance with the procedures specified in the BSC and, in the opinion of the Authority:

(a)

(i) the appealing party is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of that modification or alternative proposal; or

(ii) the appeal is on the grounds that:

(1) in the case of implementation, the modification or alternative proposal may not better facilitate the achievement of at least one of the applicable BSC objectives; or

(2) in the case of non-implementation, the modification or alternative proposal may better facilitate the achievement of at least one of the applicable BSC objectives; and

- (b) it is not brought for reasons that are trivial, vexatious or have no reasonable prospect of success.

13C. The procedures for the modification of the BSC shall provide that:

- (a) where an appeal has been raised in respect of a modification proposal and any alternative in accordance with paragraph 13B that modification proposal and any alternative shall be treated in accordance with any decision and/or direction of the Authority following that appeal;
- (b) if the Authority quashes the panel's determination referred to at paragraph 13A(d) of this condition and takes the decision on the relevant modification proposal and any alternative itself following an appeal in accordance with paragraph 13B, the panel's determination of that modification proposal and any alternative referred to in paragraph 13A(d) of this condition shall be treated as a report submitted to the Authority in accordance with the procedures specified in paragraph 4(b)(vi) of this condition and paragraph 5(a) of this condition and the panel's determination shall be treated as its recommendation.

13D. The procedures for the modification of the BSC shall provide that modifications shall only be implemented without the Authority's approval pursuant to this paragraph 13D (the "fast track self-governance route") where:

- (a) in the unanimous view of the panel, the proposed modification meets all of the fast track self-governance criteria;
- (b) the panel unanimously determines that the modification should be made;
- (c) BSC parties, the licensee and the Authority have been notified of the proposed modification;
- (d) none of the persons named in sub-paragraph (c) have objected to the proposed modification being made via the fast track self-governance route in the fifteen (15) working days immediately following the day on which notification was sent; and
- (e) notification under sub-paragraph (c) contains details of the modification proposed, that it is proposed to be made via the fast track self-governance route, how to object to the modification being made via the fast track self-governance route, the proposed legal drafting and the proposed implementation date.

13E. Without prejudice to any rights of approval, veto or direction the Authority may have, the licensee shall use its best endeavours to ensure that procedures are in place that facilitate its compliance with the requirements of this condition and create or modify industry documents including but not limited to the BSC, core industry documents and industry codes where necessary no later than 31 December 2013.

14. In this condition in the expression "sale and purchase of electricity", sale excludes sale by way of assumption of an imbalance under the BSC and sale by way of supply to premises, and purchase shall be construed accordingly; and

"applicable BSC objective(s)" means

- (a) in relation to a proposed modification of the modification procedures, the requirements of paragraph 4 (to the extent they do not conflict with the objectives set out in paragraph 3); and
- (b) in relation to any other proposed modification, the objectives set out in paragraph 3.

"Code of Practice" means the Code Administration Code of Practice approved by the Authority and:

- (a) developed and maintained by the code administrators in existence from time to time; and
- (b) amended subject to the Authority's approval from time to time; and
- (c) re-published from time to time.

"directions" means, in the context paragraph 4C, direction(s) issued following publication of significant code review conclusions which shall contain:

- (i) instructions to the licensee to make (and not withdraw, without the Authority's prior consent) a modification proposal;
- (ii) the timetable for the licensee to comply with the Authority's direction(s); and
- (iii) the Authority's reasons for its direction(s).

"fast track self-governance criteria"

- means that a proposal, if implemented,
- (b) would meet the self-governance criteria; and
 - (c) is properly a housekeeping modification required as a result of some error or factual change, including but not limited to:
 - (i) updating names or addresses listed in the BSC;
 - (ii) correcting minor typographical errors;
 - (iii) correcting formatting and consistency errors, such as paragraph numbering; or
 - (iv) updating out of date references to other documents or paragraphs.

“industry code” means a multilateral code or agreement created and maintained pursuant to a licence granted by the Authority under section 6 of the Act or under sections 7, 7ZA or 7A of the Gas Act 1986.

“self-governance criteria” means, a proposal that, if implemented:

- (a) is unlikely to have a material effect on:
 - (i) existing or future electricity consumers; and
 - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - (iii) the operation of the national electricity transmission system; and
 - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - (v) the BSC’s governance procedures or modification procedures, and
- (b) is unlikely to discriminate between different classes of BSC parties.

“self-governance statement” means a statement made by the panel and submitted to the Authority in accordance with

paragraph 13A(a)(i):

- (a) confirming that, in its opinion, the self-governance criteria are met and the modification is suitable for the self-governance route; and
- (b) providing a detailed explanation of the panel's reasons for that opinion.

"significant code review"

means a review of one or more matters which the Authority considers likely to;

- (a) relate to the BSC (either on its own or in conjunction with other industry code(s)); and
- (b) be of particular significance in relation to its principal objective and/or general duties (under section 3A of the Act), statutory functions and/or relevant obligations arising under EU law; and

concerning which the Authority has issued a notice to the BSC parties (among others, as appropriate) stating:

- (i) that the review will constitute a significant code review;
- (ii) the start date of the significant code review; and
- (iii) the matters that will fall within the scope of the review.

"significant code review phase"

means the period commencing on the start date of a significant code review as stated by the Authority, and ending either:

- (a) on the date on which the Authority issues a statement under paragraph 4C(b) (that no directions will be issued in relation to the BSC); or
- (b) if no statement is made under 4C(b), on the date on which the licensee has made a modification proposal in accordance with paragraphs 4(aa), 4C(a) and 10(b); or
- (c) immediately under paragraph 4C(c), if neither a statement, or directions are issued by the

Authority up to and including twenty-eight (28) days from the Authority's publication of its significant code review conclusions.

"small participant"

means

- (a) a generator, supplier, distributor, or new entrant to the electricity market in Great Britain that can demonstrate to the code administrator that it is resource-constrained and, therefore, in particular need of assistance;
- (b) any other participant or class of participant that the code administrator considers to be in particular need of assistance; and
- (c) a participant or class of participant that the Authority has notified the code administrator as being in particular need of assistance.

"transition modification provisions"

means the provisions of this condition which apply or applied during the transition period and which enable or enabled the Authority (whether with or without the consent of the Secretary of State) to direct the licensee to modify the BSC in certain circumstances.

"affiliate of the ~~code administrator~~
BSCCo"

means any holding company or subsidiary of the ~~code administrator~~ BSCCo or any subsidiary of a holding company of the ~~code administrator~~ BSCCo, in each case within the meaning of section 1159(1) of the Companies Act 2006.