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Smart Energy Code Performance Assurance Board

Terms of Reference (ToR) Version 2.0

1. Establishment

Section C9 of the Code requires that the Panel shall establish a Sub-Committee to be known as the Performance Assurance Board. Except where stated otherwise, capitalised terms in this PAB Terms of Reference have the meaning given to them in the Smart Energy Code.

2. Role

The role of the PAB is to manage a Performance Assurance Framework to address SEC Parties' obligations on a risk basis in order to:

- (a) give confidence to all Parties that the obligations set out in this Code are being fulfilled, and that failure to meet obligations will not detract from achievement of the SEC
- (b) give confidence to Parties individually and collectively that they are not being disadvantaged by the failure of any Party, or group of Parties, to meet obligations;
- (c) give confidence to Parties that performance risks and issues are identified and dealt with in a standardised manner, and
- (d) ensure that Parties can understand the Performance Assurance Operating Plan for the coming year, are able to contribute to it and have confidence that it will be delivered in a fair and equitable way.

3. Duties

3.1 Scope

The PAB shall (in each case in accordance with the Performance Assurance Framework):

- (a) develop and maintain a Risk Evaluation Methodology;
- (b) develop and maintain a Performance Assurance Risk Register;
- (c) develop and maintain the Performance Assurance Techniques;
- (d) develop and maintain a Performance Assurance Operating Plan;
- (e) apply a Risk Management Determination in respect of each Party;
- (f) monitor Parties' compliance with this Code through data analysis;
- (g) produce and deliver an Annual Performance Assurance Report for the Panel; and

- (h) undertake any and all other duties expressly assigned to the PAB by any other provision of the Smart Energy Code.

3.2 Out of Scope

The PAB's functions, powers and duties shall not extend to or impact:

- (a) any functions, powers or duties of the Security Sub-Committee, and/or the operation of Section G (Security), other than where:
 - i. the Security Sub-Committee may at their discretion provide the PAB with relevant information and data to present a comprehensive overview of assurance, subject to sensitive security redactions; and
 - ii. the Security Sub-Committee may refer a matter to the PAB to take reasonable steps to address matters of non-compliance as requested in the referral.
 - iii. the actions of the PAB under the Performance Assurance Framework shall complement but in no way contradict or override the rights and obligations of the Security Sub-Committee under Section G; and
- (b) any functions, powers or duties of the Alt HAN Forum, and/or the operation of Section Z (Alt HAN Arrangements).

4. Authority of SEC Panel/SECCo Executive

- 4.1** The PAB reports to the SEC Panel.
- 4.2** Matters of non-compliance which are serious, systemic and/or which the PAB does not reasonably consider it has the ability to address, or has made reasonable efforts to address, through its established procedures without success, may be referred to the Panel together with such information as the PAB considers relevant and/or the Panel may subsequently request.
- 4.3** In the event that the Panel refers a matter to the PAB (or back to the PAB), the PAB shall take reasonable steps to comply with any direction, instruction or guidance as may be included in the referral.
- 4.4** Determinations made by the PAB may be appealed to the Panel. The Panel's determination shall be final and binding.
- 4.5** The PAB will monitor and assure compliance in accordance with the Performance Assurance Framework, the notification, investigation and determination of Events of Default will be dealt with by the Panel in accordance with Section M8 (although the Panel may separately delegate some or all of its responsibilities under Section M8 to the PAB or others). The actions of the PAB under the Performance Assurance Framework shall complement but in no way contradict or override the rights and obligations of the Panel and the Parties under Section M8.

5. Composition and Membership

5.1 Members

5.1.1 The PAB members shall comprise:

a) voting members:

- three persons elected by the Large Supplier Parties;
- two persons elected by the Small Supplier Parties;
- two persons elected by the Electricity Network or Gas Network Parties;
- two persons elected by the Other SEC Parties;
- one person nominated by the DCC; and
- one consumer representative, being either an employee or a nominee of Citizen's Advice or Citizen's Advice Scotland.

b) non-voting members

- the PAB Chair
- three representatives of the SEC Code Administrator; two of which shall be from the independent performance management experts as appointed by SECCo for SEC Performance Assurance.
- the PAB Secretary.

5.1.2 The Panel shall appoint members to the PAB following an election process. A PAB member shall remain in office in their first term for 24 months or until their resignation has been submitted in writing to the PAB Secretary or their removal by the Panel in accordance with paragraphs 5.1.3 and 5.1.4 below (whichever is earlier). The term will be reviewed following the implementation of the Performance Assurance Framework.

5.1.3 The Panel may remove and replace such members from time to time if in the Panel's opinion they are unwilling, unable, unfit, or otherwise are incapable for any reason to carry out their duties.

5.1.4 The Panel shall review each PAB member's membership of the PAB from time to time and at least annually.

5.2 Attendance by Non-PAB Members

5.2.1 In addition to the PAB members, the following persons will be entitled to attend any meeting of the PAB and fully participate in any discussion, but not vote:

- a) the Panel Chair or other Panel Member having responsibility for the PAB;
- b) a representative of the Authority
- c) such other external experts, including legal advisors to SECCo, as may be considered necessary and upon invitation of the PAB Chair; and
- d) representatives from SECCo and/or SEC Code Administrator and Secretariat (SECAS).

5.2.2 Attendance is subject to the PAB Chair being satisfied that suitable confidentiality agreements are in place.

5.3 Independence

5.3.1 When exercising the functions assigned to it under the Code, each appointed PAB member shall act impartially and independently of their interests and those of their employer or their employer's Party Category.

5.3.2 Each PAB member shall provide a member confirmation to the Panel that they agree to be a PAB member, and that they agree to remove themselves from any consideration of relevant matters that relate to their employer or any affiliate of their employer.

5.4 PAB Chair

5.4.1 The PAB Chair will be appointed by the Panel, being either an existing employee of or contractor to SECCo or recruited specifically for this purpose. The candidate selected will be sufficiently independent of any particular Party or class of Parties.

5.4.2 The Chair shall arrange for a suitable alternate to deputise on occasions when the Chair may be unable to attend a meeting of the PAB, or postpone the meeting if needed.

5.5 PAB Secretary

5.5.1 Unless otherwise determined by the Panel, a SECAS representative shall function as secretary to the PAB (the "**PAB Secretary**"). This includes but is not limited to:

- Prepare the PAB Members Pack (code of conduct and expenses policy);
- Timetable and organise the PAB, including meeting rooms;
- Act as quality gatekeeper with the Chair for accepting papers;
- Circulate agendas and papers for consideration at PAB meetings, five Working Days in advance of that meeting date, or at a time specified by the Chair;
- Circulate minutes of the meeting five Working Days after the meeting for PAB approval;
- Administer the circulation list for PAB papers and Minutes; and
- Manage the decisions and Actions Log.

- Meetings of the PAB will be recorded and transcribed for the sole purpose of the production of meeting minutes.

5.6 Alternates

- 5.6.1 Any person appointed to the PAB shall be entitled but not required to nominate an **"Alternate"** if they are unable to attend any meeting of the PAB during the term of their appointment. The PAB member will be expected to nominate their Alternate to the PAB Secretary upon, or as soon as reasonably practicable after, their own appointment.
- 5.6.2 If a PAB member will be absent from a meeting, the PAB Secretary will invite their Alternate to attend on behalf of the absent PAB member.
- 5.6.3 All aspects of these PAB Terms of Reference will apply to the Alternate as if they were a PAB member until such time as the absent PAB member becomes available to resume their position.

5.7 Expenses

- 5.7.1 PAB members may recover all reasonable expenses incurred through their role. PAB members are not entitled to a salary for undertaking their role. Each PAB member, including its Alternate, shall be entitled to recover all reasonable travel expenses properly incurred by them in their role, in accordance with Section C8.3 of the SEC and the [SEC Panel Expenses Policy](#).

6. Conflict of Interest

- 6.1 It shall be each PAB member's responsibility to disclose to the PAB Chair from time to time any interests of such member which constitute, in such member's reasonable opinion, an actual or perceived conflict of interest with their functions as a member. The PAB Secretary shall record these disclosures in a conflicts of interest register, including but not limited to PAB member disclosure of employment, principal financial and business interests, and significant personal relationships with any person connected to a Party.
- 6.2 In circumstances where an actual or perceived conflict of interest could arise, a PAB member may absent themselves from the relevant meeting and vote.
- 6.3 If at any time the PAB Chair decides (after consultation with other PAB members, if necessary, including but not limited to circumstances where a member does not volunteer to absent themselves from voting) that a member has an actual or perceived conflict of interest, and whether that actual or perceived conflict of interest was raised by the member themselves or otherwise, then the PAB Chair may determine whether the member in question should be required to absent themselves from particular PAB business, including the receipt of relevant PAB papers.
- 6.4 Any decision of the PAB Chair taken pursuant to paragraph 4.3 above shall be final and binding.

7. Delegation

- 7.1 The PAB shall have the ability to delegate or procure all or any part of the day-to-day administration of its functions.

8. Proceedings of the PAB

8.1 Meetings

- 8.1.1 Meetings of the PAB shall be held at least once a month, whether in person or by video/teleconference.
- 8.1.2 All PAB meetings will be convened at such time and via such means as may be notified to the PAB members by the PAB Secretary.
- 8.1.3 If a matter arises requiring the immediate attention of the PAB which cannot reasonably await the next scheduled meeting of the PAB, the PAB Chair may convene an extraordinary PAB meeting. Such meetings would be held by video/teleconference with no less than 5 Working Days' notice.

8.2 Quorum

- 8.2.1 No business shall be conducted at any meeting of the PAB unless a quorum is present at that meeting. A quorum shall comprise of at least one half of all voting PAB members defined in clause 4.11 appointed at the relevant time. Notwithstanding that a quorum is present, the PAB Chair may exercise discretion to defer one or more agenda items to a later meeting at which more PAB members are expected to attend.

8.3 Voting

- 8.3.1 Each PAB member shall be entitled to attend and speak at every meeting of the PAB.
- 8.3.2 In deciding any matter which requires determination at a quorate meeting of the PAB, each voting PAB member may cast one vote.
- 8.3.3 All decisions of the PAB shall be by resolution. For a resolution of the PAB to be passed at a meeting, a simple majority of those PAB members voting at that meeting must vote in favour of that resolution.
- 8.3.4 For the avoidance of doubt, abstentions shall not be classed as votes and will therefore not prevent majority agreement of a matter.
- 8.3.5 Before putting any matter to the vote, the PAB Chair will enquire as to whether all PAB members have enough information on which to base a vote and whether any abstention is due to there being insufficient information on which to base a decision. If any PAB member indicates that there is insufficient information and/or that further information would allow them to cast a vote rather than abstain, the PAB Chair may, at their sole discretion, delay the vote to a later time or date if they consider that missing information would reasonably be available within that time.

8.4 Conduct

- 8.4.1 PAB members and other attendees will be expected to conduct themselves in a professional manner, refraining from any comments or behaviour that could be considered unreasonable or hinder the proper functioning of the PAB.
- 8.4.2 If any unreasonable or disruptive behaviour persists, the PAB Chair may at their sole discretion ask that individual to leave the meeting and/or take steps to restrict their future attendance.

8.5 Minutes

- 8.5.1 The PAB Secretary shall ensure that within five Working Days following each PAB meeting, draft minutes (including any determinations and failure to make any determinations) are distributed to PAB members and relevant excerpts to those persons who were entitled to attend the meeting (or part thereof) for confirmation of factual accuracy.
- 8.5.2 Any comments on the accuracy of the draft minutes shall be returned to the PAB Secretary no less than five Working Days before the next scheduled meeting of the PAB, at which they will be formally approved. In the absence of any further meeting taking place within five calendar weeks of the previous meeting, the minutes may be accepted as final by the PAB Chair, having considered any comments received by the PAB Secretary and passed onto the PAB Chair.
- 8.5.3 Due to the confidential nature of the meetings, no person other than those who were entitled to attend the meeting (or part thereof) shall be entitled to receive a copy of the minutes (or part thereof).
- 8.5.4 Any actions that are assigned to PAB members, the PAB Chair, the PAB Secretary, or any other stakeholder will be captured both in the meeting minutes and in the meeting actions log. The PAB Secretary will ensure that the actions log is updated within five Working Days of the meeting.

9. Reporting to the Panel

- 9.1 The PAB Chair shall provide a monthly report to the Panel which will include but not be limited to a summary of the key decisions and activities arising at the meeting.
- 9.2 The PAB shall prepare an Annual Performance Assurance Report in accordance with Section C9 of the Code.

10. Confidentiality and Disclosure

- 10.1 Given the potential sensitive nature of work of the PAB, agenda items, papers and discussions will be assigned an information sharing level of either CLEAR, GREEN, AMBER, AMBER-STRICT or RED, as per [The Panel Information Policy](#). As a PAB Member, each participant will be asked to undertake in writing to abide by the confidentiality and disclosure provisions in relation to each information sharing level as described above, by signing the Confidentiality and Disclosure Agreement at Appendix A to these Terms of Reference.
- 10.2 Individuals who the PAB Chair has invited to attend a meeting of the PAB will also be asked to sign the Confidentiality and Disclosure Agreement but will only be permitted to attend the PAB during discussions on agenda items relevant to their organisation.

PAB Members who breach the rules of the confidentiality and disclosure provisions under any information sharing level may have their PAB membership revoked.

- 10.3 PAB members shall acknowledge that in performing their duties and functions they may be in receipt of confidential information. For the avoidance of doubt, each PAB member shall not disclose any confidential information received in their capacity as PAB member to any person except where required under the Code or Laws and Directives. Where such disclosure is required under the Code or Laws and Directives, the PAB member shall first give written notice of the intended disclosure to the PAB Chair (unless not permitted to do so by Laws and Directives).
- 10.4 PAB agenda items, papers and discussions will be assigned an information sharing level in accordance with the Panel Information Policy.
- 10.5 Each PAB member will be asked to undertake in writing to abide by the confidentiality and disclosure provisions in relation to each information sharing level as described above, by signing a confidentiality and disclosure agreement.
- 10.6 PAB members who breach the rules of the confidentiality and disclosure provisions under any information sharing level may be removed from the PAB by the Panel.

11. Terms of Reference

- 11.1 The Terms of Reference, membership and operation of the PAB may be reviewed by the Chair at any time to ensure that they remain appropriate to reflect the duties and requirements of the SEC. Amendments to these Terms of Reference will be approved by the PAB.

12. Definitions

- 12.1 For the purpose of adding clarity to the Terms of Reference, the terms in the left- hand column shall have the meaning given to them in the right- hand column, as defined in the SEC:

Term	Definition
Annual Performance Assurance Report	means each report prepared by the PAB at the end of each financial year (1 April to 31 March) in accordance with paragraph 8.1 of the Performance Assurance Framework.
Alt HAN Forum	The body of that name established in accordance with Section Z.1.1 (Establishment of the Alt HAN Forum).
Authority	The Gas and Electricity Markets Authority as established under section 1 of the Utilities Act 2000.
Code Administrator	Is defined in Section C7.1 (Code Administrator). Section C7.1 sets out that the Panel may, from time to time, appoint and remove, or make arrangements for the appointment and removal of, one or more persons to be known as the Code Administrator.
Code	Smart Energy Code (including its Schedules and the SEC Subsidiary Documents).
Performance Assurance Board (or PAB)	means the Sub-Committee established pursuant to Section C9 (Performance Assurance Board).

Term	Definition
PAB Chair	means the person appointed by the Panel from time to time to be the chairperson of the PAB.
PAB Terms of Reference	means the terms of reference document developed and maintained by the Panel under Section C6.10 (Terms of Reference and Procedural Requirements) which sets out governance arrangements to be followed by the PAB.
Performance Assurance Framework (or PAF)	means Appendix AW (Performance Assurance Framework).
Performance Assurance Operating Plan	means each plan prepared by the PAB under paragraph 5 of the Performance Assurance Framework.
Performance Assurance Risk Register	means the risk register developed and maintained by the PAB under paragraph 3 of the Performance Assurance Framework.
Performance Assurance Techniques	means the set of techniques developed and maintained by the PAB under paragraph 4 of the Performance Assurance Framework.
SECCo	Smart Energy Code Company (being the joint venture company established pursuant to paragraph 26(c) of Condition 22 (The Smart Energy Code) for the purpose of acting as a corporate vehicle to assist the SEC Panel in exercising its powers, duties, and functions, including by entering into contracts for that purpose).
SEC Panel	The panel established under the Smart Energy Code that is constituted in such manner and is responsible to such extent and for such activities and other matters (including the delegation of functions to committees of the Panel) as may be specified in the SEC with respect to the governance and administration of the SEC.
SEC Parties	Persons (excluding the Licensee) who have acceded to the Smart Energy Code on such terms and conditions of accession as are set out in the SEC, and includes every holder of an Energy Licence who is required by a condition of that licence to be a party to and comply with the SEC.
Risk Evaluation Methodology	means the methodology developed and maintained by the PAB under paragraph 2 of the Performance Assurance Framework.
Risk Management Determination	means each determination made by the PAB in relation to a Party under paragraph 6 of the Performance Assurance Framework.

All other defined terms have the same meaning as that which is attributed to them in the SEC.

Annex A

Confidentiality and Non-Disclosure Agreement (NDA)

I, the undersigned, have read and understood SEC Section C9.9 - 17. 'Proceedings of the PAB' and the Panel Information Policy.

I understand that I am required to comply with the confidentiality and disclosure obligations in respect of each of the five information sharing levels (Clear, Green, Amber, Amber Strict and Red), as set out in the Panel's Information Policy.

I understand that I must declare any conflict of interest that I have in writing to the PAB Chair whether it exists now or during my continued membership of the group, as soon as I become aware that such a conflict exists.

I understand that should I fail to abide by the information sharing levels confidentiality and disclosure obligations or conflict arrangements I may be excluded from the PAB.

Having understood and accepted the above statements, I therefore agree to abide by these terms in my engagement with the PAB.

Name:

SEC Party Category (If Appropriate):

Primary/Alternative Participant (delete as appropriate)

Signature:

Date: