

Public

Effective: 1 October 2024

# Board of Directors

## Terms of Reference

Public – Terms of Reference: Board of Directors

## National Energy System Operator Limited

(“NESO”, the “Company”)

with effect from 1 October 2024

### Terms of Reference

#### 1. The Company and its Board

- 1.1. The NESO Board comprises a majority of Non-Executive Directors. The Executive Directors include the CEO and CFO.
- 1.2. The “**Chair**” is a person chosen by the Secretary of State for Energy Security and Net Zero to be the chair of the Board. In the Chair’s absence, any one of the other Directors may chair meetings, with the agreement of the other Directors.
- 1.3. For the purposes of the Company’s system operator licence, the Non-Executive Directors are treated as Sufficiently Independent Directors (“**SIDs**”). The Company is required to ensure at least half of its Non-Executive Directors are SIDs at all times.
- 1.4. The “**Shareholder Director**” is a person chosen by the Secretary of State to be its representative as a Non-Executive director of the Company.
- 1.5. The Memorandum of Association does not impose any restrictions on the activities of the Company in line with the Companies Act 2006.
- 1.6. The immediate parent of the Company is the Secretary of State for Energy Security and Net Zero (the “**Shareholder**”). The Shareholder may, by special resolution (being a positive vote by 75% of the members voting), direct the Directors to take, or refrain from taking, specified action. No such special resolution invalidates anything which the Directors have done before the passing of the resolution.
- 1.7. Any person who is permitted by law to do so may be appointed a director by a majority decision of the Directors, with the approval of the Shareholder. The Articles specifically allow the Shareholder to appoint or remove Directors of the Company by giving a standard form of notice, which is typically used to effect changes. Whilst Directors may appoint alternates, this is not normal practice unless needed for special reasons.
- 1.8. The registered office is St Catherine's Lodge, Bearwood Road, Sindlesham, Nr Wokingham, Berkshire, RG41 5BN.

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### 2. Secretary and Advisors

- 2.1 The Board have appointed a Company Secretary.
- 2.2 Appropriate managers or advisers will be called upon, and may attend Board meetings, as required.
- 2.3 The Company will appoint an external auditor.

### 3. Meetings

- 3.1 **Quorum and Voting.** Three Directors, two of whom must also be a Non-Executive Directors of the Company (including the Shareholder Director or their alternate and one other) and an executive director (or their alternate), are the quorum for Board meetings. Unless otherwise fixed by a decision of the directors. Any decision of the Directors must be either a majority decision at a meeting or Resolution in Writing (see 3.4 below). If the numbers of votes for and against a proposal are equal, the Chair has a casting vote.
- 3.2 **Frequency.** Board meetings are typically held six times per year and as required between these meetings.
- 3.3 **Attendance.** Directors should be prepared to attend Board meetings. Absence from a Board meeting at which acts are approved may not absolve the absent Director from liability. In practice, your Company Secretary will ensure that business is scheduled for all Directors to attend if possible. If appropriate a 'quorum' only (three Directors two of whom must also be a Non-Executive Directors of the Company (including the Shareholder Director or their alternate and one other) and an executive director (or their alternate)) Board meeting might be held, provided all Directors are notified accordingly.
- 3.4 **Resolutions in Writing.** If appropriate, for example if a physical meeting cannot be held, business arising between Board meetings may be dealt with by a written resolution. A formal "Resolution in Writing" would be circulated for approval by each Director, being effective when approved by a majority. The resolution takes the place of, and is as effective as, a resolution passed at a Board meeting and will be recorded in the minute book.
- 3.5 **Participation in Board Meetings.** In determining whether directors are participating in a Board or Board Committee meeting, it is irrelevant where any director is or how they communicate with each other.

### 4. Committees

The Board will establish Committees as necessary for it to fulfil its functions; whose members need not be Directors. Each Committee shall have its own set of Terms of Reference ("ToR"); any changes to the ToR must be approved by the Board.

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## 5. Forward Business

The Forward Business Schedule for the Company specifies the reports considered by the Board and the frequency of review by the Board.

## 6. Schedule of Matters Reserved for the Board

The Board shall maintain a formal schedule of matters reserved for its own decision. The schedule is detailed at Appendix 1 of this document.

## 7. Company Procedures

- 7.1 **Agendas of Meetings and Board Papers.** Agendas and Board papers will normally be consistent in style and layout and will usually be issued no later than five days before the Board meeting.
- 7.2 **Minutes.** Minutes of Board meetings will be approved by the Board at the subsequent meeting. Draft minutes will normally be available within two weeks of the meeting, to be reviewed as appropriate by the Board and signed by the Chair of that meeting or by the Chair of the next meeting at its start.
- 7.3 **Authentication, Sealing, Signing.** NESO has adopted Standard Authorities, which allow for the following procedures.

**Authentication** - Documents may be authenticated by a Director or the Company Secretary. The Company Secretary will normally be responsible for providing certified extracts e.g. Board Minutes, Articles of Association as appropriate.

**Sealing** – The Company Seal may be authenticated (i.e. documents are countersigned) by a Director or Secretary (as members of the 'Board Sealing Committee'- including other nominated members; any one of whom can act provided that such documents are first cleared for sealing by the Secretary / Company's lawyers as appropriate).

**Signing** - A Director or the Secretary may sign any document on behalf of the Company. Where appropriate, the Secretary may authorise any other person as the signatory for a specified document or documents.

However, the legal and business case must be properly established, and the normal internal Delegations of Authority procedures followed.

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## **8. Declaration of Directors' Particulars and Interests and Statutory Responsibilities**

The Secretary will:

- 8.1 Maintain the statutory 'company books', updating the general particulars of Directors and notifying the Registrar of Companies as appropriate (note: changes of Directors' personal information must be notified to Companies House within 14 days of the event).
- 8.2 Liaise with Directors, as appropriate, about any other general declarations of interest - any potential conflicts of interests to be approved by the Board, and interests recorded in the minutes of the Board meeting.
- 8.3 Ensure that the Board complies with key statutory duties, responsibilities and best practice (including filing accounts and returns with Companies House).

**If you are unclear about your duties as Director in any situation you should obtain appropriate advice. Initially, please contact the NESO Company Secretariat.**

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## Appendix 1 – Matters Reserved for the Board

The following matters are principally of corporate or regulatory significance which Directors have determined must be considered and approved by the Board, in addition to any further governance which must be followed as a result of the Shareholder’s requirements such as the NESO Framework Document.

Every Company should be headed by an effective board, which is collectively responsible for the long-term success of the Company. The Board’s role is to provide entrepreneurial leadership of the Company within a framework of prudent and effective controls which enables risk to be assessed and managed. The Board should set the Company’s strategic aims, ensure that the necessary financial and human resources are in place for the Company to meet its objectives and review management performance. The Board should set the Company’s values and standards and ensure that its obligations to its shareholders and others are understood and met.

All directors must act in what they consider to be the best interests of the Company consistent with their statutory duties.

<b>1. Strategy, Management and Finance</b>	
1.1	Approval of the Company’s finance policy
1.2	Approval of any material change in the Company’s accounting policies or practices
1.3	Consider to appoint, reappoint or remove auditors
1.4	Setting the Company’s strategic risk appetite
1.5	Approving and monitoring of the Company’s principal risks
1.6	Approval of the business strategy and long-term strategic objectives of the Company
1.7	Approval of the five-year Company strategic plan and annual budget
1.8	Any material extension of the Company’s activities into new business or geographic areas
1.9	Any decision to cease to operate all or any material part of the Company’s business
1.10	Authorising changes affecting the capital structure of the Company or its status as a company
1.11	Approval of major capital projects guarantees and indemnities (in accordance with the Company’s Delegations of Authority)
1.12	Approval of contracts which are considered material by virtue of their strategic importance or which involved material disposals of assets or any acquisitions of shares in another company
1.13	Approval of major regulatory matters )

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<b>2. Director and Employee Issues</b>	
2.1	Changes to the structure, size and composition of the Board and Board Committees
2.2	Adequate succession planning for the Board and senior management so as to maintain an appropriate balance of skills and experience within the Company and on the Board
2.3	Appointment, re-appointment or removal of Directors and Company Secretary
<b>3. Corporate Governance</b>	
3.1	Responsibility for the overall leadership of the Company and setting the Company's values and standards
3.2	Establishing committees of the Board, their terms of reference and approving any material changes thereto
3.3	Undertaking a formal and rigorous annual review of its own performance and of its Committees
3.4	Ensuring maintenance of a sound system of internal control and risk management arrangements throughout the Company and conducting an annual review of the effectiveness of these arrangements
3.5	Approval of significant new Policies, Public Position Statements, Procedures and Codes, and major revisions as necessary as relevant to the Company
3.6	Authorising conflicts of interest where permitted by the Company's Articles of Association
3.7	Consideration of material allegation or litigation affecting the Company
<b>4. Financial and Regulatory Reporting and Shareholders</b>	
4.1	Approval of the Company's Annual Report and Accounts
4.2	Approval of the Company's Regulatory Accounts, including the corporate governance statement
4.3	Approval and declaration of any interim dividend and recommendation of the final dividend
4.4	Approval of any Compliance Certificate associated with payment of dividends

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4.5	Approval of the Operational Resources Certificate for the Company
4.6	Approval of the Financial Resources Certificate for the Company
4.7	Calling any general meeting of the Company's shareholders and approval of the Resolutions and documentation sent to shareholders
4.8	Considering and approving as necessary any reports from the Compliance Officer as required by the Company's licence(s)
4.9	Considering and approving, in accordance with the Company's Delegations of Authority, major price controls relevant to the Company
4.10	Oversight of the relationship with OFGEM, Department for Energy Security and Net Zero and approval of any material matters, including investigations, by the same
<b>5. Other</b>	
5.1	Any other matters of strategic, financial, operational or reputational importance likely to have significant impact on the Company
5.2	This schedule of Matters Reserved for the Board
5.3	Approval, on its recommendation, of any item which falls outside the authority delegated to the NESO Executive Committee or any of the Board Committees
5.4	Any matters detailed within any of the Company's licences, issued by Ofgem, as requiring the approval of the Board