

SUBJECT TO CONTRACT

ELEXON RESTRUCTURING

BSC SERVICES MANAGER CONTRACT PRINCIPLES

No.	Clause	Description	Matters for Consideration	Comments
1.	Parties	The Parties to the Agreement will be: (1) "BSCCo", [the company currently known as ELEXON Ltd, but name change required]; and (2) "New ELEXON", [a new company]	The assumption is that a new company is established to become the service provider whilst the existing BSCCo/ ELEXON Ltd becomes the recipient of the services. New ELEXON will essentially be a services business that fulfils the obligations of the BSCCo under a contractual basis.	
2.	Background	BSCCo currently performs the role of the BSC administrator under the BSC and intends to enter into an Agreement with New ELEXON for the provision of the services necessary for BSCCo to discharge its functions under the BSC.	The assumption is that New ELEXON performs a service management role, managing the BSC contracts (which remain with BSCCo) on behalf of BSCCo. This avoids the need to obtain permission to transfer BSC contracts to New ELEXON (and to seek to transfer them back to BSCCo, or to a replacement service provider, on expiry of the Agreement). This also avoids BSC Agents having a new counterparty with a different strength of financial covenant. Consequently, it is principally the staff that transfer from BSCCo to New ELEXON. This needs to be carefully managed as ELEXON's only real asset is its people (see below).	
3.	Conditions	Both Parties are to use reasonable	Modifications to the BSC will need to be	

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	precedent	endeavours to fulfil the following conditions so that the Agreement can become effective and the Services commence: (a) the BSC modifications required to be made in connection with the restructuring taking effect and (b) amendments to certain contracts.	approved to enable BSCCo to contract out the Services to New ELEXON. There will need to be amendments to certain contracts (e.g. with BSC Agents and the building lease) to permit New ELEXON to perform BSCCo's obligations and exercise its rights under such contracts.	
4.	Duration of Agreement	The Agreement will commence when all of the conditions precedent have been fulfilled (or waived) and will continue for a specified period unless terminated earlier.	The duration of the Agreement impacts several critical areas: <ul style="list-style-type: none"> • The risk – reward trade-off for New ELEXON. • The cost of future procurement for BSCCo and New ELEXON. • The organisational behaviours and approach to strategy. • The management focus on a future procurement at a time of great industry change. • The impact on New ELEXON staff and the ability to retain key staff. 	
5.	Use of Premises, Assets and Intellectual Property	BSCCo will need to give New ELEXON full access to all premises, assets and IP required to fulfil its obligations.	In order to fulfil its obligations to BSCCo under the Agreement, New ELEXON will need the same access to physical assets (e.g. building and fittings), licences (e.g. software) and intellectual property that ELEXON has today. This may require permissions from third parties e.g. landlord.	

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			The working assumption is that the majority of these assets will remain with BSCCo and will not transfer to New ELEXON.	
7	Services	<p>(1) Appointment of New ELEXON to provide the Services</p> <p>(a) BSCCo will appoint New ELEXON to perform the Services.</p> <p>(b) BSCCo will delegate all its rights and duties under the BSC to New ELEXON to the extent required for performing the Services.</p> <p>(2) Service obligations</p> <p>New ELEXON will perform the Services in accordance with:</p> <p>(i) the terms and conditions of the BSC as such terms and conditions relate to the Services;</p> <p>(ii) applicable law and any regulatory requirements;</p> <p>(iii) good industry practice;</p> <p>(iv) the specification; and</p> <p>(iv) the KPIs.</p> <p>(3) Performance reports</p> <p>New ELEXON will provide BSCCo with the Performance Reports including providing reports of New ELEXON's performance against the KPIs.</p>	<p>The definition of what constitutes the Services needs to be carefully defined, with consideration given to:</p> <ul style="list-style-type: none"> • The existing core settlement services provided by ELEXON. • The variable aspect to much of ELEXON's work (Modifications, disputes, consultation responses etc). • The need to agree KPIs and performance reports (although current reporting to the BSCCo Board and Panel on all operational matters provides a sound basis for this work). <p>The Agreement will set out the KPIs which New ELEXON must meet in the performance of the Services.</p> <p>The performance standards will define the Service level and provide the focus for New ELEXON's management.</p> <p>The calculation of Service Credits will need to be set out in the Agreement.</p>	

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		<p>(4) Service Credits New ELEXON will pay the Service Credits to BSCCo.</p> <p>(5) Exclusivity New ELEXON will be the exclusive provider of the Services to BSCCo for the duration of the Agreement and BSCCo will not appoint any other person or company to provide the Services and shall not carry out the Services itself.</p>		
8	Change management	<p>The Agreement will contain a mechanism to introduce variations to existing Services and introduce additional services.</p>	<p>Significant change is expected to occur over the life of the contract. The contract must therefore cater for such developments and allow New ELEXON to be appropriately incentivised and rewarded to undertake such activity. Change management needs to be considered in the context of considerable industry upheaval. Future changes may include:</p> <ul style="list-style-type: none"> • Use of half-hourly data in settlement. • Interaction with the DCC. • REMIT and other European directives. <p>The Contract must be capable of dealing with such developments in an efficient and effective manner.</p>	
9	Contract	Both Parties will each appoint		

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	management	person(s) to meet regularly to manage all matters in relation to the Agreement.		
10	Charging and payment	Fixed Contract Price Element and Variable Contract Price Element.	<p>The Contract Price for the delivery of the Services is envisaged to comprise a fixed element (which will be specified for each year of the Agreement) and a variable element.</p> <p>The contract pricing structure is pivotal to the risk-reward balance for New ELEXON and for providing the right incentives to protect the interests of the BSC Parties.</p> <p>The pricing structure will need to reflect the duration of the Agreement, the structure of the Services definition and a mechanism dealing with Change Management.</p>	
11	Employment and TUPE	<p>At the start of the Agreement there will be a service provision change under TUPE regulations such that the employment of the employees of BSCCo will transfer to New ELEXON.</p> <p>The Agreement will include provisions relating to the allocation of pension and other employment liabilities.</p>	<p>The assumption is that all the current employees transfer under TUPE regulations to New ELEXON.</p> <p>It is assumed that no personnel will be left behind in BSCCo (other than the Chairman and Board directors). This is consistent with an intention not to split up services currently provided and so avoid an outsourcing of part only of the services, as this will lead to duplication of activity and therefore of cost.</p> <p>Given that the only real asset of New ELEXON (and ELEXON of today) is its people, this needs to be very carefully managed to avoid destabilising the organisation and impacting the ability of New ELEXON to fulfil its obligations to BSC</p>	

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			<p>Parties. Critical to this activity will be:</p> <ul style="list-style-type: none"> • Impact of the change on staff – retention and performance. • Protection of terms and conditions. • Agreement duration and perceived stability of New ELEXON. <p>National Grid is likely to require that pension liabilities in respect of the ESPS are borne by BSCCo (as now) and ultimately by BSC Parties (as now). This may require additional provisions direct between NG and BSCCo.</p>	
12	Liability and indemnities	<p>Service Credits</p> <p>The Agreement will specify remedies if New ELEXON fails to meet agreed KPIs.</p> <p>Limitations on liability</p> <p>The Agreement will specify the limitation of liabilities for New ELEXON.</p>	<p>Limitations on liability will need to be developed to ensure that New ELEXON is not put at undue risk in fulfilling its obligations.</p> <p>We have considerable experience in working with Logica and other service providers in the construction of KPIs and Service Credits.</p>	
13	Force Majeure	<p>The Agreement will include a provision relating to Force Majeure.</p>	<p>Force Majeure is typical in a services contract and will need to cover circumstances beyond the reasonable control of both Parties. This is likely to include FM events affecting existing BSC Agents and their suppliers.</p>	
14	Dispute resolution	<p>If any dispute arises in relation to the Agreement the Parties will meet to resolve the dispute failing which it will</p>	<p>Any dispute will need to be considered in terms of reason, materiality and remedy.</p>	

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		be escalated to the Board of BSCCo and the Chief Executive of New ELEXON.		
15	Termination	<p>Either Party will be entitled to terminate the Agreement immediately for insolvency of the other Party.</p> <p>Either Party will be entitled to terminate the Agreement for an unremedied material breach by the other Party of its obligations under the Agreement.</p>	Both Parties will need the protection of the ability to terminate the Agreement in the event of insolvency or a material breach that has not been remedied within an agreed period.	
16	Handover	The Parties acknowledge that on expiry or earlier termination of the Agreement BSCCo or a replacement supplier will need to perform the Services and so New ELEXON will be required to perform the Services in a manner which ensures that BSCCo or a replacement contractor would be able to take over the Services at any time with the minimum of disruption to the Services.	<p>BSCCo and BSC Parties will need assurance that should New ELEXON no longer be the provider of Services to BSCCo that New ELEXON is obliged to provide an appropriate transition.</p> <p>Key aspects of this are:</p> <ul style="list-style-type: none"> • Impact on Staff and TUPE. • Impact on other contractual arrangements. • Incentives on New ELEXON to perform its duties in a timely manner. 	
17	Change in law; risks excluded from the Contract Price	Change in Circumstances	<p>Certain circumstances, to be defined but typically would include:</p> <ul style="list-style-type: none"> • a change in law or regulatory requirement including a requirement of the Secretary of State; and • a change in taxation. 	

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			Where such changes put additional risks/costs on New ELEXON, then the mechanism for dealing with these risks/costs will need to be dealt with under the Agreement.	
18	Miscellaneous / boilerplate	The Agreement will contain standard boilerplate provisions including: (i) interpretation and delivery; (ii) confidentiality and data protection; (iii) costs; (iv) entire agreement; (v) further assurances; (vi) third party rights; (vii) invalidity / severability; (viii) amendment and variation; (ix) no waiver; (x); counterparts; (xi) notices; (xii) law and jurisdiction (England); (xiii) subcontracting by New ELEXON; (xiv) independent contractor / no partnership; (xv) announcements and publications; (xvi) further assurances; (xvii) assignment; (xviii) warranties and representations; and (xviii) insurance.	These requirements are consistent with a services contract of this nature.	

ELEXON

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