

ELEXON RESTRUCTURING NOTE

BSC CHANGES

Introduction

On 21 November 2011 Ofgem commenced a consultation with BSC Parties, BSC Panel members and other interested parties on the potential expansion of the role of ELEXON. The consultation seeks views on two models. Under the first of these National Grid Electricity Transmission plc ("**NGET**") would transfer ownership of BSCCo to a new umbrella holding company ("**ELEXON HoldCo**") which would be the parent of an ELEXON group of companies, each formed to fulfil a special purpose (the "**Subsidiary Model**"). The other model involves the ownership of BSCCo remaining as it is, and all activities being provided through a services contract between BSCCo and a new, commercial for profit, service provider (the "**Contract Model**").

Both the Subsidiary Model and the Contract Model require changes to the BSC: (i) in order to facilitate; or (ii) as a direct consequence of, an expansion of ELEXON's role.

Contract Model

- The Contract Model would require changes to the BSC to enable BSCCo to delegate performance of its functions and responsibilities to a services manager (**BSC Services Manager**).
- At Ofgem's suggestion, ELEXON has, in so far as possible, followed the structure of the BSC Agent provisions in Section E with regard to the BSC Services Manager role, which ELEXON suggests is deemed to be a BSC Agent role.
- The detailed contractual provisions will be contained in the relevant BSC Agent contract and not in the BSC itself. As a consequence the BSC changes can be identified prior to finalisation of that BSC Agent Contract.
- We attach the suggested BSC changes which can be summarised as follows:
 - Section C – extension to paragraph 3.1.1 to cover BSCCo's power to delegate the discharge of its powers, functions and responsibilities.
 - Section E – the creation of new provisions relating to the BSC Services Manager role covering the areas of:
 - appointment (including the relevant authorities regarding provision of BSC services and the use or transfer of assets);
 - role of BSCCo (including management of the relevant BSC Agent Contract (**BSC Services Manager Contract**) and procurement of the same); and
 - the relationship between the Parties, BSCCo and BSC Services Manager.
 - Section H – clarification in respect of third party rights.

Subsidiary Model

- ELEXON has provided Ofgem with a note dealing with how ring fence protection in the BSC could be enhanced. It will be necessary to agree these changes in principle prior to any detailed BSC drafting.

ELEXON
06.01.12

DRAFT BSC MODIFICATION

ELEXON BUSINESS RE-STRUCTURE - CONTRACT MODEL

SECTION C: BSCCO AND ITS SUBSIDIARIES (version 14.0)

Amend paragraph 3.1.1 to read as follows:

3. POWERS AND FUNCTIONS OF BSCCO

3.1 General

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;
- (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 to reimburse the expenses of, Panel Members, members of Panel Committees, members of Workgroups and others as provided in the Code;
- (i) to enter on behalf of all Parties into Accession Agreements with new Parties in accordance with Section A2.2;
- (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; ~~and~~
- (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).

Amend paragraph 3.5.1 to read as follows:

3.5 BSCCo resources

- 3.5.1 If at any time the resources (which in this paragraph 3.5 does not mean financial resources) of BSCCo are inadequate to enable it to perform any particular requirement of the Code (including a requirement specified by the Panel or a Panel Committee or Workgroup pursuant to paragraph 3.1.1), BSCCo shall promptly so notify the Panel and discuss the matter with the Panel, and following such discussion shall take such steps and procure such resources as are necessary to enable BSCCo to meet such requirement (as it may have been modified following such discussion) as soon as is reasonably practicable, provided that in circumstances where BSCCo has appointed a BSC Services Manager in accordance with Section E, paragraph 4 the resources of the BSC Services Manager shall be treated as the resources of BSCCo for the purposes of this paragraph 3.5.1.

Amend paragraph 4.6 as follows:

~~4.6 — Chief Executive~~

~~4.6.1 — After consultation with the Panel, the Board shall appoint, and may from time to time remove, reappoint or replace, a person, not being a Director, to be the Chief Executive of BSCCo.~~

~~4.6.2 — The person appointed as Chief Executive shall be employed or otherwise engaged by BSCCo on such terms as the Board shall decide.~~

~~4.6.3 — The Chief Executive shall not be a Director but shall be entitled to receive notices of and to attend and speak (but not to vote) at all meetings of the Board, and (if requested by the Chairman of the Board) shall be~~

~~required to attend such meetings, provided that the Board may require him to be absent from any part of a meeting at which any matter concerned with his employment or engagement by BSCCo is to be considered.~~

~~4.6.4 The Board shall delegate to the Chief Executive authority to conduct the day to day business of BSCCo.~~
Not used.

Insert new paragraph 7.1.5 to read as follows:

7. BSC COMPANIES

7.1 General

~~7.1.5 Without prejudice to the generality of paragraph 7.1.1, a Subsidiary in which BSCCo is permitted to hold shares in accordance with paragraph 3.4.5(b)(ii) may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) the BSC Services Manager.~~

Amend paragraph 7.5.3 as follows:

7.5 Directors and secretary

~~7.5.3 The person who is for the time being Chief Executive of BSCCo shall act as chief executive of each Subsidiary of BSCCo, under such terms of reference as the board of directors of such Subsidiary may determine.~~
Not used.

SECTION E: BSC AGENTS (version 5.0)

Amend paragraph 1.1.1 as follows:

GENERAL

1.1 Introduction

1.1.1 This Section E sets out:

- (a) requirements that certain services be provided by BSC Agents;
- (b) the role of BSCCo in contracting with BSC Agents; ~~and~~
- (c) provisions relating to the relationship between BSCCo, Parties, and BSC Agents; and
- (d) provisions relating to the BSC Services Manager.

Insert new paragraph 4 to reads as follows:

4. BSC SERVICES MANAGER

4.1 General

~~4.1.1 Except as expressly stated, the preceding provisions of Section E shall not apply to the BSC Services Manager or the BSC Services Manager Contract.~~

~~4.1.2 Subject to paragraph 4.3.2, paragraph 1.1 shall apply to this paragraph 4.~~

4.2 Appointment

~~4.2.1 BSCCo shall, from time to time, appoint a person to act as its agent for the purposes of discharging BSCCo's powers, functions and responsibilities in accordance with Section C1.2 and as otherwise specified in the Code (the "BSC Services Manager").~~

~~4.2.2 Without prejudice to paragraph 4.2.1, BSC Clearer may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) the BSC Services Manager.~~

~~4.2.3 Subject to the provisions of this paragraph 4, BSCCo may do anything necessary or reasonably incidental to enable the BSC Services Manager to perform the services under the relevant BSC Agent Contract ("BSC Services Manager Contract").~~

4.2.4 Subject always to paragraph 4.1.1, for the purposes of the Code:

(a) the BSC Services Manager shall be regarded as a BSC Agent, provided that no person (or affiliate of such person) may perform the roles of BSC Services Manager and any other BSC Agent at the same time; and

(b) the BSC Services Manager Contract shall be regarded as a BSC Agent Contract.

4.2.5 A Party (and any Affiliate) or a BSC Company shall not be appointed as BSC Services Manager.

4.2.6 Subject to any contrary provision in the Code, BSCCo or relevant BSC Company (as the case may be) may in its absolute discretion grant or transfer such rights or interests held by BSCCo or relevant BSC Company (in their capacity as BSCCo or relevant BSC Company) on such terms as those entities deem appropriate to the BSC Services Manager (or otherwise make available the benefit of such rights or interests) to enable the BSC Services Manager to discharge its powers, functions and responsibilities under the Code.

4.2.7 Notwithstanding the provisions of Section H.9.4 and paragraph 3, the BSC Services Manager shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 be able to enforce, and accordingly shall have the benefit of, the terms of this paragraph 4 which are, or are stated to be, for the benefit of the BSC Services Manager.

4.2.8 Without prejudice to paragraph 4.2.7 and notwithstanding the provisions of Section F, during the term of any BSC Services Manager Contract any amendments to the Code which:

(a) affect (including seeking to limit or restrict) BSCCo's rights to delegate its powers, functions and responsibilities to the BSC Services Manager under this paragraph 4;

(b) require BSCCo to vary the terms of the BSC Services Manager Contract other than as provided for in such contract; and/or

(c) seek to amend this paragraph 4.2.8,

shall require the prior written consent of the BSC Services Manager and in the absence of such consent the proposed amendments to the Code shall be null and void and have no effect for the purposes of the Code.

4.2.9 BSCCo hereby grants the BSC Services Manager irrevocable authority (except as expressly provided for in the BSC Services Manager Contract or the Code) to act on its behalf for the purposes of exercising BSCCo's powers, functions and responsibilities in accordance with Section C or as otherwise specified in the Code.

4.2.10 Without prejudice to paragraph 4.2.9, for the purposes of the Code, each Party, the Panel and Panel Committees acknowledge and agree that the discharge of BSCCo's functions and responsibilities or the exercise of BSCCo's rights in accordance with the Code by the BSC Services Manager shall be treated as if such functions and responsibilities or rights had been discharged or exercised by BSCCo.

4.2.11 BSCCo shall, in its absolute discretion, be entitled to authorise the BSC Services Manager to act as agent, make any commitment and incur liabilities on behalf of BSCCo (including without limitation entering into contracts or other arrangements) to enable the BSC Services Manager to perform its obligations and duties under the Code and in accordance with the BSC Services Manager Contract.

4.3 Role of BSCCo

4.3.1 BSCCo shall, subject to and in accordance with, this paragraph 4:

(a) select and enter into a contract (or accept an assignment or novation of such contract (as the case may be)) with the person appointed as BSC Services Manager;

- (b) perform its obligations, and manage, supervise and enforce the performance of the BSC Services Manager in accordance with the BSC Services Manager Contract;
- (c) where appropriate, exercise its rights pursuant to the BSC Services Manager Contract (including, without limitation, rights of termination); and
- (d) at the expiry or termination of the BSC Services Manager Contract, extend or renew the contract or conduct a procurement to select and appoint a successor BSC Services Manager.

4.3.2 It is acknowledged that in respect of the initial contract between BSCCo and the BSC Services Manager (“Initial BSC Services Manager Contract”):

- (a) _____ a BSC Service Description relating to the BSC Services Manager shall not be established at the time the Initial BSC Services Manager Contract is executed, provided that BSCCo shall procure that such contract shall specify a process for a new BSC Service Description to come into effect and in respect of which paragraphs 1.3 and 1.5 shall apply;
- (b) the provisions of paragraphs 2.3 and 2.7 shall not apply.

4.3.3 Without prejudice to paragraph 4.3.2:

- (a) (for the avoidance of doubt) the provisions of paragraphs 1.3 and 1.5 shall apply to the BSC Service Description in respect of the BSC Services Manager Contract;
- (b) the provisions of paragraph 1.6 and 2 shall apply to the BSC Services Manager Contract.

4.4 Relationship between Parties and BSC Services Manager

4.4.1 The provisions of paragraphs 3.1.1, 3.2.1 and 3.3 shall apply to the BSC Services Manager and the BSC Services Manager Contract in accordance with the BSC Services Manager Contract.

SECTION H: GENERAL (version 17.0)

Insert new paragraph 9.4.4 as follows:

9.4 Rights of Third Parties

- 9.4.1 Subject to paragraph 6.4.1, the Parties do not intend that any third party shall have any rights, benefits, entitlements or privileges under the Code, the Framework Agreement and the Code Subsidiary Documents, and nothing in the Code, the Framework Agreement or any Code Subsidiary Document shall be construed as conferring or purporting to confer any such right, benefit, entitlement or privilege on any such person.
- 9.4.2 The Parties do not intend that any term of the Code, the Framework Agreement or any Code Subsidiary Document shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.
- 9.4.3 Save for the Authority and the Panel as provided in Section F, no third party consent shall be required to rescind, vary or modify the Code or any Code Subsidiary Document (but without prejudice to the rights of BSC Agents under their respective BSC Agent Contracts in respect of any change to such BSC Agent Contract).

9.4.4 The provisions of this paragraph 9.4 shall be subject to Section E, paragraphs 4.2.7 and 4.2.8.

Section X-1 Definitions (version 52.0)

Amend Annex X-1 to read as follows:

“affiliate” means, in relation to any person, any holding company of that person, any subsidiary of that person or any subsidiary of a holding company of that

person, in each case within the meaning of section 1159 of the Companies Act 2006;

“Affiliate”

means, in relation to any Party, any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning of sections ~~736, 736A and 736B~~1159 of the Companies Act ~~1985~~2006, but subject to Section X2.2.5 in relation to the Transmission Company;

“BSC Agent”

means the person or persons for the time being appointed for the purposes of providing the services specified (or as may be specified) in a BSC Service Description, ~~as and as otherwise~~ described in Section E;

“BSC Services Manager”

means the person for the time being appointed by BSCCo for the purposes of providing the services specified in Section E, paragraph 4;

“BSCCo”:

means ~~[ELEXON-BSCCo Limited]~~ (or any successor to that company acting in the capacity as BSCCo);