

EMR – PANEL UPDATE

MEETING NAME BSC Panel

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Purpose of paper For information

Classification Public

Summary This paper is the Panel's monthly update on ELEXON's appointment as the Settlement Agent for both Contracts for Difference (CfDs) and for the Capacity Market (CM)

1. Introduction

1.1 In this paper the terms BSCCo and ELEXON Ltd have the same meaning. The terms EMRCo, EMR subsidiary, EMR Settlement Ltd and EMRS have the same meaning. CPB is the CFD Counterparty Body and CMSB is the Capacity Market Settlement Body, both being subsidiaries of DECC.

2. Engagement

DECC/Counterparty

2.1 As reported at the last Panel, engagement with the Counterparty/DECC continues in the following areas:

- Development of the contract between our EMR subsidiary and the Counterparty Body;
- Governance – we continue to hold weekly catch-up meetings;
- Draft Code, Licence and Code Subsidiary Documents (CSDs) changes;
- Counterparty's IT systems and interface with the Settlement Agents systems;
- Attending CM and CfD Business Design Authority forums (change management).

2.2 DECC has announced the following:

- The name of the CMSB is to be called Electricity Settlements Company Ltd. This name has the potential to cause confusion amongst existing and new market entrants, both with ELEXON's existing Balancing and Settlement role and EMR settlement role. Our concerns have been raised with DECC.
- At the CfD Implementation Coordination Event on 29 April 2014 the Counterparty Body announced that they will be named the Low Carbon Contracts Company.
- Dr Martin Read CBE has been appointed as CPB and CMSB Chairman and will be supported by Jim Keohane, as the Senior Independent Director (SID); the appointments are for three years. Further information is contained in Appendix 1.
- On 23 April DECC announced the award of 8 low carbon projects (5 offshore wind, 3 biomass) which are eligible for early CFD award i.e. prior to the regulations coming into force in August. This does not affect the date by which our settlement systems are required.

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- 2.3 **EMR Systems Interface:** On 11 February 2014 we published a consultation document requesting industry views on the preferred system interfaces. We received 23 responses to the consultation from a wide range of stakeholders.
- 2.4 We have reviewed the responses and provided a report to the Counterparty Body outlining the collective response to each question and a subsequent proposed IT approach. Based on the responses received we have proposed the following course of action:
- We propose to give Suppliers, generators and capacity providers the choice of receiving reports via email or via the existing Data Transfer Network (DTN);
 - Half Hourly Data Aggregators, who are required to provide meter data to the EMR Settlement Agent, should be required to do so via the DTN.
- 2.5 The Counterparty Body has agreed our proposals and our consultation response document was published on the EMR page of the ELEXON website 25 April 2014¹.
- 2.6 **Panel/Panel Committees:** In response to a request to improve the transparency of EMR related communications we are now including a dedicated EMR section within Newscast and we have also created an EMR Circular. At the date of writing, 4 EMR Circulars have been issued:
- EMR Circular 1: BSC Configurable Items amended for EMR. Issued on 28/0/14 and closed 18/4/14;
 - EMR Circular 2: Proposed Naming Convention for Additional BM Units Registered for EMR. Issued on 3/4/14 and closes on 30/4/14 (verbal update to be provided at the Panel meeting);
 - EMR Circular 3: DECC Consultation on BSC Code Subsidiary Documents. Issued 14/4/14 and closes on 7/5/14;
 - EMR Circular 4: ELEXON response to EMR Data Flows Consultation. Issued on 28/4/14.
- 2.7 **CSD Consultation:** the consequential CSD changes that are necessary to give effect to EMR were published by DECC for consultation on 9 April (DECC is required to consult on the CSDs as the changes are to be directed by the Secretary of State).
- 2.8 So far, we have received one set of detailed comments on the proposed CSD changes (EMR Circular 1). However, the consultation does not close until 7 May and responses are like to be submitted directly to DECC.

3. Governance

- 3.1 **Establishing a contract with the Counterparty:** As mentioned at the last Panel meeting we continue to work with the Counterparty and their lawyers (Slaughter and May) to develop the contractual and structural arrangements for the provision of EMR services and we have exchanged a number of iterations of the draft contract.
- 3.2 **2014/15 Grant:** The EMR Service Provider's costs are a key input into the 2014/15 Grant. However, as the service provider procurement has not yet concluded it has not been possible to finalise the 14/15 Grant. As a result, we have effectively agreed a one month extension (covering April 14) to the existing Grant. Depending on timing of finalising the service provider costs, it may be necessary to agree a further extension to cover May 2014. The IT Service Provider contract will not be executed unless the grant is executed.

¹ http://www.elexon.co.uk/wp-content/uploads/2014/02/Response-to-consultation-on-EMR-data-flows_v1.0.pdf?utm_source=Newscast&utm_campaign=0536ce6a33-Newscast_Issue_498_Staff_28_4_2014&utm_medium=email&utm_term=0_a451cd09d2-0536ce6a33-393701001

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- 3.3 **Establishing the EMR subsidiary (EMR Settlement):** As previously reported EMRS (the ELEXON subsidiary) has been incorporated, the Board appointed, and the shares transferred to ELEXON. The list of EMRS decisions that require approval by the BSCCo Board was issued to the previous Panel Meeting. Additionally, an EMRS website has been developed. We are considering when it would be appropriate to launch the new website. Our preference is to launch the website as soon as possible so that the enduring communication arrangements are established and notified to stakeholders.
- 3.4 **Data Licence:** The Data Licence between ELEXON Ltd and EMRS, as required by the proposed changes to the BSC, has been reviewed by DECC and is provided to the Panel in Attachment A.
- 3.5 An explanation of the differences between the existing P114 licence and the Data Licence is provided in Appendix 2 and an extract from the proposed BSC drafting relating to the provision of data is included in Appendix 3.
- 3.6 **Managed Services Agreement (MSA):** the MSA, which sets out the arrangements for the provision of shared services and resources between ELEXON Ltd and the EMR subsidiary has been finalised.

4. Service provider procurement

- 4.1 An update on the service provider procurement is contained in Attachment B - 224/xx(a) which is confidential.

5. Requirements' certainty

- 5.1 As mentioned at the last Panel DECC's secondary legislation consultation concluded on 24 December 2013. Despite calls from all stakeholder's DECC has declined to make public its proposed policy preferences which it has stated will not be shared with stakeholders ahead of DECC's formal response which DECC has advised will be published on 4 June 2014. We continue to urge earlier disclosure.

6. Changes to BSC Systems and processes

- 6.1 Implementation of the BSC System changes is included within the scope of the June Release. The release is progressing according to plan.

7. Financial Regulations

- 7.1 There is no further update on when DECC propose to take this matter to the FCA. We continue to maintain the pressure on DECC to bring this issue to a conclusion. It is a condition in the contract between the EMR subsidiary and DECC that this is resolved before the services begin, plus a termination right for the EMR subsidiary if the FCA's position ever changes.

8. Recommendations

- 8.1 We invite you to:
- a) **NOTE** the EMR update; and
 - b) **NOTE** the receipt of the EMR Data Licence.

Appendices

Appendix 1: Information on the Chairmen and SID of the CPB and CMSB

Appendix 2: Summary of differences between the EMR data licence and the P114 data licence

Appendix 3: Extract from the proposed BSC changes relating to the provision of data

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Attachments

Attachment A – EMR Data Licence

Attachment B – EMR Confidential update

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Appendix 1: Information on the Chairman and SID of the CPB and CMSB

Extract from DECC press release 17 April 2014

Dr Martin Read has a strong track record in non-executive roles in major private sector companies and a range of other organisations. From his fourteen years as Chief Executive Officer of Logica (1993 to 2007), he also has extensive experience of managing large contracts and settlement systems, which will be invaluable in his new role.

Dr Martin Read is currently a non-executive director at Lloyds of London and the UK Government Efficiency and Reform Board, Chair of the Remuneration Consultants Group and Chair designate of Laird plc. He has previously served as a non-executive director on the Boards of Invensys plc, Aegis Group, British Airways, Siemens Holdings, Boots Group and Asda Group. He led UK Government reviews on back office operations and IT across the public sector (2009) and management information (2012).

Jim Keohane is also an experienced non-executive. He served an eight-year term as a non-executive director of the Civil Aviation Authority and was its Deputy Chairman from 2007 to 2008.

He has also been a non-executive member of the Gas and Electricity Market Authority since 2009. Jim Keohane has 30 years' experience in the energy industry, including serving as a director of East Midlands Electricity and, later, Eastern Group. From his experience in the electricity sector he will bring an excellent knowledge of the industry to the Senior Independent Director role.

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Appendix 2: Summary of differences between the EMR data licence and the P114 data licence

The proposed changes to the BSC relating to EMR envisage in Section V an agreement (data licence) between BSCCo (ELEXON Ltd) and the Settlement Services Provider (SSP). The SSP is intended to be ELEXON Ltd's EMR subsidiary (called EMR Settlement Ltd or EMRS).

The proposed data licence is attached and is being provided to the Panel in anticipation of the requirement that will be introduced when the new Sections V5.2.2(c) and V 5.3.2(b) of the BSC are directed to be made by the Secretary of State. The draft has been discussed between BSCCo and DECC and their respective advisers and the text agreed. It is based on the existing P114 data licence, which regulates use of a specific category of data listed in the BSC. This data is not publicly available and BSCCo charges users a fee of £3,000 per annum for access to this data. Similarly EMRS will be charged £3,000 per annum. .

The main reason why it was necessary to add and amend provisions of the existing P114 licence was that the data provided to the SSP by BSCCo will not only be P114 data but will also include other data such as BMRS data. As P114 data is confidential whereas BMRS data is not, the EMR licence therefore needed to distinguish between the two and not extend confidentiality obligations to BMRS data.

There are other changes that have been made:

- The BSC (once amended for EMR) will only allow EMRS to use the data for EMR purposes. Naturally the P114 licence does not include an equivalent restriction so one has been added.
- Given that under DECC's regulations and the BSC changes, BSCCo is not able to withhold BSC data from the SSP, a provision has been included to protect BSCCo and BSC Parties, so that BSCCo can charge interest in case there are any late payments of the £3,000 annual fee. A disputes section leading to an eventual expert determination has also been added for the same reason.
- In addition BSCCo is obliged to provide the data even if there is no licence agreement in place so the right for BSCCo to terminate the licence agreement has been removed. At DECC's insistence a right for the SSP to terminate for whatever reason on 30 days' notice has been inserted.
- The use of the data under this EMR data licence is sub-licensable by the SSP on a non-assignable, non-transferable basis (and on the same terms as the EMR data licence) but only if it is done to facilitate a function performed by: (1) the CFD Counterparty Company Limited ("CPB"); (2) the Electricity Settlements Company Limited ("CMSB"); (3) the SSP; or (4) SSP's IT suppliers and only then if it is to facilitate the SSP's activities with regard to the EMR legal requirements or as otherwise provided for in the BSC.
- Should any intellectual property rights be created by or on behalf of the SSP in respect of any additional or derivative work based on the licensed data then the ownership of this is assigned to the SSP so as to give the latter the ability to fulfil its EMR role. There is a licence back to BSCCo of such intellectual property rights.
- A novation (transfer) option has been added so that the SSP can be replaced in the data licence with any of the CPB, CMSB and any nominee of the Secretary of State appointed to perform an EMR function pursuant to an EMR legal requirement. In addition, each of the above has rights to promptly receive from BSCCo, and be licensed to use, the EMR licensed data and any other information reasonably required by the CPB pursuant to, and as permitted by, Section V5 of the BSC. BSCCo in return undertakes under the EMR data licence to comply with its obligations under Section V5 of the BSC.

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Appendix 3: Extract from the proposed BSC changes relating to the provision of data

SECTION C: BSCCO AND ITS SUBSIDIARIES

Insert new paragraph 11 to read as follows:

11. PROVISION OF SUPPORT TO EMR SETTLEMENT SERVICES PROVIDERS

11.1 Provision of Support to EMR Settlement Services Providers

11.1.1 Without prejudice to paragraph 10, BSCCo may, in its discretion, provide (directly and/or via a BSC Agent) to an EMR Settlement Services Provider such support services (including the provision of assurance services) as may be reasonably incidental to supporting that EMR Settlement Services Provider in discharging its EMR Settlement Functions.

11.2 Agreement between BSCCo and EMR Settlement Services Providers

11.2.1 Subject to the disclosure obligations in Section V5, BSCCo shall enter into an agreement or agreements with the CFD Settlement Services Provider and the CM Settlement Services Provider including, inter alia, terms relating to the provision of Relevant EMR Settlement Data in accordance with Section V5, and terms that:

- (a) restrict the use of the Relevant EMR Settlement Data to the extent necessary to enable the CFD Settlement Services Provider and/or the CM Settlement Services Provider (and their service providers) to discharge their EMR Settlement Functions;
- (b) are consistent with the terms (as to availability and reliability of data) contained in agreements entered into by BSCCo pursuant to Section V3.2.7;
- (c) in respect of the CFD Settlement Data, impose restrictions on the use of CFD Settlement Data equivalent to the restrictions on the use of Confidential Information in Section H4 provided that the CFD Settlement Services Provider shall be entitled to share CFD Settlement Data with the CFD Counterparty, and otherwise in accordance with the EMR Legal Requirements;
- (d) in respect of the CM Settlement Data, reflect the provisions on the use of protected information contained in the EMR Legal Requirements;
- (e) where EMR Settlement Data is to be disclosed to a service provider of an EMR Settlement Services Provider, provide that such EMR Settlement Data shall only be disclosed on a "need-to-know" basis and requiring such service providers to enter into a confidentiality agreement with the relevant EMR Settlement Services Provider on terms equivalent to those contained in an EMR Legal Requirement or, if there is no applicable EMR Legal Requirement, Section H4;
- (f) allow for the provision of support services in accordance with paragraph 11.1.1 and which, to the fullest extent permitted by law, restrict BSCCo's liability to the EMR Settlement Services Provider for any claim in damages or any other claim of a financial nature relating to the supply of services to the EMR Settlement Services Provider to the amounts payable under the agreement for those services; and
- (g) provide for the payment by the CFD Settlement Services Provider of CFD Settlement Services Provider Costs and by the CM Settlement Services Provider of CM Settlement Services Provider Costs, as appropriate to the relevant agreement, in each case in accordance with Section D7.

SECTION V: REPORTING

Insert new paragraph 5 to read as follows:

5. EMR SETTLEMENT DATA REQUIREMENTS

5.1 Provision of data and information to the EMR Settlement Services Providers

5.1.1 For the purposes of the Code, CFD Settlement Data and CM Settlement Data shall collectively be referred to as "**EMR Settlement Data**".

5.2 Provision of data and information to the CFD Settlement Services Provider

5.2.1 Subject to paragraph 5.2.4, BSCCo must provide, or procure that a BSC Agent provides, such data, information and reports to the CFD Settlement Services Provider and the CFD Counterparty as the CFD Settlement Services Provider and the CFD Counterparty reasonably require in order to discharge their EMR Settlement Functions (the "**CFD Settlement Data**").

5.2.2 In respect of the CFD Settlement Data, BSCCo shall provide to the Panel:

- (a) a schedule of the CFD Settlement Data reasonably required by the CFD Settlement Services Provider and the CFD Counterparty;
- (b) an explanation of why the CFD Settlement Data is reasonably required to enable the CFD Settlement Services Provider and the CFD Counterparty to discharge their EMR Settlement Functions; and
- (c) a copy of the agreement required by paragraph 5.4.1.

5.2.3 In respect of any CFD Settlement Data that is:

- (a) publicly available;
- (b) available to any person on request; or
- (c) expressly contemplated under any EMR Legal Requirement,

then each Party and the Panel shall not (whether by action, omission or withholding of consent) prevent or restrict BSCCo from providing that CFD Settlement Data to the CFD Settlement Services Provider and the CFD Counterparty.

5.2.4 Subject always to paragraph 5.2.3, if the Panel considers that any CFD Settlement Data is not reasonably required to enable the CFD Settlement Services Provider to discharge its EMR Settlement Functions the Panel shall instruct BSCCo to refer the matter to the CFD Counterparty.

5.2.5 Following such referral, the CFD Counterparty shall, in its absolute discretion, determine whether that CFD Settlement Data is reasonably required to enable the CFD Settlement Services Provider to discharge its functions and the CFD Counterparty's determination shall be final and binding for the purposes of the Code.

5.2.6 If at any time the CFD Settlement Services Provider or the CFD Counterparty requests further CFD Settlement Data from BSCCo then the provisions of paragraphs 5.2.1, 5.2.2(b), 5.2.3, 5.2.4 and 5.2.5 shall apply in respect of that CFD Settlement Data.

5.2.7 BSCCo shall arrange for a schedule of CFD Settlement Data to be published on the BSC Website from time to time and revised as soon as reasonably practicable after any change is made to the schedule of CFD Settlement Data in accordance with paragraph 5.2.5.

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5.3 Provision of data and information to the CM Administrative Parties

5.3.1 BSCCo must provide, or procure that a BSC Agent provides, such data, information and reports to the relevant CM Administrative Parties as it is required to provide under any EMR Legal Requirement (the "**CM Settlement Data**") in accordance with the requirements contained therein.

5.3.2 BSCCo shall provide to the Panel:

(a) a schedule of the CM Settlement Data to be provided to CM Administrative Parties; and

(b) a copy of the agreement required by paragraph 5.4.1,

and BSCCo shall arrange for the schedule of CM Settlement Data to be published on the BSC Website from time to time.

5.4 General

5.4.1 Where EMR Settlement Data is provided to an EMR Settlement Services Provider pursuant to this paragraph 5, BSCCo shall enter into and remain a party to an agreement with the CFD Settlement Services Provider and the CM Settlement Services Provider (as applicable) in accordance with Section C11 relating to the provision of data provided that any failure to enter into such an agreement must not prevent BSCCo from complying with any EMR Legal Requirement.