
EMR LICENCE DATA AGREEMENT

ELEXON LIMITED

AND

EMR SETTLEMENT LIMITED

Licence Data Agreement (the "Agreement") is dated the _____ day of _____ 2014

This Agreement is made between:

ELEXON Limited registered in England and Wales under number 3782949 whose registered office is at 4th Floor, 350 Euston Road, London NW3 1AW ("ELEXON"); and

EMR Settlement Limited registered in England and Wales under number 08924703 whose registered office is 4th Floor, 350 Euston Road, London NW3 1AW 4th Floor, ("the Licensee").

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise requires the definitions set out in this Agreement shall have the meanings given herein. Definitions not otherwise set out in this Agreement but defined in the Balancing and Settlement Code (the "BSC") (as in force at the date of this Agreement) shall have the same meanings where used herein.
- 1.2 "**Agreement**" means this agreement including the Annex hereto.
- 1.3 "**Commencement Date**" means the date so described in clause 2.1.
- 1.4 "**Confidential Licensed Data**" means such of the Licensed Data stated on its face or contemplated under the BSC, to be confidential or described in the Annex hereto.
- 1.5 "**ELEXON's Systems**" means the systems or processes referred to in clause 7.1.
- 1.6 "**Fee**" means the fee referred to in clause 3.1.
- 1.7 "**Licensed Data**" means any data or information which is available on ELEXON's Balancing Mechanism Reporting Service website or which is reasonably required by the Licensee pursuant to, and as permitted by, Section V5 of the BSC.
- 1.8 "**Licensee's Systems**" means the means or systems so described in clause 7.5.
- 1.8 "**Permitted Purpose**" means facilitating functions performed by: (1) the CFD Counterparty Company ("CPB"); (2) the [Electricity Settlements Company Limited]("CMSB"); (3) an EMR Settlement Services Provider ("SSP"); as described in the EMR Legal Requirements or as such EMR Legal Requirements are contracted to an SSP by the CPB or CMSB all as defined in the EMR Legal Requirements or (4) the EMR Settlement Services Provider's IT suppliers (each an "ITSP") (in order to facilitate the SSP's activities with regard to the EMR Legal Requirements) or as otherwise provided for in the BSC or as otherwise required to discharge any EMR Settlement Function or any requirement under any EMR Legal Requirements.

2. COMMENCEMENT DATE AND DURATION

- 2.1 Subject to clause 9 this Agreement shall commence on the date of this Agreement (the "Commencement Date").
- 2.2 This Agreement shall automatically be deemed to be and to have been renewed on each anniversary of the Commencement Date.

3. FEE

- 3.1 The Licensee shall pay ELEXON a fee of £3,000 per annum in consideration of ELEXON providing the Licensed Data to the Licensee during each year of the term of this Agreement. The first fee shall be paid by the Licensee on or before the Commencement Date. Thereafter, the relevant fee shall be paid by the Licensee on or before each consecutive anniversary date of the Commencement Date.

- 3.2 If any relevant fee referred to in clause 3.1 is not paid into ELEXON's bank account then interest shall be payable on the late payment of any undisputed fee that is more than three months overdue and which is invoiced under this Agreement at a rate of 2% above the base rate of Barclays Bank plc. on the amount of the overdue payment for the period from the due date to the date of payment.
- 3.3 If the Licensee receives an invoice which it reasonably believes includes a sum which is not valid and properly due it shall have the right to dispute such amount and, if so, it shall notify ELEXON in writing as soon as reasonably practicable.

4. LICENCE TO AND RIGHT TO OBTAIN THE LICENSED DATA AND RESTRICTION ON USE

- 4.1 Subject to the terms of this Agreement and to the Licensee's compliance with its obligations under this Agreement:
- 4.1.1 ELEXON hereby grants to the Licensee a non-exclusive, sub-licensable (in accordance with clause 4) non-assignable, personal and non-transferable licence to obtain and use the Licensed Data on the terms and conditions of this Agreement; and
- 4.1.2 the Licensee shall be entitled, by such means or processes as ELEXON in its discretion decides, to request, obtain or receive the Licensed Data from ELEXON and ELEXON shall be obliged to provide the Licensed Data promptly.
- 4.2 Subject to clauses 4.3, 4.4 and 5, the Licensee shall be entitled during the period of this Agreement to use the Licensed Data, provided that such use is only for the purpose of participating in or in connection with the Permitted Purpose. For the avoidance of doubt, but subject to (and without limiting the ambit of the restrictions in) clauses 4.3, 4.4 and 5, it is confirmed that the term "use" for the purposes of this clause 4 includes the analysis, processing, modification, copying, distribution and transmission of the Licensed Data.
- 4.3 Subject to clause 4.4 the Licensee shall not:-
- 4.3.1 sub-licence the Licensed Data to any person other than for a Permitted Purpose; or
- 4.3.2 otherwise than as expressly permitted by clauses 4.1, 4.2 and 4.4, use the Licensed Data.
- 4.4 The Licensee shall not be entitled to provide, give or transfer the Licensed Data to any third person or allow any third person to have access to or use the Licensed Data unless the Licensee provides, gives, transfers or allows the third person access to or use of the Licensed Data solely for the purposes described in clause 4.2 above.
- 4.5 ELEXON undertakes to comply with its obligations under Section V5 of the BSC.
- 4.6 For the avoidance of doubt and notwithstanding clause 8.1.1 ELEXON shall be obliged to provide the Licensed Data to the Licensee.

5. CONFIDENTIALITY

- 5.1 Subject to clause 5.3, and to any rights or obligations that the Licensee has under applicable law or regulations the Licensee undertakes to keep strictly confidential the Confidential Licensed Data and it shall adopt and enforce adequate and proper procedures within its organisation for ensuring the confidentiality of the Confidential Licensed Data that is the subject of this Agreement, including in order to ensure the following:
- 5.1.1 that the Confidential Licensed Data is disseminated within its organisation only on a "need-to-know" basis and in furtherance of the Permitted Purpose;
- 5.1.2 that persons within its organisation are and will be made fully aware of the provisions of this clause 5 and that they have their own personal obligation and

duty (which shall be owed to both the Licensee and to ELEXON) to ensure that the Confidential Licensed Data is kept strictly confidential; and

- 5.1.3 that access to the Confidential Licensed Data is not given to any person who is not an employee or officer of the Licensee other than in accordance with clause 4.4 and for the Permitted Purpose.
- 5.2 The Licensee shall procure that any Confidential Licensed Data that it receives and discloses to any other party shall be disclosed on the same basis as that set out herein (things being changed that need to be changed).
- 5.3 The provisions of this clause shall not apply to any Confidential Licensed Data that:
 - 5.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party in breach of this clause);
 - 5.3.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 5.3.3 the parties agree in writing is not confidential or may be disclosed; or
 - 5.3.4 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

6. SECURITY AND INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Licensee undertakes to ensure that the Licensed Data is properly protected at all times from unauthorised access or use and against misuse by any person.
- 6.2 The Licensee acknowledges and accepts that, as between itself and ELEXON, the intellectual property rights, know-how and/or information comprised in the Licensed Data belong to ELEXON.
- 6.3 ELEXON's rights under this clause 6 shall be without prejudice to any Party's rights of ownership of data as provided by the Code.
- 6.4 The Licensee shall use all reasonable endeavours to ensure that, and warrants to ELEXON (for itself and for the benefit of all other relevant persons), that:
 - 6.4.1 the provision to any third party of the Licensed Data; and
 - 6.4.2 the use, disclosure and/or publication of all such Licensed Data by any person to whom it has been disclosed by the Licensee

will not, as far as it is aware, be contrary to any obligations of confidence or be in breach of this agreement.

- 6.5 Save for the Licensed Data (which under no circumstances shall be assigned to the Licensee), ELEXON hereby assigns absolutely to the Licensee all right, title and interest including all intellectual property rights in and to any analysis, data, report or product relating to, derived from or based or relying on the Licensed Data produced by ELEXON for the Licensee in order to support the Permitted Purpose (collectively, Work Product).
- 6.6 The Licensee hereby grants to ELEXON under its intellectual property rights an irrevocable, sub-licensable, non-exclusive, royalty-free, worldwide license to use, copy, distribute, sub-license, modify, and make derivative works of the Work Product for the term of this Agreement.

7. SYSTEMS

- 7.1 In the event that ELEXON decides to provide or allow the Licensee to obtain or receive the Licensed Data by means of permitted access to restricted areas of ELEXON's website or to

other systems or processes used or operated by ELEXON (together "ELEXON's Systems"), the Licensee shall comply with the requirements of this clause 7.

7.2 The Licensee shall:-

7.2.1 on or before the Commencement Date (and/or at such other times as may be specified by ELEXON) provide ELEXON with such information as ELEXON may from time to time specify as being required in order for ELEXON to allow the Licensee to have access to ELEXON's Systems; and

7.2.2 where information provided by it pursuant to clause 7.2.1 is no longer current or valid, provide ELEXON with revised or updated information.

7.3 The information which ELEXON currently requires the Licensee to provide may include the following information:-

7.3.1 the Internet Protocol ("IP") address from which the Licensee will access or connect to ELEXON's Systems; and

7.3.2 the name, telephone and e-mail address of a technical contact person who is responsible for the systems that the Licensee will use to access or connect to ELEXON's Systems.

7.4 The Licensee acknowledges that ELEXON may propose to provide the Licensee with the following information:

7.4.1 File Transfer Protocol ("FTP") user ID;

7.4.2 FTP password;

7.4.3 IP address of ELEXON's FTP server; and

7.4.4 a time stated in minutes, as the minimum interval between which successive accesses of ELEXON's Systems by the Licensee may take place. The Licensee hereby agrees to such minimum interval.

7.5 Where the means by which the Licensee proposes to access or connect to ELEXON's Systems) (such means are hereinafter called "the Licensee's Systems") are or have been or are likely to be subject to a virus, internet-borne attack, security breach or other event or incident which might adversely affect ELEXON's Systems ("Systems Threat"), the Licensee on becoming aware of such a Systems Threat shall:

7.5.1 take such immediate and effective steps as are available to it or within its power to protect ELEXON's Systems from being or potentially being adversely affected (or if ELEXON's Systems are or may already be or have been adversely affected, to protect them or prevent them from being further adversely affected). These steps shall (unless demonstrably unnecessary) include immediately ceasing to use the Licensee's Systems to access or connect with ELEXON's Systems and to immediately terminate or suspend all access or connection to ELEXON's Systems;

7.5.2 give immediate notice of the Systems Threat to ELEXON; and

7.5.3 give immediate notice to ELEXON once the Systems Threat has been resolved.

Notwithstanding clause 12, all notices given pursuant to clause 7.5.2 shall be given by telephone to an appropriate person within ELEXON and, simultaneously (where possible) or immediately thereafter (if it is not reasonably possible to do so simultaneously) the Licensee shall give a further such notice to the same effect to ELEXON in accordance with the requirements of clause 12.

7.6 ELEXON retains the right not to provide or to immediately cease providing the Licensee with the Licensed Data (or with access to it) in the event that:

- 7.6.1 there has been or is likely to be a Systems Threat to the Licensee's Systems, or a like threat to ELEXON's Systems from whatever source or cause; and/or
- 7.6.2 the Licensee at intervals shorter in duration than that specified by ELEXON pursuant to clause 7.4.4 above has repeatedly accessed ELEXON's Systems.
- 7.7 ELEXON, in the event that the situation described in clause 7.6.1 occurs will only recommence the provision of the Licensed Data (or give access to it) on being satisfied that the Systems Threat (or a like threat to ELEXON's Systems from another source or cause) has been rectified, is at an end or is unlikely to occur and that there is no risk whatsoever to any of ELEXON's Systems.

8. LIMITATION OF LIABILITY

- 8.1 The Licensee acknowledges and agrees that it shall not have any claim or entitlement whatsoever or howsoever arising against ELEXON or any other person (including BSCCo, any BSC Party, any BSC Agent or the Transmission Company) as a result of any of the following:
 - 8.1.1 the provision (including of access to), supply, receipt, obtaining or availability or the failure to provide, supply, receive or obtain or the unavailability (in each case in whole or in part) of any Licensed Data; or
 - 8.1.2 any corruption, omission, error, inaccuracy or incompleteness of or in any Licensed Data provided (including of access to), supplied, received, obtained or made available pursuant to this Agreement.
- 8.2 No warranty or representation is given (whether expressly or impliedly) by ELEXON or any other person (including BSCCo, any BSC Party, any BSC Agent and the Transmission Company) as to the title to, right to supply, clarity, quality, lack of corruption, reliability, accuracy, comprehensiveness or completeness of any Licensed Data provided, supplied, received, obtained or made available pursuant to this Agreement.
- 8.3 The Licensee acknowledges and agrees that any use by the Licensee or reliance placed by the Licensee upon the Licensed Data shall be at the Licensee's own risk and responsibility and neither ELEXON nor any other person (including BSCCo, all BSC Parties, all BSC Agents and the Transmission Company) shall be or be deemed to have any liability whatsoever or howsoever arising to the Licensee or any other person in respect of or in relation to the Licensed Data or the Licensee's or any other person's use thereof or reliance thereon.
- 8.4 Without limiting the generality of clauses 8.1 to 8.3 (inclusive) ELEXON shall not have any liability whatsoever or howsoever arising to the Licensee or any other person for any claim, action, loss or damage that may arise from the Licensee's or any other person's use of or reliance on the Licensed Data including without limitation any and all direct, indirect or consequential loss, any economic loss, loss of profit, loss of goodwill, loss of contracts or loss of opportunity for profit which each or any of the Licensee or any other person may suffer as a result of or in connection with the use of or reliance on the Licensed Data.
- 8.5 ELEXON and the Licensee agree that nothing shall exclude, restrict or limit either party's liability under law to the other for death or personal injury resulting from the other party's negligence.
- 8.6 The Licensee hereby acknowledges and agrees that the exclusion of warranties and the limitation and exclusions of liability set out in this Agreement are reasonable and fair in all circumstances.
- 8.7 Without prejudice to any other rights or remedies ELEXON may have, the Licensee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this Agreement and that ELEXON shall be entitled to the remedies of injunction,

specific performance and to any other equitable relief for any threatened or actual breach of this Agreement.

9. TERMINATION

9.1 The Licensee may terminate this Agreement by giving not less than 30 days prior written notice to ELEXON.

10. DISPUTES

10.1 If a dispute arises out of or in connection with this Agreement then:

10.1.1 either party may call a meeting of the parties by giving not less than 14 calendar days prior written notice to the other and each party shall procure that an authorised representative attends all such meetings;

10.1.2 those attending the relevant meeting shall use all reasonable endeavours to resolve the dispute; and

10.1.3 if the parties fail to resolve the dispute in the allotted time, either party may within that period refer the matter for expert determination in accordance with the provisions of this agreement.

10.2 Either party may refer a dispute out of or in connection with this agreement to expert determination by a qualified chartered accountant agreed upon by the parties or, failing agreement, as nominated by the President from time to time of the Institute of Chartered Accountants who shall act on the following basis:

10.2.1 the expert shall act as an expert and not as an arbitrator and shall act fairly and impartially;

10.2.2 the expert's determination shall be final and binding on the parties; and

10.2.3 the expert shall decide the procedure to be followed in the determination and shall make his or her determination as soon as reasonably practicable after appointment;

10.3 The parties shall provide such information and documents as the expert requires to make his or her determination.

10.4 The costs of such expert shall be paid by the parties equally.

11. SEVERANCE

11.1 If any provision of this Agreement is or becomes invalid, unenforceable or illegal or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction or by any other Competent Authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement, which shall continue in full force and effect notwithstanding the same.

12. SURVIVAL

12.1 Clauses 1, 4.3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 shall survive the termination (whether by expiration or otherwise) of this Agreement.

13. NOTICES

13.1 All notices under this Agreement shall be in writing and shall be delivered by hand or sent by first class pre-paid post or facsimile transmission to the party being served at its address set out in this Agreement (or otherwise notified in writing to the other party).

- 13.2 All notices sent pursuant to clause 13.1 shall be deemed to have been received by the recipient if delivered by hand, on the date of delivery; if sent by first class pre- paid post, on the second day after posting; and if sent by facsimile transmission, on the date of sending if sent prior to 5pm on that day, and on the next working or business day if sent after 5pm. Notices shall not be sent by email.

14. NOVATION

- 14.1 The CPB and/or the CMSB and/or any nominee of the Secretary of State that is appointed to perform an EMR function pursuant to a EMR Legal Requirement ("Nominee") shall be entitled to assume by way of novation all (or such part as any of them shall request) of the rights and obligations of the Licensee hereunder on expiry or termination of the Settlement Services Provider Agreement between the Licensee, CPB and CMSB (in whole or in part) (the "Settlement Services Provider Agreement") and in this regard ELEXON and the Licensee shall execute and deliver all such documentation as may be reasonably required to effect such novation.

15. THIRD PARTY RIGHTS

- 15.1 CPB and/or the CMSB and/or any Nominee and/or any ITSP shall be entitled on request to promptly receive from ELEXON and be licensed to use the Licensed Data and any other information reasonably required by the CPB pursuant to, and as permitted by, Section V5 of the BSC, subject to payment of the Fee (when due) if ELEXON undertakes any activities to provide the Licensed Data directly to anyone other than the Licensee and subject also (as applicable) to continuing compliance by each of CPB (and any Successor Entity of the CPB) and/or the CMSB with the confidentiality undertakings as set out in Clause 33 of the Settlement Services Provider Agreement.
- 15.2 The parties hereby acknowledge and agree that this Agreement confers a benefit upon the CPB, CMSB and/or any Nominee and accordingly the CPB, CMSB and/or any Nominee shall have the right to enforce ELEXON's obligations under Clause 15.1 and the provisions of Clauses 14.1 and 15.2 as if they were parties to the Agreement in accordance with the terms of the Contracts (Rights of Third Parties) Act 1999.
- 15.3 Subject to the above, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

16. ENTIRE AGREEMENT

- 16.1 The parties agree that this Agreement constitutes the entire agreement and understanding between them and supersedes all previous agreements, understanding, arrangements and undertakings.
- 16.2 This Agreement may be executed in any number of counterparts and each counterpart shall constitute an original of this Agreement.
- 16.3 This Agreement may only be varied in writing signed by each of the parties.

17. GOVERNING LAW

- 17.1 This Agreement shall be governed and construed in all respects in accordance with the laws of England and any dispute arising under it shall be submitted to the exclusive jurisdiction of the English courts.

SIGNED BY
on behalf of **ELEXON LIMITED**

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SIGNED BY
on behalf of **EMR SETTLEMENT
LIMITED**

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ANNEX: Confidential Licensed Data

TABLE 1 – SAA REPORTING (SAA-I014 Subflow 2)

Name of report	Frequency
Interim Information Settlement Report	Daily
Initial Settlement Report	Daily
Timetabled Reconciliation Settlement Report	Daily
Final Reconciliation Settlement Report	Daily
Post-Final Settlement Report	Following a Post-Final Settlement Run

TABLE 2 – BM Unit Gross Demand Report (SAA-I042)

Flow Name	Name of Report	Frequency
SAA-I042	BM Unit Gross Demand Report	Daily