



# Appointment of a BSC Service Manager: Panel Engagement

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<b>Meeting Name</b>	BSC Panel
<b>Meeting Date</b>	26 September 2012
<b>Purpose of paper</b>	For Decision
<b>Summary</b>	<p>Subject to a satisfactory business case and agreement of appropriate commercial terms, the Balancing and Settlement Code Company (BSCCo) proposes to appoint a BSC Service Manager in line with a set of Contract Principles defined by the BSCCo Board. The BSC Panel is invited to consider how it would like to engage in this work and if this should be by means of appointing a Panel Observer under the Terms of Reference set out at Appendix 1.</p>

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## 1. Introduction

- 1.1. Modification P284 'Expansion of ELEXON's role via the 'contract model'' has been approved by the Authority and was implemented on 18 September 2012.
- 1.2. This modification enables BSCCo to outsource some or all of the services that it currently provides to BSC Parties to a new BSC Agent (the BSC Service Manager). For the purposes of this paper this new legal entity is referred to as New ELEXON.
- 1.3. Ofgem has indicated in its letter<sup>1</sup> of 30 April 2012 that it believes it is appropriate for the initial appointment of a BSC Services Manager to be made without a competitive tender. Ofgem also noted in this letter that the initial contract should be for a fixed term (between 5 to 8 years).
- 1.4. The ELEXON (BSCCo) Board has published its process<sup>2</sup> for appointing a BSC Service Manager and has consulted on a set of Contract Principles as part of this work.

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<sup>1</sup> <http://www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/elexon%20expansion%20way%20forward%20letter%20300412.pdf>

<sup>2</sup> <http://www.elexon.co.uk/wp-content/uploads/2012/08/Appointment-Approach-Information-Sheet-v1.0.pdf>

## 2. Panel Observer

- 2.1. Section E of the Code allows the Panel to appoint and set the terms of reference for a Tender Committee to advise the BSCCo on the conduct of BSC Agent procurements, including the pre-qualification and/or short-listing of bidders and award of the contract.
- 2.2. While P284 waives these provisions for the initial appointment of a BSC Service Manager the BSCCo Board believes that it is appropriate for the BSC Panel to have oversight of the process that the Board is following. This may be via:
  - regular Panel updates and requests for views at meetings and via correspondence;
  - a Panel Observer or Observers; or
  - another means as determined by the Panel.
- 2.3. A Panel Observer would provide the BSCCo Board and the Panel with assurances that the BSCCo is following its agreed process. They should also be available to advise and, if appropriate, make recommendations, to the BSCCo negotiating team on matters relevant to the service contract including definition of the Services to be provided and appropriate KPIs for the Services. The BSCCo Board may consult directly with the Panel Observer.
- 2.4. Consistent with previous terms of reference for Tender Committees and Project Observers, the Panel Observer would not participate in contract negotiations. The Panel Observer would act in an advisory capacity with no decision-making authority since the contract will be negotiated by the BSCCo team and approved by the BSCCo Board.
- 2.5. Proposed terms of reference for a Panel Observer are set out at Appendix 1.

## 3. Next Steps

- 3.1 In accordance with the BSCCo Board's published approach we will:
  - **Update the Contract Framework Document** taking account of consultation comments, BSCCo Board deliberations and the views of the industry workshop held on 6 September 2012. The revised document will be shared with the Panel Observer (if appointed) and circulated to the BSCCo Board for approval; and
  - Develop a **Term Sheet** describing the shape of the arrangement at a high level to be used as the basis for structuring the contract itself. The Term Sheet (redacted as appropriate to preserve confidentiality) will be shared with the Panel Observer (if appointed) for review.

- 3.2 We have noted the paper that ELEXON's CEO, Peter Haigh, presented to the BSC Panel regarding the benefits of adopting the 'contract model'<sup>3</sup> and we expect this to be used as a starting point (together with the Term Sheet and Contract Framework Document) for determining the **business case** for outsourcing before progressing with any negotiations on the detail of a contract.
- 3.3 Should a case be made for outsourcing and appropriate commercial and contractual terms developed, the **BSC Service Manager Contract** will be provided to the BSCCo Board for review and approval prior to being agreed. Elements of this contract (redacted as appropriate to preserve confidentiality) will be shared with the Panel Observer (if appointed) for review.
- 3.4 If commercial and contractual terms cannot be agreed which satisfy the principles established by the BSCCo Board the BSC services will not be outsourced and will continue to be provided by BSCCo.

#### 4. Recommendation

- 4.1. The Panel is invited to;
- a) **APPOINT** a Panel Observer under the Terms of Reference at Appendix 1; or
  - b) **CONSIDER** alternative means for engaging with BSCCo and the BSCCo Board regarding the potential appointment of a BSC Services Manager.

#### For more information, please contact:

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#### Appendices:

Appendix 1 – Project Observer: Proposed Terms of Reference

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<sup>3</sup> [http://www.elexon.co.uk/wp-content/uploads/2012/04/201\\_09\\_An\\_Assessment\\_of\\_the\\_benefits\\_of\\_adopting\\_the\\_Contract\\_Model.pdf](http://www.elexon.co.uk/wp-content/uploads/2012/04/201_09_An_Assessment_of_the_benefits_of_adopting_the_Contract_Model.pdf)

## Appendix 1 – Panel Observer for the Appointment of the BSC Service Manager: Proposed Terms of Reference

### 1. Appointment

- 1.1 The Panel Observer is appointed as someone who is knowledgeable about BSCCo's core roles and its BSC obligations relating to governance, procurement, change, operations and assurance as well as its impact on industry participants. The Panel Observer is to assist (where applicable) the BSCCo team with the conduct of the appointment of the BSC Service Manager and to assure the BSC Panel that the process has been operated transparently and fairly.
- 1.2 The Panel Observer is appointed as an observer and does not have executive or decision making capacities concerning the appointment of the BSC Service Manager and shall:
- a. be appointed by the BSC Panel;
  - b. carry out the duties of a Panel Observer as set out in these Terms of Reference;
  - c. act impartially and shall not be representative of, and shall act without undue regard to, the particular person or class of persons (including his or her employer);
  - d. take up his/her duties on appointment and shall serve until the date that the BSC Panel is notified that a contract has been awarded;
  - e. carry out the assigned duties in a professional manner and shall endeavour at all times to meet the timescales imposed by the project;
  - f. maintain the confidentiality of the project at all times;
  - g. be independent from any potential BSC Service Manager and any company who expresses an interest in fulfilling the roll of the BSC Service Manager; and
  - h. provide comment to the BSCCo Board and the Panel on his/her observations of the appointment process.
- 1.3 If at any time, the Panel Observer is unwilling or unable to carry out his or her duties in accordance with these Terms of Reference for whatever reason, such person shall cease to be the Panel Observer and the Panel shall appoint a new Panel Observer (being a person with similar skills and qualifications, where possible) in their place.
- 1.4 The Panel Observer shall disclose to the Panel, from time to time, any interests which constitute, in the Panel Observer's reasonable opinion, an actual or perceived conflict of interest in the discharge of his or her

functions, and the Panel shall determine whether he or she may continue to hold office or whether to replace them.

- 1.5 The BSC Panel may require confirmation from the Panel Observer and/or his employer in terms equivalent to those set out in BSC Section B2.8.2.
- 1.6 Unless otherwise agreed by the Panel the Panel Observer shall not be entitled to delegate any of their responsibilities to any other person.

## **2. Role of the Panel Observer**

- 2.1 The Panel Observer shall provide advice by reviewing and commenting on documents and/or by attending meetings (in person or via teleconference) with members of the project team.
- 2.2 Without limitation to paragraph 2.1, the following documents may be provided for review:
  - Appointment Approach
  - Contract Framework Document (including Contract Principles)
  - Term Sheet
  - Draft Contract
  - BSC Service Manager Service Description
- 2.3 The Panel Observer shall provide a report to the BSCCo Board and the BSC Panel on the appointment of the BSC Service Manager confirming, if applicable, that the work was carried out in a fair and transparent manner and in accordance with the BSCCo Board's published process.

## **3. Project Liaison**

- 3.1 BSCCo's BSC Advisor (Adam Richardson) will be responsible for liaison between the BSCCo team and the Panel Observer. All correspondence from the project to the Panel Observer shall be sent through BSCCo's BSC Advisor and conversely all communications from the Panel Observer to the BSCCo team shall be addressed to BSCCo's BSC Advisor.
- 3.2 The Panel Observer will receive communications from BSCCo's BSC Advisor for comment and advice. Where possible such communications shall explain the nature and direction of the advice that is sought.
- 3.3 In all cases communications to the Panel Observer shall state a date by which comments are required. BSCCo's BSC Advisor shall recognise that the Panel Observer has other responsibilities and shall allow a reasonable period time for the Panel Observer to comment given the nature of the query.

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- 3.4 Whenever an urgent response is required from the Panel Observer BSCCo's BSC Advisor shall give the Panel Observer immediate notice so that time can be allocated.

#### **4. Confidentiality and Independence**

- 4.1 The Panel Observer will provide advice and support to the BSCCo Board and the BSCCo team on a confidential basis.
- 4.2 The Panel Observer shall be independent from any potential BSC Service Manager and any company who expresses an interest in fulfilling the roll of the BSC Service Manager. The Panel Observer will be required to execute a confidentiality agreement in this regard.
- 4.3 Confidential materials will be kept secure and handled in accordance with BSCCo information security policies and relevant data protection provisions.

#### **5. Remuneration and Liabilities**

- 5.1 The Panel Observer shall be entitled to be paid by BSCCo reasonable out of pocket expenses in accordance with BSC Section B2.11.1.
- 5.2 BSCCo shall indemnify and keep indemnified the Panel Observer (as an 'indemnity beneficiary') in accordance with BSC Section B2.9.1.