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## P332 Workgroup 10 summary

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### Summary

#### 1 Welcome and Meeting Objectives

The Chair welcomed attendees and presented the following meeting objectives to WG Members:

- Review Terms of Reference, including views against the BSC Objectives
- Agree Consultation questions
- Agree Progression Plan

#### 2. Recap and Actions

2.1 Recap of WG Meeting 9 – Elexon presented a recap of the previous meeting and gave an update on the actions.

2.2 Actions from the last WG meeting? – Elexon explained what was meant by “appointed” in the BSC. There are references to “appointed” in both Section J and S and the records held in SMRS reflect which Agent is appointed. The WG suggested that the legal text and side letter should refer to “appointed and registered in SMRS”. Elexon will review the draft legal text and side letter and make changes. WG discussion confirmed that the side letter should only apply when the Supplier Agent has accepted (D0011) an appointment notification (D0155) and the identity of the Supplier Agent is registered in SMRS. It is the SMRS status that identifies the responsible agent when referencing BSCP obligations.

2.3 Elexon confirmed that the P332 solution dovetails with the Removal of Qualification process. Elexon presented a matrix which explained that any new Agents qualifying once P332 had been implemented would be required to sign the side letter. Any Qualifying during the six months period for existing Agents to sign the letter would have until the end of the six months before the side letter became effective.

#### 3 Legal analysis

3.1 Legal analysis – exclusions/limitations and caps on liability – Elexon explained that the purpose of the side letter is to allow Suppliers to enforce, against SVA Meter Operator Agents and Data Collectors, all applicable obligations of SVA Meter Operator Agents and/or Data Collector specified in the BSC and the BSCPs. A failure by an agent to comply with these obligations would constitute a breach of contract. As a result, the relevant Supplier will have the right to seek legal remedies for this breach. If the Supplier seeks damages as a legal remedy, the Courts will apply various tests to determine whether, and how much, damages should be payable. It is normal practice in contracts to exclude certain categories of loss (e.g. indirect and consequential losses, loss of profits, etc.). The side letter as drafted does not include any limitations or exclusions, but could mirror what is already held in the BSC in respect of indirect losses and loss of profits. Some WG Members expressed concerns over the absence of limited liabilities.

3.2 The Proposer was happy for limitations and a cap on liability to be included. The Workgroup believed it important that the Modification Reports provided clear examples that would help industry understand these legal points. An example was agreed where a Supplier sought damages for an entire contract of [1000] MPANS, but it was only the underperformance of one MPAN that triggered the claim. This example illustrated the difference between direct and indirect losses.

3.3 Legal analysis – compensation – Elexon had been asked to consider what legal recourse a Party Agent would have if it performed services for which it had not received compensation. The legal recourse available would be a claim in ‘Quantum Meruit’ i.e. a claim to be paid a reasonable amount for the services performed. The side letter could be made more amenable to a Quantum Meruit claim by an explicit statement that the letter does not exclude any right of the agent or supplier to bring a claim. Elexon agreed to document worked examples in the Assessment Consultation.

3.4 The Workgroup suggested an example here of a Supplier asking a DC to take a hand held read (e.g. because unable to dial the meter) which is not provided for in the DC/customer contract

## 4 Settlement Risks

- 4.1 What is the P332 impact on Settlement Risks/Performance Assurance Framework? - Elexon presented the assessment of P332 impact on Settlement Risks. As P332 impacts on all Settlement Risks, it is assessed that P332 will impact and help to mitigate Risk Event 001.
- 4.2 Verbal Update to PAB – Elexon stated that they had provided a Verbal Update to PAB on [26 November 2020](#) to explain the issue, solution and progression plan. PAB Members considered what this side letter would mean for PAB, particularly as some issues with Customer Preferred Agents were not always related to BSC obligations. A PAB Member on the WG welcomed the engagement with PAB. It was noted that there was anecdotal evidence of issues being raised with OSMs and not getting to PAB but this process would be reviewed by Elexon. Elexon explained that Risk Event 001 was included in the [Risk Operating Plan 2020/21](#), in response to evidence provided under P332, but other areas had been prioritised to support Covid related activities. Elexon are due to review P332 at the internal Risk Evaluation Work Group this month.

## 5 Applicable BSC Objectives

- 5.1 Views against the BSC Objectives – At the last WG Meeting, Voting Members had provided their initial views against the BSC Objectives. The Proposer reiterated his view that P332 was positive against (c) and (d). Voting Members who were present at the last meeting had not changed their mind. The majority of the WG were neutral against (c) positive against (d).

## 6 Consultation Questions

- 6.1 WG Members were asked for any Additional Consultation Questions. A WG Member asked for a question to ask whether respondents agreed with the side letter in principle, but not some of the wording. It was agreed that a question would be added and respondents would be asked to provide their rationale and suggested changes to the wording. The WG also agreed to include specific questions around the scope of the side letter in terms of applicable roles (SVA DC/MOA) and obligations (all applicable obligations).

## 7 Progression Plan

- 7.1 Elexon presented the revised Progression Plan, which had been updated due to the requirement to hold this WG Meeting before Assessment Consultation. It was noted that an extension request was required and that the Assessment Report would be presented to the Panel in March 2021 and the Draft Modification Report would be presented to the Panel in May 2021.

## 8 Next steps

- 8.1 The WG agreed that P332 could be sent for Assessment Consultation, subject to agreed amendments and WG review of the Assessment Consultation. The document would be drafted ready for WG review w/c 11 January 2021.

## 9 Actions

1. Elexon to amend the draft legal text and side letter to reflect that the Agent has been appointed and also registered in SMRS
2. Elexon to add limitations to liabilities in the side letter.
3. Elexon to document worked examples of limited liabilities and remuneration in the Assessment Consultation to help Parties and Party Agents understand the implications of the side letter.
4. Elexon to review P332 at the internal Risk Evaluation Work Group in December.
5. Elexon to include Additional Consultation Question to ask respondents if they agree in principle with the side letter, but disagree with the wording. Respondents will be asked to provide their rationale and suggested amendments.