



Redlined excerpt of BSCP537 showing changes proposed by CP1240

3.7 Qualification Letter

To:

ELEXON Limited as the Balancing and Settlement Code (the "BSC") Company ("BSCCo")

[insert registered office address]

[insert date]

Dear Sirs,

Qualification Application & Letter

We are writing to you in your capacity as BSCCo for itself, and pursuant to paragraph 3.8 of Section J of the BSC, as trustee and agent for each other Party, the Panel, any Panel Committee, or the Performance Assurance Administrator.

Unless otherwise stated or the context otherwise requires any capitalised term in this letter shall have the meaning given to it in the BSC.

By writing this letter we are applying to undergo the Qualification Requirements and Qualification Processes in accordance with Section J of the BSC in respect of *[insert proposed Qualification capacity]*.

We acknowledge that we have obtained a copy of the latest versions of Section B (The Panel), Section C (BSCCo and its Subsidiaries), and Section J (Party Agents and Qualification under the Code), and Section Z (Performance Assurance) of the BSC as well as BSC Procedure 537 from the BSCCo website at <http://www.elexon.co.uk>.

In consideration of BSCCo, and/or the Performance Assurance Board undertaking the Qualification Processes in relation to ourselves or arranging for such procedures to be undertaken, we hereby agree with each of you that we shall during the Qualification Processes and thereafter abide by:

- (a) the terms of Section B2 (the Panel), Sections C5 (BSCCo and its Subsidiaries), Section J (Party Agents and Qualification under the Code), Section Z (Performance Assurance) of the BSC for the purposes of the Qualification Requirements and Qualification Processes as if we were a party to the BSC for the purposes of those Sections and that Annex; and
- (b) the terms of BSC Procedure 537, as amended, and as referred to in those aforementioned Sections and any other applicable BSC Procedure.

- 1 In addition to the above, we acknowledge and agree that during the Qualification Processes and thereafter the provisions of paragraph 3.7 of Section J (Party Agents and Qualification under the Code) of the BSC which provide that should we be dissatisfied with any decision of the Performance Assurance Board concerning our Qualification, re-Qualification or removal of Qualification, our sole and exclusive remedy will be to refer the matter for determination to the Authority in accordance with that paragraph and we accept that its determination or, as the case may be, the determination of the arbitrator appointed by the Authority pursuant to paragraph 3.7.3 of that Section will be final, conclusive and binding.
- 2 We further acknowledge and agree that during the Qualification Processes and thereafter:
 - (a) the total aggregate liability of the Performance Assurance Board, any such member thereof, and the Performance Assurance Administrator, to an Interested Person whether in contract, tort (including negligence or breach of statutory duty) or otherwise arising directly or indirectly out of or in connection with the performance or non-performance of its functions (including the contents of any opinion or report prepared by the Performance Assurance Board) shall in no circumstances exceed £1,000,000 per claim or series of related claims;
 - (b) neither the Performance Assurance Board nor any member thereof and the Performance Assurance Administrator shall be liable to any Interested Person for any loss of profit, loss of revenue, loss of contract, loss of goodwill or any indirect or consequential loss arising out of or in connection with the performance or non-performance of its functions;
 - (c) paragraphs 2 (a) and (b) above and any relevant provisions of the BSC shall not exclude the liability of the Performance Assurance Board, any members thereof or the Performance Assurance Administrator for fraud or death or personal injury resulting from the negligence of such board or member;
 - (d) the exclusions from and limitations of liability of the Performance Assurance Board, any members thereof or the Performance Assurance Administrator under paragraph 2 (a), (b) and (c) and any relevant paragraphs of the BSC are reasonable because of (amongst other matters) the likelihood that the amount of damages awardable to the Interested Person from the Performance Assurance Board, any members thereof or the Performance Assurance Administrator would otherwise be disproportionate to the charges which it makes in connection with the performance of its functions and because of the limited resources and expertise of the Performance Assurance Board, any members thereof and the Performance Assurance Administrator;
 - (e) the exclusions from and limitations of liability of the Performance Assurance Board, any members thereof and the Performance Assurance Administrator and any relevant paragraphs of the BSC shall be considered severally and the invalidity or unenforceability of any one paragraph shall not affect the validity or enforceability of any other paragraph; and
 - (f) the Applicant shall not (save to the extent required by law, any relevant regulatory bodies or pursuant to the rules of any arbitration tribunal or by any arbitration award) be entitled to and shall not copy or disclose any preliminary and/or final Qualification report relating to it submitted by BSCCo (or any of its agents or service providers), the

Performance Assurance Board or any members thereof or the Performance Assurance Administrator or the contents thereof to any other person, other than to its employees and professional advisers for the purposes of advising the Applicant and (if the Applicant has lodged an appeal) to the Authority subject to the Applicant notifying such persons of the requirement to keep such reports confidential;

(g) to the extent permitted by law, any agent or service provider of BSCCo who may perform any of the Qualification services shall have no liability to the Applicant on any basis, whether in contract, tort (including negligence) or otherwise, arising from or in connection with its Application including (without limitation) any advice or interpretation relating thereto given to it by any agent or service provider (whether orally or in writing). Such exclusion of liability shall not apply in the event of any acts or omission which are in any case criminal, dishonest or fraudulent on the part of the agent or service provider. In addition, we also agree not to take any action against an agent or service provider of BSCCo who may perform any of the Qualification services; and further that such agents or service providers shall have a right (subject to the discretion of the Court) to a stay in proceedings should we bring such a claim in breach of this paragraph 2 (g);

(h) the exclusion of liability under paragraph 2 (g) and any relevant paragraphs of the BSC (if applicable) are reasonable because of (amongst other matters) the agent or service provider will be relying on information provided by the Applicant and will not be acting in a decision making capacity in relation to the Application.

3 In addition to the above, we agree to be bound by the Qualification Process as set out in Section J of the BSC and BSC Procedure 537 and represent, warrant and undertake to you in the terms of paragraph 3.8 of Section J of the BSC.

4 We confirm that we:

(a) have completed a Confidentiality Licence and Disclosure Agreement*;

(b) represent, warrant and undertake that we are not appointed by a person with an electricity supply licence to retrieve, validate and process metering data for the purposes of the 1998 trading arrangements*.

5 This letter shall be governed by, and construed in all respects in accordance with, the laws of England and Wales.

Yours faithfully,

signed by [*insert name*] being a Director and signing this for and on behalf of [*insert name full registered name of Company*]

*delete as appropriate