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| **MODIFICATION PROPOSAL FORM** | | | | | |
| **Proposer**  *(Company)* | **Date of receipt**  *(assigned by Secretariat)* | | **Type of Proposal**  *(delete as appropriate)* | | **Modification Proposal ID**  *(assigned by Secretariat)* |
| **SEMO** | **17 January 2012** | | **Standard** | | **Mod\_03\_12** |
| **Contact Details for Modification Proposal Originator** | | | | | |
| **Name** | | **Telephone number** | | **Email address** | |
| **Nuala Dunne** | | **01 2370326** | | [**Nuala.dunne@sem-o.com**](mailto:Nuala.dunne@sem-o.com) | |
| **Modification Proposal Title** | | | | | |
| **Alignment of TSC with revised VAT arrangements** | | | | | |
| **Documents affected**  *(delete as appropriate)* | | **Section(s) Affected** | | **Version number of T&SC or AP used in Drafting** | |
| **T&SC**  **AP** | | **TBD** | | **v10** | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| There is a requirement in the Trading and Settlement Code (TSC) and also in the SEM VAT Agreement (agreed by both VAT authorities at the start of SEM) that all units must have a VAT registration in the Jurisdiction where they have registered a unit in SEM. To date, this has not been an issue as all participants had a place of business in the relevant Jurisdiction.  There are a number of interested parties that now wish to enter the market and register as Interconnector Units in a Jurisdiction other than where their company is established. This applies currently for the Moyle Interconnector, but in Q3 2012 will also apply to the East West Interconnector. Based on EU VAT legislation, they should not be required to have a VAT number if they are not established in the Jurisdiction of the unit.  The VAT Agreement, TSC and the Central Market Systems (CMS) are not set up to deal with this kind of arrangement and to do so requires a new VAT Agreement with both VAT authorities, a Modification to the TSC and CMS changes.  A solution is currently being worked on with both VAT authorities which will result in a revised SEM VAT Agreement. SEMO is analysing the potential CMS changes. It has been communicated to the VAT authorities that these changes could be implemented in the TSC and the CMS by April 2013.  In addition to the above changes, following the implementation of the previous VAT changes in Oct 2010, removing the need to have blended VAT rates, the VAT agreement will be updated to reflect these changes and the TSC will be modified accordingly.  It is anticipated that the sections below are those that will change for this modification. The legal drafting will be developed in line with the solution referred to above. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| MANAGEMENT OF TAXES AND VAT   * 1. The following paragraphs deal with the treatment of VAT for the purposes of the Code and are prepared subject to and in accordance with the terms of the joint letter from Her Majesty’s Revenue and Customs and the Revenue Commissioners (together referred to as the “Revenue Authorities”) entitled “Agreement with regard to VAT and the operation of the All-Island Electricity Market” (the “VAT Agreement”).   2. Notwithstanding the terms of the VAT Agreement all Participants shall indemnify and keep indemnified the Market Operator, its officers, employees and agents against any liability which the Market Operator may incur as a result of the failure of any Participant to pay or account for any VAT due on any Invoice or Self Billing Invoice (or Debit Note where applicable).   3. If any Participant shall fail properly to pay or account for any amount of VAT payable or receivable by it, that Participant shall indemnify and keep indemnified each non-defaulting Participant (on an after tax basis, but taking account of any tax relief available to the relevant Participant, as the case may be) against any liability which such non-defaulting Participant or Participants shall incur consequently.   4. All Invoices and Self Billing Invoices (and Debit Notes where applicable) shall include VAT at the appropriate rate for the Participant concerned as more particularly set out below. Pursuant to the VAT Agreement, Participants shall be entitled to make their VAT returns based on the Invoices and Self Billing Invoices (and Debit Notes) and the Market Operator shall issue a summary document (bi-monthly to Participants in Ireland, and monthly to Participants in Northern Ireland) identifying with respect to that Participant the total value cross-border supplies during the relevant period of two months or one month.   5. Pursuant to the VAT Agreement, the Market Operator shall prepare Invoices, Self Billing Invoices and, when appropriate Debit Notes including VAT applied at a rate determined in accordance with Agreed Procedure 15 “Invoicing”, based upon the Currency Zone of the Generator Units or Supplier Units of the Participant concerned (excluding those invoices which relate only to Fixed Market Operator Charges or Variable Market Operator Charges which shall bear VAT at the applicable rate for the Jurisdiction) Such VAT rates shall be as below.  1. For Supplier Units in the Northern Ireland Currency Zone – the relevant Northern Ireland VAT rate; 2. For Generator Units in the Ireland Currency Zone – the relevant Ireland VAT rate; 3. For Generator Units in the Northern Ireland Currency Zone – an appropriate blended VAT rate calculated as set out in Agreed Procedure 15 “Invoicing”; and 4. For Supplier Units in the Ireland Currency Zone – a second blended VAT rate calculated as set out in Agreed Procedure 15 “Invoicing”.   At the end of each year, the Market Operator shall compare the estimated transactions and energy flows used to determine the blended VAT rate pursuant to Agreed Procedure 15 “Invoicing” with the actual transactions and energy flows during such year for the purpose of adjusting the rate of VAT applied to reflect such actual transactions and energy flows. The Market Operator shall then issue debit notes or credit notes, as the case may be, to relevant Participants applying such adjusted rate of VAT to the Invoices and Self Billing Invoices to which the adjustment applies, together with Interest on the difference between the original sum and the sum adjusted by this paragraph, in each case from the due date of payment of the relevant Invoices or Self Billing Invoices until the date when such debit note or credit note is issued. Payment shall be made in respect of such debit notes or credit notes as if they had been Invoices or Self Billing Invoices.   * 1. The Market Operator shall retain records of all amounts of VAT included in all Self Billing Invoices, Invoices and Debit Notes together with records of all amounts of electricity transferred between Northern Ireland and Ireland which shall be made available to the Revenue Authorities for the purpose of setting the Blended Rate for subsequent years following the initial period provided for in the VAT Agreement. Such information shall also be provided to the Regulatory Authorities and to Parties.   2. For the avoidance of doubt, Participants receiving Invoices shall pay the invoiced sum, including VAT to the Market Operator by the Invoice Due Date and the Market Operator shall pay to Participants in receipt of Self Billing Invoices, the sum concerned including VAT by the Self Billing Invoice Due Date, subject only to any deduction or off-set as provided for in the Code.   3. Any difference between the VAT paid by the Market Operator and the VAT received by the Market Operator in any Settlement Period shall be treated as a component of the Balancing Cost.   4. The Market Operator shall retain records of all amounts of VAT included in all Self Billing Invoices and all Invoices together with records of all amounts of electricity deemed to be subject to a Cross Border Supply and actually subject to a Cross Border Supply and shall, upon request, make such information available to the Revenue Authorities and shall cooperate in any investigation by the either Revenue Authority relating to the settlement of the Pool or any aspect of it. | | | | | |
| **Modification Proposal Justification**  *(Clearly state the reason for the Modification)* | | | | | |
| The current requirements are not valid for participants whose companies exist in a jurisdiction other than where the interconnector unit is registered. This is a barrier to joining the SEM and the current market rules do not reflect EU VAT law. | | | | | |
| **Code Objectives Furthered**  *(State the Code Objectives the Proposal furthers, see Section 1.3 of T&SC for Code Objectives)* | | | | | |
| 1. to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences; 2. to ensure no undue discrimination between persons who are parties to the Code; | | | | | |
| **Implication of not implementing the Modification Proposal**  *(State the possible outcomes should the Modification Proposal not be implemented)* | | | | | |
| This modification is required to allow open competition in the market and allow companies established outside the jurisdiction of the interconnector unit to register in SEM. This will allow increased trade on the interconnectors. If it is not implemented the current rules are limiting those who can join the SEM by requiring a VAT number from companies who are not entitled to one and so preventing them from joining the SEM. We have agreed with the VAT authorities that we will amend our systems by April 2013 so that we can accommodate these companies. | | | | | |
| **Working Group**  *(State if Working Group considered necessary to develop proposal)* | | | **Impacts**  *(Indicate the impacts on systems, resources, processes and/or procedures)* | | |
| No required | | | VAT Agreement, Central Market Systems | | |
| ***Please return this form to Secretariat by email to*** [***modifications@sem-o.com***](mailto:modifications@sem-o.com) | | | | | |

**Notes on completing Modification Proposal Form:**

1. **If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.**
2. **Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.**
3. **Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.**
4. **For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:**

**Agreed Procedure(s): means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in Appendix D “List of Agreed Procedures”.**

**T&SC / Code: means the Trading and Settlement Code for the Single Electricity Market**

**Modification Proposal: means the proposal to modify the Code as set out in the attached form**

**Derivative Work: means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal**

**The terms “Market Operator”, “Modifications Committee” and “Regulatory Authorities” shall have the meanings assigned to those terms in the Code.**

**In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of the Code (and Agreed Procedure 12), which I have read and understand, I agree as follows:**

**1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:**

* 1. **to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;**
  2. **to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;**
  3. **to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;**

**1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.**

**2. The licences set out in clause 1 shall equally apply to any Derivative Works.**

**3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.**

**4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.**

**5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.**