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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** | **15 May 2012** | | **Standard** | | **Mod\_03\_12\_v2** |
| **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** | | **T&SC Section 6, Glossary, AP4, AP9 and AP15** | | **v10** | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| The provisions in the Code (V10) and SEM VAT Agreement (agreed by VAT authorities in both jurisdictions) require that all units must be VAT registered in the Jurisdiction that the Unit is registered.  A number of parties are interested in registering as Interconnector Units in SEM (on Moyle and East West Interconnectors) but not necessarily in the place where their company is established. In accordance with EU VAT legislation, a company established in a jurisdiction other than that of where their Interconnector Unit is registered is not required to be VAT registered in the jurisdiction of the Interconnector Unit.  This Modification Proposal aims to amend the Market Rules to remove the requirement for companies to become VAT registered in two jurisdictions in order to participate in SEM as Generator Units. These provisions apply to Interconnector Units as they are considered Generator Units for the purposes of the Code.  The proposal also removes the concept of the Blended Rate. This no longer applies in the SEM following the implementation of the Cross Border VAT in the SEM systems. A number of other non-material clarifications are included.  In order to implement the changes, an amendment to the existing VAT Agreement is necessary. The VAT Authorities have, following discussions with the Market Operator, amended the existing VAT Agreement to include an Addendum that satisfies the EU VAT legislation requirements.  A change to the Central Market Systems is also necessary. The vendor has delivered an Impact Assessment at the request of the Market Operator. The VAT authorities were advised that the earliest date in which the changes can be implemented in the Market Rules and the CMS is April 2013. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| T&SC  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 “Statement of Agreed Treatment of VAT under the SEM” (the “VAT Agreement”) as may be amended from time to time.   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. 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)..   5. Pursuant to the VAT Agreement, the Market Operator shall prepare Invoices, Self Billing Invoices and, when appropriate Debit Notes including VAT applied at the appropriate rate based upon the Currency Zone of the Generator Units or Supplier Units of the Participant concerned ).   6. Intentionally Blank.   7. For the avoidance of doubt, Participants receiving Invoices shall pay the invoiced sum, by the Invoice Due Date and the Market Operator shall pay to Participants in receipt of Self Billing Invoices, the sum concerned including applicable VAT by the Self Billing Invoice Due Date, subject only to any deduction or off-set as provided for in the Code   8. 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.   9. 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 either Revenue Authority relating to the settlement of the Pool or any aspect of it.   T&SC Glossary   |  |  | | --- | --- | |  |  |   AP4 Appendix 2   1. Business Data Contained in Each Element   **Application Data**   | **APPLICATION DATA** | | | | --- | --- | --- | | Screen Name | Comment | Mandatory / Optional | | Represent Party | Name of the Party that is represented by the registering Participant. | Optional | | VAT jurisdiction | Place of establishment for VAT purposes: IE, UK, Other EU, Non-EU | Mandatory | | VAT number | VAT identification number (VATIN) | Mandatory (EU only);  Optional (Non-EU) | | VAT Status | VAT Exempt (1) or Non-Exempt (0), for each jurisdiction | Mandatory | | Notification Comment | Used by the Market Operator and Participant to exchange notes with respect to that registration data. | Optional |   Agreed Procedure 9   1. Calculation Of VAT For Required Credit Cover   As per section 6 of the Code, the Required Credit Cover for each Participant shall include an amount in respect of VAT. This amount shall be calculated as follows.   * For published Invoices and Self Billing Invoices that are included in the Actual Supplier Exposure and Actual Generator Exposure, the amount of VAT as calculated on the Invoice will be included in the VAT amount of the Required Credit Cover. This applies to Invoices and Self Billing Invoices issued in respect of Trading Charges and Payments, Capacity Charges and Payments and Variable Market Operator Charges. * For published Settlement Statements that have not been included in any Invoices or Self Billing Invoices, an amount in respect of VAT will be calculated for all the payments and charges in accordance with the rules as set out in the VAT Agreement. This amount will be included in the VAT amount of the Required Credit Cover. This applies to Settlement Statements issued in respect of Trading Charges and Payments, Capacity Charges and Payments and Variable Market Operator Charges. * For the amounts calculated in respect of Undefined Potential Exposure amounts, an amount in respect of VAT will be calculated. The VAT will be calculated in accordance with the rules as set out in the VAT Agreement except where the VAT is in relation to amounts calculated in respect of Trading Charges and Variable Market Operator Charges in a Currency Zone where different VAT rates apply to these charges. In this circumstance a future VAT rate which will be based on an average of the VAT rates applicable in the relevant Currency Zone will be applied.   The future VAT rate will be published on the Market Operator Website.  Agreed Procedure 15  2.1.6 Intentionally Blank.  **2.3.2.5 VAT**  VAT is applied to Participants through the invoicing system according to the VAT Agreement and the charge type. VAT will apply to Trading Payments, Trading Charges, Capacity Payments, Capacity Charges and Market Operator Charges. VAT will not be applied to Interest or Settlement Reallocations amounts.  **APPENDIX 1: Definitions and Abbreviations**  **Definitions**   | **Billing Period Currency Cost** | | As defined in the Code | | | --- | --- | --- | --- | |  | |  | | | **Capacity Charge** | | **As defined in the Code** | | | | | | | |
| **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 Proposal is required to allow open competition in the Market, allowing companies established outside the Jurisdiction of the Interconnector Unit to register in SEM. This will facilitate increased trade on the Interconnectors. If this proposal is not implemented, the rules will discriminate against those who, in accordance with EU VAT legislation, should be allowed to join the SEM regardless of where a Unit is registered. The rules will continue to stipulate that a company must become VAT registered in the jurisdiction in which the Unit is registered, when in fact, the company may not be entitled to a VAT registration number for the Jurisdiction. This could prevent companies from joining the SEM. SEMO have agreed with the VAT authorities that the earliest that the necessary changes to the Central Market Systems can come into effect is April 2013. An interim arrangement with the VAT authorities will be in place until April 2013. | | | | | |
| **Working Group**  *(State if Working Group considered necessary to develop proposal)* | | | **Impacts**  *(Indicate the impacts on systems, resources, processes and/or procedures)* | | |
| N/A | | | 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.**