

## **ARRANGEMENTS**

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### **ARRANGEMENTS ENTERED INTO**

between

The Department for the Economy, whose principal address is  
Netherleigh, Massey Avenue, Belfast BT4 2JP

and

The Gas and Electricity Markets Authority, a body corporate  
established under section 1 of the Utilities Act 2000, whose  
principal address is 10 South Colonnade, Canary Wharf,  
London, E14 4PU

For the provision of Conferred Functions and Ancillary Activities  
delivered by the Gas and Electricity Markets Authority in  
relation to the Administration of the Northern Ireland Non-  
Domestic Renewable Heat Incentive Scheme

# ARRANGEMENTS

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## 1. INTRODUCTION AND PURPOSE

- 1.1** A scheme to facilitate and encourage renewable generation of heat in Northern Ireland was established by the Department of Enterprise, Trade and Investment (now DfE) by regulations made under section 113 of the Energy Act 2011. The Renewable Heat Incentive Regulations (Northern Ireland) 2012, as amended<sup>1</sup>, confer certain functions on DfE.
- 1.2** Section 114 of the Energy Act 2011 provides that DfE and GEMA may enter into arrangements for GEMA to act on behalf of DfE for, or in connection with, the carrying out of any functions that may be conferred on DfE under, or for the purposes of, a scheme established in section 113 of the Energy Act 2011. This document sets out such arrangements (“Arrangements”).
- 1.3** These Arrangements set out a formal and mutually agreed statement of the business relationship between DfE and GEMA for the delivery of those functions on behalf of DfE. They set out the functions to be exercised by each Party as well as agreed relevant standards, governance and operational arrangements that will apply between the two Parties. Both Parties will endeavour to comply with the provisions of these Arrangements. Whilst these Arrangements have the legal effect of enabling GEMA to perform the functions identified in this document, both Parties agree that they are not intended to be legally binding and that no legal obligations or legal rights will arise between the Parties from them. For the avoidance of doubt, both Parties also agree, that, whilst the Arrangements are entered into to enable GEMA to act on behalf of DfE for, or in connection with, the carrying out of certain functions, nothing in these Arrangements is intended to, or will be deemed to, give rise to a relationship of agent and principal between the Parties or overrides or is intended to pre-empt the ability of either Party to discharge any of its powers or duties that arise as a matter of law.
- 1.4** DfE is responsible for the development and implementation of the Northern Ireland renewable heat incentive policy and legislation, including the design and financing of the RHI Scheme to deliver environmental, sustainability and value for money objectives. DfE therefore has overall responsibility for the RHI Scheme including RHI Scheme guidance and the policy behind the Regulations. GEMA is primarily responsible for administering the RHI Scheme on a day-to-day basis in accordance with

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<sup>1</sup> Amendments were made by the Domestic Renewable Incentive Scheme Regulations (Northern Ireland) 2014, the Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015, the Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016, the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 and the Northern Ireland (Regional Rates and Energy) Act 2018.

# ARRANGEMENTS

these Arrangements. Section 5 of these Arrangements sets out the Parties' main responsibilities.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 In these Arrangements:

<p><b>“Administration Costs”</b> means the costs to GEMA of carrying out the Conferred Functions and Ancillary Activities and any other activities under these Arrangements, howsoever incurred. The budget and charging methodology for calculating the Administration Costs, and the types of activity which can contribute to the Administration Costs, will be agreed separately between the Parties in advance of the Administration Costs being incurred, in accordance with Section 9.</p>
<p><b>“Ancillary Activities”</b> means the activities that GEMA considers are necessary or desirable for the Conferred Functions to be carried out properly.</p>
<p><b>“Account Manager”</b> means the persons nominated by DfE and GEMA under Section 6.</p>
<p><b>“Confidential Information”</b> means information which has been designated as confidential by either of the Parties, whether, if it is passed to the other Party, at the time it is so passed or at a later stage, or is of a confidential nature concerning DfE, GEMA or any third party.</p>
<p><b>“Conferred Functions”</b> means all of the Functions other than the Retained Functions.</p>
<p><b>“Decision to Retain Notice”</b> means a notice given under paragraph 5.5.</p>
<p><b>“DfE”</b> means the Department for the Economy.</p>
<p><b>“Functions”</b> means the duties and powers conferred on DfE under the Regulations.</p>
<p><b>“GEMA”</b> means the Gas and Electricity Markets Authority.</p>
<p><b>“Guidance”</b> means the document(s) entitled “Non-Domestic Northern Ireland Renewable Heat Incentive - Guidance Volume 1: Eligibility and How to Apply” and “Non-Domestic Northern Ireland Renewable Heat Incentive - Volume 2: Ongoing Obligations, Payments”, published in accordance with regulation 51 in March 2016, as amended from time to time.</p>
<p><b>“Party”</b> means DfE or GEMA as a party to these Arrangements, and <b>“Parties”</b> shall be construed accordingly.</p>
<p><b>“the Regulations”</b> means the Renewable Heat Incentive Regulations (Northern Ireland) 2012, as amended by the Domestic Renewable Incentive Scheme Regulations (Northern Ireland) 2014, the Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015, the Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016, the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 and the Northern Ireland (Regional Rates and Energy) Act 2018, as may be amended from time to time.</p>
<p><b>“Retained Functions”</b> means the powers and duties conferred on DfE pursuant to:</p>

# ARRANGEMENTS

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- a) regulation 23(1) (grants from public funds), but only for the purpose of determining whether funds used or to be used in respect of any of the costs of purchasing or installing an eligible installation amount to a grant from public funds or the provision of other public support as a result of the application of commission regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid;
- b) regulation 36(8) (calculation of tariff rates and publication of table of tariff rates each year);
- c) regulation 47(1)(a) (requiring participant to repay payment as a civil debt);
- d) regulation 50 (right of review);
- e) regulation 51 (publication of guidance and publication of specified information on website);
- f) any Decision to Retain Notice.

**“RHI Scheme”** means the Non-Domestic Northern Ireland Renewable Heat Incentive Scheme.

- 2.2 Words used in these Arrangements and in the Regulations shall have the meaning given to them in the Regulations, unless otherwise defined herein.
- 2.3 Paragraph headings will not affect the interpretation of these Arrangements.
- 2.4 Any notice to be given pursuant to these Arrangements should be in writing and sent by e-mail to the relevant Account Manager.

## 3. WORKING RELATIONSHIP

- 3.1 DfE and GEMA will maintain an effective working relationship by:
  - a) being open, straightforward and constructive in their communications and actions;
  - b) working together at all levels, wherever appropriate;
  - c) enabling early engagement on new scheme design or existing RHI Scheme changes;
  - d) respecting each other's views, where different, and ensuring a proper understanding of the reasons for any such differences;
  - e) highlighting areas of interaction and setting out what each expects of the other, recognising that each has distinct governance, responsibilities and decision-making arrangements;
  - f) minimising duplication of activity wherever possible; and
  - g) ensuring lessons are learned and an approach of continuous improvement is maintained.

# ARRANGEMENTS

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- 3.2** Both Parties recognise that the delivery of legislative functions may involve the exercise of discretion which is subject to legal rules and constraints. Both Parties further recognise that, in exercising any discretion conferred by the Conferred Functions or Ancillary Activities, GEMA is not subject to the direction or instruction of DfE, and that nothing in these Arrangements is intended to alter that position. Both Parties have agreed the procedure in paragraph 5.5 as a means of enabling DfE to make a decision to retain Conferred Functions and to exercise those functions as Retained Functions.
- 3.3** Key Performance Indicators (KPIs) will be agreed between DfE and GEMA for the delivery of the Conferred Functions and Ancillary Activities.

## **4. SCOPE AND DURATION OF THE ARRANGEMENTS**

### **Functions Exercised**

- 4.1** The functions to be exercised by GEMA and by DfE are set out in Section 5.

### **Duration of the Arrangements**

- 4.2** These Arrangements take effect from the later date of the two signatories at Section 15 and remain in force for the lifetime of the Scheme unless terminated in accordance with Section 12. These Arrangements may be amended at any time with the consent of both Parties but, as a minimum, will be reviewed annually in accordance with the arrangements set out in Section 11.

## **5. ROLES AND RESPONSIBILITIES**

### **GEMA's Responsibilities**

- 5.1** GEMA will carry out the Conferred Functions and the Ancillary Activities and will at all times act in a manner which is consistent with any applicable obligations that arise as a matter of law.
- 5.2** GEMA will nominate an Account Manager to act as a contact point for the purposes of these Arrangements and inform DfE of the identity of that person.
- 5.3** Subject to paragraph 5.1, GEMA will:
- a) provide DfE with:
    - i. such information as is necessary to enable DfE to carry out in a proper manner the powers and duties imposed on DfE by

## ARRANGEMENTS

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- regulations 23, 47(1)(a) and 50, and any Decision to Retain Notice; and
- ii. such other information as DfE may reasonably request, which GEMA may hold in relation to the Conferred Functions;
  - b) inform DfE of any complaint or request for a formal review that is received by GEMA in connection with the carrying out by it of the Conferred Functions or the Ancillary Activities;
  - c) provide such assistance as DfE may reasonably request in respect of any court proceedings or other dispute with third parties in connection with the carrying out of the Conferred Functions on condition that any costs incurred by GEMA are charged to DfE at a daily rate to be agreed in advance of the provision of such assistance;
  - d) take all reasonable steps to ensure that wherever possible it will facilitate the ability of DfE to operate effectively in relation to the Regulations through the provision of briefings, attendance at meetings with industry and other stakeholders, and providing resource materials as required;
  - e) ensure that adequate controls are embedded in systems and processes to minimise the risk of error, duplicate payments and fraud and to meet with audit requirements;
  - f) maintain service availability within the agreed tolerance and have in place a Business Continuity Plan (see Section 13) to address how service will continue in the event of adverse threats or failure;
  - g) communicate with DfE on matters of common interest and common concern as appropriate and share in advance with DfE proposals for public announcements relating to or impacting on the scheme established by the Regulations when appropriate;
  - h) ensure that where it requests information<sup>2</sup> from DfE under these Arrangements, it will provide reasonable notice, where possible, and specify the information or nature of the information it requires, the format in which it requires it, the deadline for providing it and the reason it is required;
  - i) provide agreed key Management Information;
  - j) ensure that the Conferred Functions and Ancillary Activities are, so far as within the control of GEMA, delivered in accordance with agreed Key Performance Indicators;
  - k) support the administrative effectiveness of any function exercised by DfE pursuant to any Decision to Retain Notice;
  - l) notify DfE immediately in writing if any financial irregularity in relation to the NI RHI is suspected, and indicate the steps being taken in response. Irregularity means any Fraud, theft or other impropriety,

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<sup>2</sup> Information requests should be relevant to the Administration Costs, the Functions, the Ancillary Activities, the Regulations, the Guidance, relevant laws and regulations of Northern Ireland, or any legislation made or proposed to be made under section 113 of the Energy Act 2011.

## ARRANGEMENTS

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- mismangement, or use of funds for purposes other than that approved;
- m) communicate with DfE regarding the Terms of Reference for the audit activity undertaken by Deloitte/Ricardo-AEA, and endeavour to ensure that any DfE concerns regarding the NI RHI are adequately addressed. Upon completion of the audits, GEMA will share the outcomes where they relate to the NI RHI;
  - n) while being consistent with the obligations set out in the Arrangements, including the requirement to comply with any legal obligations, provide any records, information, or explanations which may reasonably be required to enable DfE to follow scheme payments, including but not limited to information relating to accredited installations, calculations of payments and transfer of funds from GEMA to the installation owner. If DfE has any issue requiring further consideration, GEMA will provide DfE, or the Northern Ireland Audit Office, with access rights relating to the payments made to accredited installations.

### **DfE's Responsibilities**

#### **5.4 DfE will:**

- a) nominate an Account Manager to act as a contact point for the purposes of these Arrangements and inform GEMA of the identity of that person;
- b) pay the Administration Costs quarterly, on a pass through basis, as agreed at the Service Delivery Board;
- c) transfer to GEMA the monies necessary for payment of the periodic support payments;
- d) produce an annual Inspections Strategy setting out the approach for on-site and desk based inspections to progress the ongoing DfE Inspections Programme;
- e) ensure that adequate controls are embedded in systems and processes to minimise the risk of error and fraud and to meet with audit requirements;
- f) take all reasonable steps to ensure that wherever possible it will facilitate the ability of GEMA to operate effectively in relation to the Regulations through the provision of briefing materials, attendance at meetings with industry and other stakeholders, and providing resource materials as required;
- g) communicate with GEMA on matters of common interest and common concern as appropriate and share in advance with GEMA proposals for public announcements and consultations relating to or impacting on the scheme established by the Regulations when appropriate;
- h) share information with GEMA necessary to enable GEMA to carry out the Conferred Functions and the Ancillary Activities in a proper

## ARRANGEMENTS

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manner. This includes providing GEMA with all information necessary to ensure that GEMA is aware of any laws and regulations of Northern Ireland applicable to performance of the Functions that will impact upon the carrying out by GEMA of the Conferred Functions or the Ancillary Activities (including any relevant prospective or actual changes). If GEMA have not been so provided, GEMA will not be liable for any loss which arises as a result of not taking into account the requirements of such laws and regulations. In sharing such information, DfE will comply with all relevant legislation and have respect for any personal or commercial confidentiality. Where DfE is made aware of such information, it will notify GEMA that it holds the information and provide it to GEMA on request;

- i) where it requests information<sup>3</sup> from GEMA under these Arrangements, provide reasonable notice, where possible, and specify what information it requires, in what format, by when and why it needs it;
- j) where GEMA provides DfE with information under these Arrangements, prior to the publication of that information, not without GEMA's express consent circulate that information outside the Northern Ireland Executive until after the date of publication by GEMA and treat such information as Confidential Information, unless otherwise agreed;
- k) provide such assistance as GEMA may reasonably request in connection with any court proceedings or other dispute with third parties in connection with the carrying out of the Functions;
- l) keep GEMA informed in good time of proposals to amend or re-enact the Regulations or the Guidance and give GEMA reasonable opportunity to consider and provide substantive comment on draft legislation where possible.

### **Notice procedure for DfE to exercise Conferred Functions as Retained Functions**

- 5.5** Both Parties recognise that, as DfE is responsible for both the policy and regulations supporting the Northern Ireland renewable heat incentive, DfE may wish in some cases or circumstances to exercise functions that would otherwise be exercisable by GEMA as Conferred Functions. In order to facilitate this, DfE may give notice (a "Decision to Retain Notice") to GEMA that it intends to exercise any of the Conferred Functions identified in the notice (whether exercisable in relation to any individual case or any group or class of cases) instead of GEMA. By way of example only, both Parties anticipate that DfE may wish to use a Decision to Retain Notice for functions relating to the inspection of accredited installations, and in some

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<sup>3</sup> Information requests should be relevant to the Administration Costs, the Functions, the Ancillary Activities, the Regulations, the Guidance, relevant laws and regulations of Northern Ireland, or any legislation made or proposed to be made under section 113 of the Energy Act 2011.

## ARRANGEMENTS

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cases for functions under Part 7 of the Regulations in relation to enforcement.

- 5.6** Any Decision to Retain Notice must be given before GEMA has exercised the function in question in relation to the case or group or class of cases covered by the notice.
- 5.7** Where a Decision to Retain Notice is given, the functions identified in the notice cease to be Conferred Functions in relation to the individual case or group or class of cases referred to in the notice (and instead become Retained Functions for that purpose). This is subject to paragraph 5.8.
- 5.8** Where a Decision to Retain Notice is given, both Parties may agree in writing that GEMA may continue to exercise any function identified in the notice in relation to the individual case or group or class of cases referred to in the notice, in which case GEMA's exercise of that function is to be treated as the exercise by GEMA of one of the Conferred Functions and DfE's exercise of that function is to be treated as the exercise by DfE of one of the Retained Functions. By way of example only, both Parties anticipate that they may agree for GEMA to continue to exercise functions which may inform DfE's decisions on enforcement/compliance activities for a particular case/group of cases as identified in the Decision to Retain Notice.
- 5.9** Where DfE have exercised any function pursuant to a Decision to Retain Notice, GEMA will provide administrative support to enable the effective implementation of any resulting decision (for example, by amending records or periodic support payments). Both Parties will discuss what is needed for these purposes.

## 6. COMMUNICATIONS

### Account Managers

- 6.1** Both DfE and GEMA will appoint an Account Manager to act as the main point of contact to help address any operational issues that arise under these Arrangements. The Account Managers will:
- a) act as primary point of contact within each organisation in relation to the delivery of the NI Non-Domestic RHI Scheme;
  - b) act as first level contact to deal with escalated issues;
  - c) attend monthly Service Delivery Board meetings;
  - d) participate in weekly checkpoint meetings to review ongoing service delivery and discuss any emerging issues;
  - e) maintain an Actions Log and liaise with relevant teams to monitor and ensure progress;

## ARRANGEMENTS

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- f) manage the generic mailbox in each respective organisation to ensure information or queries received are acted upon.

### Methods of Communication

- 6.2** As indicated in paragraphs 5.2 and 5.4, both DfE and GEMA will communicate as follows:
- a) **Email** – generic email addresses will be used by both Parties for all email communication on all aspects of Scheme Management. These must be monitored on a daily basis and information / requests issued to the relevant area in the organisation.
  - b) **Secure File Transfer Protocol (SFTP)** – SFTP must be used for the transfer of sensitive information and data including case papers and payment information for all NI Non-Domestic RHI participants. DfE will cover licence costs for all users both within the DfE and GEMA.
  - c) **Website** – DfE and GEMA will be responsible for maintaining the sections of their websites relevant to the RHI Scheme to ensure accurate and timely information is available to all participants and interested parties.

## 7. GOVERNANCE / MONITORING

### Operational

- 7.1** The Non-Domestic RHI Service Delivery Board is an executive, decision-making board whose purpose is to manage delivery of all elements of the NI Non-Domestic RHI Scheme in line with the Regulations and the Guidance. The DfE Account Manager will report to the Board and the GEMA account manager will attend the Board to update on the operational Business As Usual process covering all elements of service delivery including policy development, operational performance management, compliance and value for money.
- 7.2** The service delivery board, chaired by the Director of RHI in DfE, will meet monthly to monitor service delivery and performance against agreed KPIs and to manage and resolve implementation issues. DfE will provide the secretariat for the meeting including draft minutes which will be shared and agreed across all members.
- 7.3** In order to ensure good internal governance, GEMA will retain its own internal NIRHI Board to which the GEMA Account Manager will report and the DfE Account manager will attend as required.
- 7.4** Account Managers will have weekly checkpoint meetings to review progress, current risks/issues, identify any operational issues impacting performance for both Parties; this checkpoint will cover all elements of

## **ARRANGEMENTS**

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delivery between DfE and GEMA including finance arrangements, Scheme payments, Scheme amendments, Inspections support, compliance/enforcement activity and formal reviews.

### **8. PERFORMANCE AND RISK MANAGEMENT**

- 8.1** Progress and performance will be reviewed at the monthly Service Delivery Board – covering responsibilities of both DfE and GEMA. Performance will be measured against an agreed set of KPIs.
- 8.2** GEMA will provide an agreed Management Information Pack one week ahead of the monthly Service Delivery Board meetings.
- 8.3** Where either Party considers that functions are not being delivered by either Party to the required standard and the issues cannot be resolved through the Service Delivery Board, they will be raised via the escalation procedures described at Section 11.
- 8.4** Risk and Issues Logs will be presented to this Board for review each month with mitigating actions and progress clearly marked for discussion.

### **9. CHARGING PROCESS**

- 9.1** DfE and GEMA will agree the administration costs for all activities covered by these Arrangements on an annual basis at least one month in advance of the forthcoming year to which the charge will apply.
- 9.2** Administration Costs will be calculated by reference to best estimates and forecasts available for the following year. Administration Costs will be reviewed quarterly at the Service Delivery Board and any required adjustment, resulting from in-year surpluses/deficits, will be made as appropriate to reflect the actual costs incurred.
- 9.3** Arrangements for the payment of the Administration Costs specific to the delivery of Conferred Functions and Ancillary Activities for the NI Non-Domestic RHI Scheme shall be made quarterly by DfE when agreed and signed off by the Service Delivery Board. Both parties recognise that GEMA's funding for delivering the Conferred Functions and Ancillary Activities cannot be funded from any other source available to GEMA.
- 9.4** Any request for additional services/changes may be subject to an additional charge.

### **10. INFORMATION MANAGEMENT**

#### **Data Ownership**

## ARRANGEMENTS

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- 10.1** Both Parties will keep the data sharing protocol agreed between them in February 2015 under review.

### **Freedom of Information and Assembly/Parliamentary Questions**

- 10.2** Both Parties shall observe any obligations under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 that arise and are related to these Arrangements. Both Parties will liaise to agree the approach to any response to any request prior to issue, will offer all reasonable assistance to the other in handling any such requests, or any Assembly/Parliamentary Question, and will promptly transfer any information requests received by one Party to the other if appropriate.

### **Data Protection**

- 10.3** Both Parties shall observe any obligations under the Data Protection Act 2018 and General Data Protection Regulation that arise and are related to services covered by these Arrangements.

### **Release of Data to Northern Ireland Audit Office**

- 10.4** All requests for information for NIAO, and related responses, will come through DfE. The Account Managers will liaise in relation to collating and release of information.

### **Requests for Audit Access**

- 10.5** There may be occasion when either NIAO or DfE Internal Audit will require access to information held on GEMA systems as part of normal audit processes. Such requests, and responses, will be coordinated through the DfE Account Manager.

### **Support for briefings or evidence sessions**

- 10.6** GEMA and DfE will also each provide support to the other if briefings or evidence is required by Ministers, PAC or any other body to which DfE or GEMA may be required to account to in respect of any activity under these Arrangements to which GEMA has been a part, in so far as it is appropriate to so do.

### **Confidentiality**

- 10.7** Each Party agrees to be responsible for ensuring (both throughout the term of these Arrangements and after their termination) that Confidential Information is kept confidential, is not used other than strictly for the purpose of these Arrangements and is not disclosed to any third party without the prior written consent of the other Party, unless the information:

## ARRANGEMENTS

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- a) is public knowledge at the time of disclosure;
- b) has become public knowledge other than by breach of this paragraph;
- c) has become lawfully into the possession of the Party in question from a third party without any restrictions regarding confidentiality attaching to such information;
- d) is required by law to be disclosed, in particular under or by virtue of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004, the Data Protection Act 2018 or the General Data Protection Regulation, as amended from time to time. Where disclosure of Confidential Information is required by law, each Party agrees to consult where possible with the other in advance of making any disclosure information which is held in relation to the subject matter of these Arrangements. Each Party agrees to offer all reasonable assistance to the other in handling any requests for information made under the Legislation which relate to the subject matter of these Arrangements and to transfer any information requests received by that Party to the other Party if appropriate.

**10.8** GEMA and DfE may each disclose Confidential Information to any relevant governmental or other authority or regulatory body, and to any employees or contractors of GEMA or DfE or of any of the above, provided that before any such disclosure GEMA or DfE, as the case may be, will make those persons aware that the information is confidential and of these Arrangements. Where one Party discloses such Confidential Information to another body under this paragraph, it will have consulted the other Party prior to doing so, subject to any legal constraints on its ability to do so.

**10.9** Both Parties intend, both during the term of these Arrangements and after their termination, to ensure that any employee or contractor to whom Confidential Information is disclosed is made aware that the information is confidential and of these Arrangements.

## **11. REVIEW PROCEDURE AND DISPUTE RESOLUTION**

### **Frequency**

**11.1** These Arrangements will be reviewed by mutual agreement or at least once a year. The review will take on board the views of Operational Leads within DfE and GEMA and reflect any changes to the Regulations or the Guidance. All proposals for change will be submitted to the NI Non-Domestic Service Delivery Board. Proper version control process will be followed in agreeing any proposed changes.

### **Resolution of Disputes**

## **ARRANGEMENTS**

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- 11.2** In the case of a dispute between DfE and GEMA about the interpretation or implementation of these Arrangements, the Parties intend to comply with the following process:
- a) the dispute will first be discussed by the nominated Account Managers from GEMA and DfE, with a view to resolving the dispute at that level;
  - b) if the Account Managers are unable to resolve the dispute amongst themselves within two weeks of first being made aware of it, one or both will each escalate the dispute to the Head of Division/Operational Area within their respective organisation who should arrange an informal resolution meeting;
  - c) if those senior staff members are unable to resolve the dispute within four weeks of being notified thereof, they will then each escalate the dispute to the DfE G3 and GEMA's Director of E-Serve for final resolution;
  - d) in the case of failure to resolve jointly, the final decision will rest with DfE as Scheme owner and accounting body.
- 11.3** For the avoidance of doubt, this procedure does not apply to any dispute relating to the interpretation or administration of the Regulations to which other agreed processes apply.

## **12. TERMINATION AND ASSETS**

- 12.1** Termination of these Arrangements shall take effect in accordance with this Section.
- 12.2** DfE or GEMA may seek to terminate these Arrangements for any reason whatsoever.
- 12.3** Where a Party seeks to terminate these Arrangements, it should first inform the other Party in writing of that fact, with its reasons, and afford the other Party an opportunity to respond. Not earlier than 30 calendar days after being so informed, either Party may then give the other a termination notice setting out the termination notice period. These Arrangements will terminate on expiry of that period.
- 12.4** For the purposes of paragraph 12.3, the termination notice period shall not be less than 150 calendar days from the date of the termination notice, unless otherwise agreed by the Parties. Both Parties are expected to make every effort to ensure that any notice is given with minimum disruption to work processes.
- 12.5** On termination of these Arrangements, the Parties intend that (subject to applicable legal constraints, including any requirements to respect personal or commercial confidentiality) GEMA provide DfE with all

## ARRANGEMENTS

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information reasonably requested by DfE and held by GEMA on DfE's behalf at GEMA's premises in connection with the carrying out of the Conferred Functions and the Ancillary Activities, on condition that at least one week's notice is provided in advance to GEMA by DfE. The Parties envisage that this would include all data that the applicant/participant had provided, such as application forms, meter readings, payment history and original drawings.

- 12.6** The Parties intend that any assets, including but not limited to intellectual property rights, created or purchased by GEMA in connection with the carrying out by it of the Conferred Functions and Ancillary Activities, will vest in GEMA following termination of these Arrangements.
- 12.7** Subject to paragraph 12.5, any materials, plan or equipment owned by DfE and provided by DfE for use by GEMA in carrying out the Conferred Functions or Ancillary Activities will be returned to DfE following termination of these Arrangements.
- 12.8** Charging arrangements as provided for at Section 9 of these Arrangements will continue until the expiry of the termination notice, and the expiry of these Arrangements.

### **13. BUSINESS CONTINUITY**

#### **Business Continuity**

- 13.1** GEMA and DfE will have in place a tested Business Continuity Plan (BCP) outlining practical measures for responding to events that could have adverse consequences for service delivery, with a view to limiting the extent of impact. GEMA will inform DfE annually about the arrangements for the periodic testing and review of the BCP.
- 13.2** The GEMA BCP will cover the end-to-end management of an incident, from the initial identification of failures/disruptions, through invocation procedures to eventual reversion to normal service. Alternative business processes should be defined, together with key roles and responsibilities for those staff members who are part of the Incident Management Team. In the event of an incident GEMA will communicate with DfE on a timely basis.
- 13.3** A Disaster Recovery Plan should be an integral part of the BCP, setting out arrangements for recovering the technical elements required for service delivery in various failure scenarios.

# ARRANGEMENTS

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**13.4** Should any systems failure occur, GEMA will work with DfE on the subsequent review to identify and implement any necessary actions and lessons learned.

**13.5** All business continuity and disaster recovery arrangements will be dealt with on an individual basis and each Party will be informed of all action, including priorities, as quickly as possible. A list of key contacts will be shared by both Parties.

## **14. VARIATION**

**14.1** These Arrangements may only be varied by written agreement of the Parties.

## **15. SIGNATORIES**

Signed  
For and on behalf of  
The Department for the Economy (DfE)

Signed  
For and on behalf of  
The Gas and Electricity Markets Authority

.....  
Date:

**20<sup>TH</sup> NOVEMBER 2018**

Date:

21st November 2018  
.....