

# **Memorandum of Understanding between the Authority and NWML**

## **Introduction**

1 This Memorandum of Understanding (“MOU”) is between the Gas and Electricity Markets Authority (the “Authority”) and the National Weights and Measures Laboratory, an executive agency of the Secretary of State for Trade and Industry (“NWML”)

2 The Utilities Act 2000 established the Authority. The principal object of the Authority is to protect the interests of consumers respectively of gas and electricity, wherever appropriate by promoting effective competition.

3 The Weights and Measures Act 1985 provides various powers for the regulation and enforcement activities to protect consumers and ensure fair trade where weights and measures are involved.

## **Statutory Responsibilities**

4 The relevant statutory responsibilities of the Authority (“Authority Responsibilities”) in respect to this MOU are provided for in:

- Section 17 and Schedule 2B Gas Act 1986;
- Schedule 7 Electricity Act 1989; and
- supporting regulations made under these Acts and made for the purpose of implementing European Directives on metering.

5 The relevant statutory responsibilities of the Secretary of State in respect to this MOU are provided for in:

- Part II section 12 Weights and Measures Act 1985; and
- supporting regulations covering European and National provisions

## **Background**

6 This MOU sets out the arrangements to complete an administrative transfer of certain metrology responsibilities set out in the Ofgem Metrology Work Programme – 2006/2009 dated 16 January 2006 (“Work Programme”)

This MOU covers the period 1<sup>st</sup> April 2006 until either 31<sup>st</sup> March 2009, or, or the date upon which legislation comes into effect legally transferring the Authority Responsibilities from the Authority to NWML.

7 Notwithstanding this MOU, Ofgem<sup>1</sup> retains the Authority Responsibilities pending a formal transfer to NWML or its successor organisation by way of amendment to primary legislation.

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<sup>1</sup> The Office of the Gas and Electricity Markets Authority (“Ofgem”) is the administrative office of the Authority and works under the direction and governance of the Authority. References in this MOU to Ofgem should be deemed also to be references to the Authority

8 Bids have been made for Parliamentary time for amendments to the Gas and Electricity Acts to reflect these timescales.

### **Working Arrangements**

9 The following list of documents, developed and agreed by the Authority and NWML, will be used to structure the working arrangements:

- the Work Programme; and
- Annex A and B of the Work Programme.

10 The programme of work identified in Annex A of the Work Programme may be amended to cover changes to or deletion of existing projects and addition of new projects. Any such amendments will be at the discretion and agreement of the Ofgem Technical Director and the Chief Executive of NWML. Agreement to changes in the financial arrangements contained within the Work Programme will be handled as described in paragraph 13.

11 NWML will, on behalf of the Authority, carry out the activities set out in the Work Programme: however, the Authority will retain legal liability as regards third parties for any activities carried out by NWML.

### **Financial**

12 The Work Programme will be funded by the Authority to cover the costs budgeted in Annex B of the Work Programme. Appendix A details the agreed level of Ofgem funding.

13 With respect to the Work Programme, any financial modifications due to new work or extraordinary changes to the Work Programme will be agreed by Ofgem's Chief Accountant, and NWML's Director of Finance and Resources before any additional cost is allocated.

14 With respect to the Outsourcing of Metrology Functions Agreement made between the Authority and SGS United Kingdom Ltd dated 28 November 2002 ("the Agreement") the Authority will fund and pay monies to SGS United Kingdom Ltd due for work performed under the Agreement.

15 With respect to the Work Programme, NWML will invoice Ofgem on a quarterly basis for all resource used on projects identified in the Ofgem Work Programme 2006-2009. All invoices will be supported by quarterly reports and appropriate authorisation.

### **Staff**

16 The Ofgem Work Programme 2006-2009 will be resourced by appropriately qualified, experienced and competent staff at NWML. Relevant Ofgem staff will transfer from Ofgem Technical Directorate to NWML.

## **Outsourcing Agreement**

17 NWML will manage the Agreement on behalf of the Authority. Where NWML perform any obligation under the Agreement on behalf of Ofgem it shall do so in accordance with the terms of the Agreement and shall inform Ofgem forthwith if NWML or SGS are in dispute regarding the Agreement.

18 The Authority will consult with NWML on any policy potentially affecting the current or future arrangements which are the subject of the Agreement. The Authority will also consult with NWML prior to agreeing any amendment to the Agreement with SGS. The Authority will consider any points raised by NWML in response to consultation.

19 The Authority or NWML will not knowingly take actions under the Agreement that could adversely affect either party without firstly gaining the consent of the other party.

20 The Authority will take such steps as may be necessary to secure the consent of SGS United Kingdom Ltd to NWML managing the Agreement on behalf of the Authority.

## **Reporting**

21 The Work Programme provides the mechanisms and frequency of reporting to the Ofgem Technical Director.

22 Performance against the Work Programme will be reported by NWML to the Authority on a quarterly basis.

23 All communications regarding the subject matter of this MOU will be made in writing.

## **Review**

24 Authority and NWML operational staff will meet on a quarterly basis to discuss the Work Programme, performance monitoring to the Ofgem Work Programme, policy priorities and new additional work requirements.

25 NWML and the Authority will in turn share responsibility for hosting and making arrangements for meetings, preparing agendas and completing meeting notes for routine and ad hoc meetings.

26 Additionally, on each anniversary of this MOU the Chief Executive of NWML and the Ofgem Technical Director will meet to review reports, discuss any developments or issues and agree any resulting actions and timescales.

## **Dispute Resolution**

27 The Authority and NWML will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this MOU.

28 Any dispute will be dealt with as follows:

- the dispute will be referred as soon as practicable to the nominated contacts for resolution;
- if the dispute has not been resolved within 10 business days of being referred to the nominated contacts, or if the nominated contacts determine that it is incapable of being resolved at that level, then it will be immediately referred to the Chief Executive of NWML and the Ofgem Technical Director.
- if the dispute has not been resolved within 10 business days of being referred to the Chief Executive of NWML and the Ofgem Technical Director, or if the Chief Executive of NWML and the Ofgem Technical Director determine that it is incapable of being resolved at that level, then it will be immediately referred to the Director General of the Innovation Group, DTI, and the Ofgem Chief Operating Officer;

29 Should the dispute not be resolved within 15 business days of being referred to the Director General of the Innovation Group, DTI, and the Ofgem Chief Operating Officer then, subject to approval by the Secretary of State, both parties will agree to appoint an impartial mediator whose decision, based on information subject to the dispute and provided by either group will be binding and implemented within three months of the decision.

### **Cancellation**

30 This MOU may be cancelled by either the Authority or NWML by provision of six months written notice to the other party.

### **Expiry Date**

31 Unless cancelled in accordance with paragraph 30, this MOU will expire on 31<sup>st</sup> March 2009, or when the arrangements referred to in paragraph 6 are in effect, if earlier.

32 NWML will consult the Authority if the Government decides to implement new arrangements for the operation of NWML's current responsibilities before 31<sup>st</sup> March 2009.

### **Contacts**

33 The following officers will be responsible for the operation of functions under this MOU, exchange of information and communication links.

|                |                            |
|----------------|----------------------------|
| NWML:          | Director, Utility Metering |
| The Authority: | Technical Adviser, Gas     |

### **Disclosure of Information**

34 The Authority and NWML are open about their activities as part of their commitment to the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Citizen's Charter and the Code of Practice on Access to Government Information (1994). Information requested will be disclosed unless its release is covered by exemption. Each party undertakes to make the other aware, with at least five business days notice in advance,

of any significant relevant disclosure to members of the public, including the media. For the avoidance of doubt however, both parties acknowledge that section 105, Utilities Act 2000 applies to them and agree to comply with the requirements of that provision.

### **Media Enquiries/Public Communications**

35 Enquiries from the media or communications of a public nature are to be dealt with by NWML's Director of Communication and Ofgem's Director of Communications. When appropriate, clearance from the DTI Press Office or a Ministerial Office will be obtained prior to information being released.


36 NWML's Director of Communications and Ofgem's Director of Communications will liaise on a case by case basis regarding the rationale for handling media enquiries/public communications where the Work Programme is concerned.

### **Disclaimer**

37 This MOU does not override any otherwise existing legal rights or obligations. Without restricting the freedom of the parties hereto to perform their functions as they see fit and in accord with any legal requirement, it is expected that each party would seek to avoid where possible any action which it is aware would unduly prejudice the other's position.

### **Signed By**

John Scott  
Acting on behalf of the  
the Gas and Electricity  
Markets Authority

 Date 13 March 2006

Jeff Llewellyn  
Acting on behalf of the  
the National Weights and  
Measures Laboratory

 Date 13 March 2006

| <b>Total Ofgem Work</b>                 | 2006/07    | 2007/08    | 2008/09    | TOTAL       |
|---|------------|------------|------------|-------------|
|   | £k         | £k         | £k         | £k          |
| <b><u>Direct costs</u></b>              |            |            |            |             |
| Salary                                  | 146        | 151        | 156        | <b>453</b>  |
| External consultancy costs              | 60         | 65         | 65         | <b>190</b>  |
| Legal costs*                            | 17         | 40         | 52         | <b>109</b>  |
| Relocation costs                        | 10         | 8          | 8          | <b>26</b>   |
| Travel & subsistence                    | 6          | 6          | 6          | <b>18</b>   |
| Training                                | 2          | 2          | 2          | <b>6</b>    |
| <b>Total Direct Costs</b>               | <b>241</b> | <b>272</b> | <b>289</b> | <b>802</b>  |
| <b><u>Overheads</u></b>                 |            |            |            |             |
| Accommodation use                       | 7          | 7          | 7          | <b>21</b>   |
| Other infrastructure                    | 18         | 19         | 20         | <b>57</b>   |
| Share of Chief Exec                     | 11         | 11         | 11         | <b>33</b>   |
| Share of Finance/reception/IT/Personnel | 20         | 21         | 22         | <b>63</b>   |
| Share of Communications                 | 9          | 10         | 10         | <b>29</b>   |
| <b>Total Overheads</b>                  | <b>65</b>  | <b>68</b>  | <b>70</b>  | <b>203</b>  |
|   |            |            |            |             |
| <b>Total Cost</b>                       | <b>306</b> | <b>340</b> | <b>359</b> | <b>1005</b> |

| <b>Existing Ofgem Work<br/>(GREEN PROJECTS)</b> | 2006/07<br>£k | 2007/08<br>£k | 2008/09<br>£k | <b>TOTAL<br/>£k</b> |
|---|---------------|---------------|---------------|---------------------|
| <b><u>Direct costs</u></b>                      |               |               |               |                     |
| Salary  | 104           | 107           | 111           | <b>322</b>          |
| External consultancy costs                      | 0             | 0             | 0             | <b>0</b>            |
| Legal costs*                                    | 14            | 18            | 18            | <b>50</b>           |
| Relocation costs                                | 10            | 8             | 8             | <b>26</b>           |
| Travel & subsistence                            | 6             | 6             | 6             | <b>18</b>           |
| Training  | 1             | 1             | 1             | <b>3</b>            |
| <b>Total Direct Costs</b>                       | <b>135</b>    | <b>140</b>    | <b>144</b>    | <b>419</b>          |
| <b><u>Overheads</u></b>                         |               |               |               |                     |
| Accommodation use                               | 5             | 6             | 5             | <b>16</b>           |
| Other infrastructure                            | 14            | 17            | 15            | <b>46</b>           |
| Share of Chief Exec                             | 8             | 9             | 8             | <b>25</b>           |
| Share of Finance/reception/IT/Personnel         | 15            | 17            | 18            | <b>50</b>           |
| Share of Communications                         | 7             | 8             | 8             | <b>23</b>           |
| <b>Total Overheads</b>                          | <b>49</b>     | <b>57</b>     | <b>54</b>     | <b>160</b>          |
|   |               |               |               |                     |
| <b>Total Cost</b>                               | <b>184</b>    | <b>197</b>    | <b>198</b>    | <b>579</b>          |

| <b>Additional Ofgem Work<br/>(YELLOW PROJECTS)</b> | 2006/07<br>£k | 2007/08<br>£k | 2008/09<br>£k | TOTAL<br>£K |
|--|---------------|---------------|---------------|-------------|
| <b><u>Direct costs</u></b>                         |               |               |               |             |
| Salary   | 42.0          | 44.0          | 45.0          | <b>131</b>  |
| External consultancy costs                         | 60            | 65            | 65            | <b>190</b>  |
| Legal costs*                                       | 3             | 22            | 34            | <b>59</b>   |
| Relocation costs                                   |               |               |               |             |
| Travel & subsistence                               |               |               |               |             |
| Training   | 1             | 1             | 1             | <b>3</b>    |
| <b>Total Direct Costs</b>                          | <b>106</b>    | <b>132</b>    | <b>145</b>    | <b>383</b>  |
| <b><u>Overheads</u></b>                            |               |               |               |             |
| Accommodation use                                  | 2             | 1             | 2             | <b>5</b>    |
| Other infrastructure                               | 4             | 2             | 5             | <b>11</b>   |
| Share of Chief Exec                                | 3             | 2             | 3             | <b>8</b>    |
| Share of Finance/reception/IT/Personnel            | 5             | 4             | 4             | <b>13</b>   |
| Share of Communications                            | 2             | 2             | 2             | <b>6</b>    |
| <b>Total Overheads</b>                             | <b>16</b>     | <b>11</b>     | <b>16</b>     | <b>43</b>   |
|  |               |               |               |             |
| <b>Total Cost</b>                                  | <b>122</b>    | <b>143</b>    | <b>161</b>    | <b>426</b>  |