Number	Company	Issue	Clause	Response ref	Comment	ESB Response
1	BGE	General	Call Option	1.	Insufficient evidence has been provided to warrant the need for the inclusion of the Call Option element in the FEMA	As per our Explanatory Note, ESB have taken regulatory advisement as to appropriate approach to accommodate the RO introduced by ISEM and have progressed on the basis of the two products as set out under the Confirmation templates posited under the DC proposal.
2	BGE	General	Call Option	1. i.	Call Option must have some value attached to it	The Call Option value will be reflected in the price of the CfD. As such there will be one price associated with each trade.
3	BGE	General	Call Option	1. ii.	Risk of over recovery by ESB	Given the answer in 2 above the risk of over recovery is removed.
4	BGE	General	Call Option	1. iii.	If a discount is attached to the Call Option, this must be net against any monies owed for the CfD.	(i) For the avoidance of doubt, there is no discount. (ii) With regard BGE's proposal to further clarify the Payment Netting mechanics under the FEMA in respect of a Transaction (i.e. 2-way CfD and linked Commodity Call Option) , see amending language under Part 1[Payment Netting] of the Schedule.
5	BGE	General	Call Option	1. iv.	Reference to Put Option in the agreement should be removed as they don't relate to DCs	While ESB disagree insofar as the FEMA is a master agreement which should include the definition of both as an option can exercsied either as a put or call, ESB will remove all references to the Put option in the contract to avoid any further confusion.
6	BGE	General	Call Option	1. v.	Request confirmation that ESB will continue to report EMIR trades including the Call option.	Confirmed.
7	BGE	FEMA	Clause 2(e) (Transactions - Conditions Precedent)	2.1. i.	Questions why (i) Market Disruption and (ii) Accelerated Termination Date are included as conditions precedent to payment. In the case of (i), if a Market Disruption Event has occurred, it just results in the Floating Price being determined by reference to an Alternative Floating Price Source and it does not raise any credit concerns regarding the other Party's performance that would merit reliance on a condition precedent. In the case of (ii), an Accelerated Termination Date will not necessarily encompass all Transactions and so should only trigger the condition precedent with respect to the Transactions the subject thereof	Insofar as the DC process is regulated, an Alternative Reference Price Source will be determined by the RA, therefore we can delete sub-clause (iii). However, where an Accelerated Termination Date has been designated, only Transactions affected by the releant Change Event as set out under Section 7 will be subject to the Condition Precedent, so no change is required.

8	BGE	FEMA	Clause 4 (a Market Disruption Event)	2.1. ii.	BGE notes that the relevant Floating Price shall be determined in accordance with SEMOpx Rules and/ or SEMOpx Procedures. BGE notes that within those documents a number of options exist for SEMOpx in case of certain circumstances arising such as for example failure or unavailability of systems, processes, data or information that could prevent clearing and settlement. One of these options is to apply a "No Auction" procedure, a link to which is to be provided on the SEMOpx website. BGE would welcome further insight to this approach and clarity as to whether it is one of the possible approaches that could be applied in the case of a Market Disruption Event as defined under the FEMA?	As instructed by CRU, Alternative Floating Reference Price will be as determined by SEMOPx Rules and Operations. We defer to CRU to advise on appropriate fallback mechanisms for ISEM (i.e. No Auction).
9	BGE	FEMA	Clause 6 (Remedies)	2.1. iii.	We note that pursuant to this clause, save for insolvency related events of default, where the non-defaulting party owes the net amount it does not have to make payment. This is quite different to the current DC contract where no distinction is made between insolvency and non-insolvency events. This clause should be amended to reflect the current practice as we are concerned that the new clause appears to create systemic risk;	Agree BGE's comment; clause duly amended (see further marked draft of FEMA).
10	BGE	FEMA	Additional Definitions Suggestions	2.1. iv.	BGE seeks the following additions in the "definitions" section of the FEMA: - "Credit Support Documents" should include Parent Company Guarantees (please see further comments on this issue below); - "Regulatory Authorities" – reference to the Commission for Energy Regulation needs to be changed to the Commission for Regulation of Utilities ("CRU") in line with the 2016 Energy Act.	- Guarantees are explicitly included under the definition of Credit Support Document and in Part 7 of the Schedule in respect of Party B - Amended to read CRU (v CER)
11	BGE	FEMA Schedule	Part 2 - Termination Provisions	2.2. i.	Under clause (d), an Additional Termination Event is described as occurring when BGE ceases to be an authorised counterparty with which ESB is entitled to do business pursuant to the "Specification". "Specification" is defined in the FEMA as "the specification dated 12 September 2014 (as amended from time to time) and any of the requirements issued by the Minister for Finance of the Republic of Ireland in accordance with the 1992 Act." BGE seeks details and sight of this Specification and all related "requirements issued by the Minister" as well as clarity with regard to the 1992 Act and its relevant provisions.	ESB's Specification is publicly available on ESB's website (as per Part 3 of the Schedule) - https://www.esb.ie/who-we-are/corporate-governance/financial-transactions-of-certain-companies-and-other-bodies-act-1992

12	BGE	FEMA Schedule	Part 7 – Credit Support Documents and Credit Support Provider(s)	2.2. ii.	With regard to "Credit Support Documents", it is noted in this Part 7 that "Party B shall provide Party A with the following Credit Support Documents: any such parent company guarantee(s), letter of credit, cash collateral or such other credit support document(s) (and any substitute or replacement thereof on materially similar terms) as may be provided from time to time to ~~Party B~~ Party A in respect of ~~Party A's~~ Party B's obligations under this Agreement in a form reasonably acceptable to Party A in accordance with the Subscription Rules." A minor error in terms of the use of Party A and B is noted and BGE requests that the proposed change as noted and underlined here above, is made in the final FEMA Schedule.	Technical correction to correct Party A and Party B designations. Duly noted.
13	BGE	General	Parent Company Guarentees	3.	Current drafting gives too much discretion to ESB. Any counterparty of sufficient creditworthiness should be explicitly permitted to provide a PCG subject to meeting appropriate credit rating standards	A number of respondents raised queries with the approach to credit arrangements for the directed contracts. In SEM the Directed Contracts are fully collateralised with cash or a letter of credit and no alternative forms of credit cover are permitted. For I-SEM, ESB GWM has offered to allow alternative forms of credit cover on a case by case basis . While this approach was welcomed, some respondents have suggested that it affords too much discretion to ESB GWM. As ESB is mandated to offer DC contracts and carries all of the risk, without discretion as to the counter party, it must retain full control over its credit exposures. Any counter party can, if it so wishes, continue to provide collateral with cash or a letter of credit as is the case in SEM.
14	BGE	General	Parent Company Guarentees	3.	Requiring PCGs from "A" credit rated entities only is considered excessive and a more proportionate approach would be acceptance of PCGs from entities with investment grade credit ratings, of at least BBB- (S&P).	As above (cf 13)
15	BGE	General	Parent Company Guarentees	3.	BGE proposes that as a general principle, ESB should only be exempt from having to provide credit support so long as it meets certain financial and credit rating standards.In the interests of transparency and fairness as to what these standards should be, BGE proposes that ESB be required to providecredit support for DC purposes in the same circumstances as when it is determined to be "materially weaker" under the "Merger Event" provision of the FEMA. This effectively requires that ESB is only exempt from having to post collateral when ESB's beneficial ownership by the Irish State is at 50% or more and the credit rating of the long-term senior unsecured debt (unsupported by third party credit enhancement) of ESB or its Credit Support Provider (as the case may be) is at, or above, BBB- (or where the Credit Support Provider is a bank or financial institution, at or above A-) by S&P or at or above Baa3 (or where the Credit Support Provider is a bank or financial institution at or above A3 by Moody's)	As above (cf 13). In additon this is the status quo under the existing DC contract.

16	BGE	General	Parent Company Guarentees	3.	The acceptance of PCGs as suitable collateral should be reflected across all relevant DC documentation as necessary. We note reference to PCGs at the end of the FEMA (in the Schedule, page 11) where it notes that Credit Support Documents include "any such parent company guarantee(s)", but appropriate references are missing elsewhere in the documentation.	Under the FEMA, where a PCG is provided as a Credit Support Document under Part 7 of the Schedule this is duly taken into account when calculating Exposure under the CSA (cf Section 8 of the Subscription Rules - related worked examples of credit cover calculations where PCG provided i.e. scenarios 2 and 3)). Eligible collateral under the CSA remains cash and LCs.
17	BGE	Credit Support Annex (CSA)	Clause 8 of the CSA (Disputes)	4. ii.	With regard to Clause 8 of the CSA (Disputes), BGE notes the proposed approach to resolving disputes regarding the value of credit cover. Reference is made to obtaining quotations from “three leading traders in the relevant commodity market” chosen according to ESB’s reasonably exercised discretion, and taking the arithmetic average of those obtained. Where such quotes are not available, each party obtains one quotation and the arithmetic averages of these are used. If no such quotations can be obtained ESB’s (as the Valuation Agent) original calculations will be used. BGE’s query in this regard is who here counts as a “trader” for the purposes of this clause? Given that a DC pricing formulae applies, do the quotations obtained relate to the various underlying commodities that feed into the price calculations or for what inputs are quotations sought? BGE questions the applicability of such a clause to DCs and suggests consideration of a clearer resolution;	Agree BGE's commentary in relation to the DC contract and included appropriate amending language (see further marked draft of CSA)
18	BGE	Credit Support Annex (CSA)	Clause 9 of the CSA (Interest Income on Cash)	4. iii.	BGE notes the reference in Clause 9 of the CSA (Interest Income on Cash) to the “ISDA 2014 Collateral Agreement Negative Interest Protocol which is “incorporated by reference” into this CSA. BGE would welcome further details on what this Protocol provides given that we have not had sight of it;	Publicly available on the ISDA website - http://www2.isda.org/
19	BGE	Credit Support Annex (CSA)	Clause 11 of the CSA (Termination of the Agreement),	4. iv.	Under Clause 11 of the CSA (Termination of the Agreement), in the event there is an Early Termination of the Agreement due to an Event of Default under the master agreement, ESB (as Valuation Agent) will determine the Base Currency Equivalent of all Eligible Credit Support provided. This amount will be included in the net amount owing in respect of an Early Termination date. There is reference in this clause “to other amounts payable” by the Transferee but this is not clear and not specified in the relevant section of the FEMA. Please clarify what these “other amounts payable” include?	"other amounts payable" should read "Unpaid Amount" (as defined in the FEMA) - Technical correction duly noted

20	BGE	Subscription Rules	Section 5.1 (CFD Fixed Price)	5. i. b1.	Reference is made under section 5.1 (CFD Fixed Price), to the fact that I-SEM Subscription Windows are “i.e. Subscription Windows prior to the conclusion of the Forwards and Liquidity Consultation Process”. This Process or its length is not defined anywhere and in light of BGE’s comments in the parallel DC consultation (SEM-17-064) on the need for early review of market power and liquidity measures, this period of time should not be open-ended;	BGE is seeking advisement from CRU on length of Subscription Windows (cf BGE commentary re: SEM 17-064)
21	BGE	Subscription Rules	Section 5.1 (CFD Fixed Price)	5. i. b2.	Under section 5.1 (CFD Fixed Price), there is also reference to the terms “CFD Fixed Price” and “Fixed Reference Price.” ESB confirmed verbally with industry that these are one and the same but clarification as to this point, included in this section, would be welcomed	Technical correction "Fixed Reference Price" should read "CfD Fixed Price" (See further marked draft of SubRules)
22	BGE	Subscription Rules	Section 5.1 (CFD Fixed Price)	5. i. b2.	ESB verbally confirmed that the table on page 3 under Section 5.1 is demonstrative only and that the DC Pricing formulae inputs will be updated before auctions through the DC Information Papers as they are currently. BGE suggests that clear reference to the “sample” nature of the table in this section should be made;	Amended accordingly to make it clear that the table has been used for illustrative purposes. CRU to confirm pricing for ISEM subscriptions.
23	BGE	Subscription Rules	Section 5.1 (page 4)	5. i. b3.	The regulators have confirmed that the DC pricing formulae is considered to be a “regression formulae” thus BGE does not see the rationale for deletion of this word and suggests for clarity that it is maintained under Section 5.1 (page 4)	For consistency, reference reinstated (see page 4 of further marked SubRules)
24	BGE	Subscription Rules	Section 5.1.1	5. i. b4.	Under section 5.1.1 there is reference to a “Quarter C”. BGE would welcome clarification of this wording;	Corrected to read "quarter". (See further marked draft of Subscription Rules)
25	BGE	Subscription Rules	Section 5.1.2	5. i. b5.	In section 5.1.2 reference is made to the fact that Coal prices will be based on the “midpoint of the Bid and Ask prices (in US dollars per tonne)…”. BGE requests further insight as to why the “Settle price” is not used for coal pricing as it is with other input costs (e.g. gas and carbon)?	Amended to Coalq = the price (in US dollars per tonne) for quarterly ARA Coal Futures as reported on www.theice.com as “Rotterdam Coal Futures – ARA” ÷ USD/EURO Exchange Rate.
26	BGE	Subscription Rules	Section 6.1	5. ii.	Under section 6.1 “total eligibility” has been re-worded to read “eligibility”. We understand that “total eligibility” and “eligibility” mean the same thing but we do not see the need for deletion of the word “total” as it potentially raises concerns as to limitations on volumes that can be subscribed for in DC Auctions;	The word "total" was deleted in the first paragraph to align with its use throughout the remainder of Section 6 - we think the inclusion of "total" creates unnecessary ambiguity.
27	BGE	Subscription Rules	Section 8	5. iii. b1.	BGE suggests and believes that it is good practice to outline explicitly how the Independent Amount is to be determined as the parameters of determination “in a commercially reasonable manner” are quite broad;	The methodology for determining the IA is clearly set out in pgs 11-12 of the Subscription Rules - (See page 11 of further marked Subscription Rules with appropriate amending language)
28	BGE	Subscription Rules	Page 16	5. iii. b3.	BGE would welcome, for clarity purposes, re-insertion of the following words from the current Receivables definition: “Negative amounts (i.e. amounts payable) will offset positive amounts in the calculation of Receivables””;	Amended to add BGE's clarifying language (See p14 of further marked Subscription Rules).

29	BGE	Subscription Rules	section 8.1.1 (Credit Margin),	5. iii. b4.	Suggest removal or references to ““Current Month Low Sulphur Fuel Oil Price” and to ““Current Month Gasoil Price”	As advised by CRU, two data reference sources have been cited to ensure alignment with the appropriate reference source designated by CRU for the relevant calculation.
30	BGE	Subscription Rules	section 3 (Execution of Directed Contract Documentation),	5. iv.	Under section 3 (Execution of Directed Contract Documentation), the point labelled “5” should not be a point on this list. Instead it should be a separate line, should be re-phrased and be placed further down in the section. Also as aforementioned, sight of any regulations made pursuant to the 1992 Act regarding the Specification should also be given to eligible suppliers;	Section 3 Technical correction - duly noted (See further marked draft of Subscription Rules). See response above RE: Specification.
31	BGE	Subscription Rules	Definitions	5. iv.	Finally, while Valuation Date is not explicitly defined, Valuation Day is and we would welcome confirmation that they are one and the same definition?	Technical correction duly noted. Changed to Valuation Day (as defined in CSA).
32	BGE	Misc	Confirmation Document	6.	BGE understands and supports the fact that ESB will issue both confirmations (i.e. one for the CFD element; one for the Call Option element) notwithstanding that BGE is the “seller” of the Option under the FEMA. Such an approach also allows the Call Option confirmation to be adapted in future if deemed necessary for example due to changes in the capacity market.	Confirmed that ESB will send both the CfD and linked Call Option Confirmation (together the "Transaction") to Suppliers
33	BGE	Misc	Confirmation Document	6.	BGE understands that the definition of the Mid Merit product in the Confirmation documents is incorrect	Technical Correction duly noted - period should read "23:00" (v 19:00)
34	Electro Route	Contract Drafting	Part 8 (d).1 of the Schedule		The Non Speculation Clause outlined in Part 8 (d).1 of the Schedule have specific relevance for the DC process in which the instrument will be used for hedging a Suppliers liabilities, but such a provision should not find its way into the wider NDC contracts that will develop for I-SEM.	No Comment
35	Pre pay Power	Product Definition	Confirmation Document		This document has the Mid-Merit defined product of being from 07:00 to 17:00 instead of 07:00 to 23:00.	Technical Correction duly noted.
36	Pre Pay Power	Subscription Rules	Subscription Rules		It states that suppliers are to send ESB subscription forms via ‘electronic transmission’. For clarity, does ‘electronic transmission’ include email?	Electronic transmission has been amended to "Electronic messaging system" i.e. email
37	Pre Pay Power	Subscription Window	Subscription Rules		Why has the window for the receipt of the DC Subscription form moved from 8:30 am to 11:00 am to 10:00am to 12:00pm? A larger window facilitates all suppliers as there is more time to deal with unforeseen events. The subscription window should be from 08:30am to 12:00pm.	10am to 12noon aligns with industry standard window for OTC markets.
38	SSE	Call Option			Recommend exploring alternatives to the structure proposed that would hedge the asset backed seller and avoid the reporting difficulties associated with having a Contract for Difference coupled with a Commodity Call Option. This is due to increased reporting requirements arising from the proposed approach.	ESB will report the ISEM product offering under two separate UTIs (Unique Trade Identifier) for each of the CfD and Commodity Call Option - a "linked Transaction reference number" will be set out under the respective Confirmations to provide the requisite cross-references.

39	SSE	Credit	General		It is important that the FEMA and EFET CSA maintain an absolute cap on how onerous credit arrangements can be.The 15% margin requirement should be reviewed – this is relatively high level of margining relative to a number of other EU power markets, although if cross-product netting and margining is available this could compensate.	A number of respondents raised queries with the approach to credit arrangements for the directed contracts. In SEM the Directed Contracts are fully collateralised with cash or a letter of credit and no alternative forms of credit cover are permitted. For I-SEM, ESB GWM has offered to allow alternative forms of credit cover on a case by case basis . While this approach was welcomed, some respondents have suggested that it affords too much discretion to ESB GWM. As ESB is mandated to offer DC contracts and carries all of the risk, without discretion as to the counter party, it must retain full control over its credit exposures. Any counter party can, if it so wishes, continue to provide collateral with cash or a letter of credit as is the case in SEM.
40	SSE	Credit	Netting		Potential for Netting is positive. The elements of the ESB Group Policy relevant to this determination should be available, transparent and directly linked to the Forward Power Contracting Arrangements – this would help suppliers understand what they need to meet in order to available of cross-product close-out netting and margining.	General guidelines around credit requirements for counterparty eligibility are set out in the Specification, to which ESB must comply. To the extent that ESB Group Risk determines margining arrangements other than those posited under the proposed DC suite of contracts be considered, such arrangements will be discussed and negotiated on a by counterparty basis.
41	Tynagh Energy	LoC		1.	The turnaround time for changes to Letters of Credit should change from three business days to five business days.	This is the status quo under the current SEM DC and ESB are not proposing to change this.
42	Tynagh Energy	LoC		2.	The Approved Provider credit rating should move from A- to BBB+.	A number of respondents raised queries with the approach to credit arrangements for the directed contracts. In SEM the Directed Contracts are fully collateralised with cash or a letter of credit and no alternative forms of credit cover are permitted. For I-SEM, ESB GWM has offered to allow alternative forms of credit cover on a case by case basis . While this approach was welcomed, some respondents have suggested that it affords too much discretion to ESB GWM. As ESB is mandated to offer DC contracts and carries all of the risk, without discretion as to the counter party, it must retain full control over its credit exposures. Any counter party can, if it so wishes, continue to provide collateral with cash or a letter of credit as is the case in SEM.
43	Tynagh Energy	Banking		3.	The business days should consider European Banking days and not just London or Dublin.	The definition of Business Day is not limited to London or Dublin; rather it is defined (i) in relation to any payment made under the Agreement in all of the places where the parties' respective accounts are located as specified in the Schedule and (ii) in relation to any other obligation under the Agreement in all of the cities where the parties' respective addresses for notices and communications are located.
44	Viridian (Energia)	General	Insufficient Time allowed for proper analysis	2.1	This consultation process provided insufficient time for parties to do an in-depth analysis of the full breath of all aspects being consulted upon. In particular a full and proper legal review of the documentation has not been possible.	Comment deferred by ESB to RAs

45	Viridian (Energia)	General	Proposal to defer consultation on DC Allocation process	2.2	Energia believe the RAs must set the prices in these contracts administratively, not by auctioning them off.	Refer to RAs
46	Viridian (Energia)	Call Option	There is a more simple solution	2.3	It is clear that a much more simple mechanism of dealing with the potential RO implications on ESB in ISEM (assuming ESB secures RO contracts for the plants it is using to provide generated volumes into the DC process), is to allow ESB to sell truncated CfDs i.e. CfDs with a cap at the RO price. This will avoid the unnecessary complication related to the complex two-way Cfd with a linked Commodity Call option. The consultation paper has not outlined the rationale as to why such a simple solution has not been considered and is not being proposed.	The simpler "capped CfD" posited by Energia requires embedding the RO Index into the Commodity Reference Price which structure ESB is precluded from entering into under the Specification. Moreover, it is unclear as to how such Transaction would be reported to ensure EMIR compliance.
47	Viridian (Energia)	Reporting	Reporting Implications are unclear	2.4	A two-way CfD with a linked Commodity Call option is a complex derivative, and the consultation paper has not made reference in any way as to how such a regime needs to be reported under EMIR, REMIT and any other such mandatory reporting process.	ESB will report the ISEM product offering under two separate UTIs for each of the CfD and Commodity Call Option – a “linked Transaction reference number” will be set out under the respective Confirmations to provide the requisite cross-references.
48	Viridian (Energia)	FEMA	Timing of the Consultation on FEMA Questioned	2.5	Given the SEM Committees decision to postpone the consultation on the DC process until after go-live of ISEM, it is considered reasonable that any consultation related to proposing a fundamental change to the form of DC contract should have been postponed until after go-live of ISEM also. Further a move from the current DC contract structure to a FEMA contract is a material movement in terms of contractual arrangements. Energia finds it difficult to reconcile the extent of this change with the SEM Committee decision to pursue a strategy of minimal change whereby only changes that are absolutely essential for ISEM are introduced.	ESB disagree with this assessment. As set out in Appendix I to the Explanatory Note, provisionally, the FEMA/CSA aligns to the general terms and conditions of the current DC Contract and provides a coherent base under which credit and collateral terms can be negotiated for individual counterparties. The Confirmation templates capture the relevant terms for the defined products set out in Section 2(d) of the FEMA and align to the ISDA standard functional definitions for similar products.
49	Viridian (Energia)	FEMA	Use of FEMA contract	2.6	Energia is concerned that the proposed FEMA contract is only used in Nordic markets, and thus may fail to attract new counterparties in the GB market which is essentially what the SEM market would like to achieve. Energias quick investigation into this indicated that few GB parties had heard of the FEMA agreement, and none had ever used the agreement,	The FEMA is not used in the GB market insofar as the GB forward Power market trades physically - the GTMA is a physical contract. The Irish forward power market is currently a financially traded market, thus the rationale for using the FEMA as a functional base and a contract familiar in the European energy markets. We would further note that contrary to suggestions made by respondents to this consultation, the EFET Power/EFET GTMA Appendix is the preferred master agreement used by the majority of European energy market participants to facilitate trading in the GB power markets. The ISDA/GTMA approach is generally used by banks insofar as the ISDA is bank standard master agreement used to document standard treasury derivative products (i.e. FX/Currency Options, IRDs, EDS, CDS, etc.)

50	Viridian (Energia)	General	No Fault Termination	2.7	The FEMA agreement contains a "No Fault Termination" clause which permits ESB to terminate the agreement for any reason. This ability undermines the security of the FEMA contract for contracting parties, and creates an unnecessary risk related to same. Energia do not believe this clause should be retained in the final agreement given the uncertainty it introduces to the contract and the entire DC process. Energia strongly suggests that this clause is deleted.	As this is a Directed Contract imposed by RAs on ESB, this provision is required should there be a circumstance beyond ESB control which necessitates the termination of the contract; the principal is in the current contract; however, we can agree to include "as approved by the RAs".
51	Viridian (Energia)	LoC	LOC Bank Credit Rating	2.8	The FEMA agreement stipulates a requirement for participants who wish to use Letters of Credit (LOC) that they provide this from a leading commercial bank with a credit rating of at least A- from Standard and Poors (S&P) or A3 by Moodys. This is argued to be unreasonably onerous on participants, and unduly costly, given most banks in Ireland (including AIB and BOI) do not have a credit rating this high. Energia request a more reasonable credit rating be applied of BBB- or BBB (from S&P) so as to give market participants more options as to what bank they can use.	A number of respondents raised queries with the approach to credit arrangements for the directed contracts. In SEM the Directed Contracts are fully collateralised with cash or a letter of credit and no alternative forms of credit cover are permitted. For I-SEM, ESB GWM has offered to allow alternative forms of credit cover on a case by case basis . While this approach was welcomed, some respondents have suggested that it affords too much discretion to ESB GWM. As ESB is mandated to offer DC contracts and carries all of the risk, without discretion as to the counter party, it must retain full control over its credit exposures. Any counter party can, if it so wishes, continue to provide collateral with cash or a letter of credit as is the case in SEM.
52	Viridian (Energia)	FEMA	SEM-17-065 Cover Doc	App B. 3.	Energia believes the new form of Master Agreement (known as Financial Energy Mast Agreement or "FEMA") proposed in this consultation is a standard only in Nordic countries. Energia's investigations in this matter has found that in general traders in the GB market are not familiar with the FEMA agreement, concluding that the FEMA contract is not a standard form on contract in the GB market to which the SEM will be linked.	The Irish Power market hedges its forward market financially as does the Nordic market; the GB market hedges its forward market physically. As stated in ESB's Explanatory Note the FEMA has been used in the Nordic market from 2000 and is based on the ISDA functional model and is familiar in the EU power market, including the Nordic market.
53	Viridian (Energia)	Call Option	Call Option	App B. 4.	There is inherent value in this cap being purchased from the supplier, which is a form of risk insurance. It is not clear where this value is being appropriately captured in the price being paid by Suppliers or in the DC process itself. Clarity in this regard is requested?	The Call Option value will be reflected in the price of the CfD. As such there will be one price associated with each trade.
54	Viridian (Energia)	Call Option	Call Option	App B. 5.	The CBI Consultation paper sets out "proposed measures" related to the "sale and distribution of CfDs to retail clients", where the Central Bank of Ireland found "retail clients generally were not sufficiently aware of the high risk and complex nature of the product". This scenario is not the situation in relation to ESB selling power CfDs to professional energy industry players in SEM, and as such further information is requested to clarify why the view has been formed that this consultation is relevant to the DC contract process?	Under the DC scheme CER instruct ESB to enter into CfD contracts with specific counterparties. Any counterparty entering into a CfD must meet CBI eligible contract participant requirements. ESB has included appropriate provisions under the DC contract to ensure these requirements are met.

55	Viridian (Energia)	Minimial Change Rationale	FEMA	App B. 6.	Energia supports the move to a more standardised approach to DC contracting. However, given the desire in SEM is to attract new potential suppliers or traders of power, especially given the expected lack of liquidity in the forwards market, it is suggested that the form of agreement used as the "Industry Standard" in Ireland should reflect what is the most prevalently used in Europe, in particular GB, and not what a particular niche market uses. Energia's investigations have shown that the FEMA agreement does not appear to be used in GB at all, and further from initial investigations does not appear to be used in Europe either.	See comment above (cf. 49; 52); to be clear, the GB forward power market is physical – the majority of EU market players use the EFET to facilitate trading in the EU; indeed the EFET GTMA Appendix is typically the contract used to facilitate GB physical power trading under the EFET Power Master Agreement. As stated above, the Irish forward power market is currently a financial market and thus ESB looked to the contractual approach used in the Nordic power market insofar as it is also a financial market. The FEMA has been in use from 2000 it is the industry master agreement used to facilitate trading in the Nordic financial power markets and of particular import, the general T&Cs are consistent with the ISDA which facilitates market access and liquidity.
56	Viridian (Energia)	Minimial Change Rationale	FEMA	App B. 7.	Energia supports the move to a more standardised approach to DC contracting, and more generally for NDCs etc. However given the GB market is the market SEM is linking to as part of the ISEM project, the contractual arrangements may still be a barrier given Energia's initial investigations indicate GB counterparties are unfamiliar with the FEMA agreement.	See above (cf 55)
57	Viridian (Energia)	Minimial Change Rationale	FEMA	App B. 8.	As outlined above Energia support the view that a standardised contractual approach will support liquidity, but question the use of the FEMA agreement format given Energias initial investigations have found no evidence of active participants in the GB market using this agreement format. ESB are asked to provide supporting data to indicate how widely used FEMA is in the GB market (and elsewhere), and what volume of transactions are traded using it?	See above (cf 55)
58	Viridian (Energia)	Minimial Change Rationale	FEMA	App B. 9.	Taking the longer term perspective Energia support this view. However Energia question the timing of such a fundamental change in the contracting structure given the market is only 2 months from the first DC auctions, and 6 months from ISEM go-live. It is contended to be an unnecessary additional work burden on participants at this critical time to have to deal with this issue along with all the other ISEM work they are doing. More in-depth consideration on this aspect might have allowed this consultation to be moved post ISEM when participants had more time to appropriately review this issue. Alternatively a modification of the DC agreement which partied are familiar with would also have lessened the work burden on participants.	As stated in ESB's Explanatory Note, the "Minimal Change" approach is not possible under the current SEM DC; moreover, given the nature of the contract, particularly in view of changes to underlying product or market structure such as those introduced by ISEM, would require restatement on each occasion. In view of the highly bespoke nature of the SEM DC contract and the technical inaccuracies and ambiguities identified since its inception, in our view new entrants would be deterred from entering into such a contract.

59	Viridian (Energia)	FEMA	Counterparties	App B. 12.	(1) The Company Registration Number for ESB should be added (2) ESB, as well as being defined as Party A, needs to be defined as the "Seller" for clarity (3) Party B needs also to be defined as the "Buyer" for clarity.	(1) ESB is a statutory company and does not have a registration number (2) & (3) Counterparty designations are clearly set out under the FEMA and the Confirmation Template. For the avoidance of doubt, under the FEMA/Schedule – ESB is Party A, the supplier is Party B; under the 2-way CfD ESB is the Floating Rate Payer, the supplier is the Fixed Rate Payer; under the Commodity Call Option, ESB is the Option Buyer and the supplier is the Option Seller
60	Viridian (Energia)	FEMA	Recital	App B. 13.	This wording it is suggested is too broad and too vague. Whatever documents are required to be referenced here should each be listed separately so as to provide a complete list, thereby avoiding a lack of clarity, or any confusion.	Not agreed. The language as drafted is sufficient.
61	Viridian (Energia)	FEMA	Clause 1(b)	App B. 14.	5th Line - the word "Transaction" should be plural "Transactions".	The singular (in the last line of 1(b)) is sufficient.
62	Viridian (Energia)	FEMA	Clause 1 (c) (ii)	App B. 15.	Depending on the size of the participant, and its working hour arrangements, this timing could potentially give the Buyer just 3 hours to confirm a trade (9.00am until 12 noon) where the Seller can have more than 24 hours depending on timings of Transactions. This time is important given the deemed acceptance regime. It is suggested a later time would be more reasonable for the Buyer to respond in this manner and a time of 16:00 or 15:00 is suggested.	ESB issues Confirmations within 1 BD of each Transaction. Assuming there are no inaccuracies, the duly executed Confirmation is returned to ESB no later than 12noon two (2) BDs following each Transaction. This is ESB's current practice for the DCs and aligns to ESB's EMIR reporting requirements.
63	Viridian (Energia)	FEMA	Clause 2(d)(ii)(2)	App B. 16.	Given this is not required under the DC process it is suggested this sub-clause is deleted to avoid confusion.	Although not required for the DC CfDs, insofar as the FEMA is a master agreement, and as an option can be exercised as both a put or a call, for accuracy and completeness the definition should be retained in the FEMA.
64	Viridian (Energia)	FEMA	Clause 2(f)(iv), 2(h), 2(i) and 2(j)	App B. 17-18.	(i) "seller" should be capitalised - "Seller" (ii) "party" should be capitalised "Party" (iii) "interest rate" should be capitalised - "Interest Rate". "party" should be capitalised to "Party"	Technical amendments. Duly noted and corrected as appropriate.
65	Viridian (Energia)	FEMA	Clause 5(a) Event of Default	App B. 19.	This sub-clause 5(a) would be more reasonable on market participants if (i) it were qualified with reference to Clause (2)(f) and (ii) if a grace period was allowed for given the dramatic impact on participants if an "Event of Default" is deemed to have occurred.	Duly noted and amended accordingly. Note that cure periods are set out under clause 2(f)(iii).
66	Viridian (Energia)	FEMA	Clause 6 (Remedies)	App B. 20.	Clarification is sought on the timing outlined in this clause which is confusing as drafted	Current drafting is considered clear
67	Viridian (Energia)	FEMA	Clause 6 (Remedies)	App B. 21.	The non-defaulting Party must give not less than 20 days' notice of an Early Termination Date. This 20 calendar days is at odds with the 30 Business Days allowed under the Breach of Agreement section in Clause 5(c). It is suggested these should be consistent and that both should be 30 Business Days.	Not agreed. 20 days aligns to current DC contract and industry std (i.e. ISDA)
68	Viridian (Energia)	FEMA	Clause 8	App B. 22-24.	Typos	Technical correction. Duly noted

69	Viridian (Energia)	FEMA	Clause 8	App B. 25.	Details of how a dispute are resolved using an Expert. The following wording should be added to this clause so as to ensure that the Expert in 'making a determination will endeavour to maintain the commercial intent of the agreement' and to act 'reasonably' in all situations. Further the Parties should have the right of Termination in the event that the parties do not accept the Expert's determination.	Aligns with current DC contract
70	Viridian (Energia)	FEMA	Clause 11(g)	App B. 26.	This provides an indemnity in relation to Stamp Duty - "against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to that other party." This may be a considerable issue for parties located in Northern Ireland but who wish to purchase CfDs from ESB. ESB are asked to relook at this so as not to unduly burden parties in Northern Ireland who may wish to purchase DC CfDs.	Required only for new entrants overseas jurisdictions where stamp duty may be applicable. For UK counterparts, Stamp Duty applies only to land and transfer of shares (i.e. not cash settled derivatives). No impact to NI counterparties, as no stamp duty has been applicable as per current SEM DC. ROI Stamp duty abolished.
71	Viridian (Energia)	FEMA	Clause 11(p)	App B. 27.	The Agreement shall remain in force unless terminated …on expiry of 30 (thirty) days written notice of termination by Party A. This No Fault Termination clause should be deleted. There must be a valid reason for the termination of the Agreement. As drafted no reason is required for termination by Party A on 30 days' notice. This gives no certainty or comfort to Party B. This clause requires amendment linking termination only to certain events.	See response to 2.7 above
72	Viridian (Energia)	FEMA	Clause 11(p)	App B. 28.	The wording suggests that termination may occur "by replacement or material change to the Order or I-SEM". As drafting this wording is too broad and needs to be tightened.Termination only as a result of changes to I-SEM that have a material effect on the ability of the parties to perform their obligations, should be only grounds on which termination as a result of material changes in ISEM should be allowed to occur. Any Termination needs to take due regard to Transactions that have already been entered into, where all steps are taken to ensure such transactions are allowed to complete. Any "replacement or material change to the Order or I-SEM" must be agreed by the RAs in conjunction with industry consultation, and thus the right for ESB to terminate at its sole discretion should not be facilitated. In addition the reference to I-SEM should be amended to SEM given immediately post I-SEM go live it will revert to be called "SEM" again.	Amended accordingly to make clear "I-SEM" (i.e. the arrangement to commence 23May18)
73	Viridian (Energia)	FEMA	Definitions	App B. 29.	It is very unclear what is meant by European Style of commodity option. Further clarification is requested.	Amended to include definition of European style option.

74	Viridian (Energia)	FEMA Schedule	Part 2 (d)	App B. 30.	Additional Termination Event It is unclear how Party B would change in such a way so as to no longer be an authorised counterparty of Party A? Clarity in this regard is requested	Given that the DC contracts are evergreen, it is possible that a counterparty may no longer meet eligibility requirements set out under the Specification (e.g. loss of license, change in credit profile, corporate restructuring, etc.)
75	Viridian (Energia)	FEMA Schedule	Part 7 (a)	App B. 31.	Details the Credit Support Documents to be provided by Party B to Party A The wording is incorrect on line 3 where it should read "provided from time to time to Party A in respect of Party B's obligations". As currently drafted it reads "provided from time to time to Party B in respect of Party A's obligations" which is incorrect.	Technical correction. Duly noted
76	Viridian (Energia)	FEMA Schedule	Part 8 (a)	App B. 32.	ESB are deemed to be the Calculation Agent It is considered not appropriate for ESB to be the Calculation Agent on a termination / event of default where ESB is the defaulting party. The RAs are asked to approve a process for nomination of an alternative Calculation Agent in these circumstances.	Amended accordingly; RAs to advise process for determination alternative Calculation Agent.
77	Viridian (Energia)	FEMA Schedule	Part 8 (d)(1)	App B. 33.	The contract outlines requirements for representation as an “Eligible Contract Participant” It is not clear that this representation is essential, where both parties are Irish. Clarification in this regard is requested.	Amended to provide representation to ensure MiFID compliance
78	Viridian (Energia)	FEMA Schedule	Part 8 (e)	App B. 34.	Line 3 reads "EMIR Port Red Protocol" - this is a Typo This should read "EMIR Port Rec Protocol" as this is the defined term	Technical correction. Duly noted
79	Viridian (Energia)	FEMA Schedule	General	App B. 35.	A draft of the Schedule attached to the FEMA has been provided ESB are asked to confirm if the draft Schedule as provided will apply for all parties or will be modified.	The Schedule will be negotiated on a by counterparty basis.
80	Viridian (Energia)	FEMA Schedule	Part 7 – Credit Support Documents and Credit Support Provider(s)	App B. 36.	As drafted although it speaks about mutual obligations to provide credit support, but there is nowhere in the agreement documents where ESB is obliged to provide such credit support ESB should be required to provide Credit Support as intended in the FEMA documentation	In accordance with the Subscription Rules, ESB will evaluate credit support on a by counterparty basis
81	Viridian (Energia)	FEMA Schedule	General	App B. 37-38.	There is reference made to “party” or “parties” and also reference made to “Party” and “Parties”. A full review of the drafting of FEMA should be undertaken to ensure the correct use of “party” or “Party” is used. Typos.	Technical correction. Duly noted
82	Viridian (Energia)	Credit Support Annex (CSA)	Clause 14.7	App B. 39.	A Notification for increased credit if required will be issued by 3.00pm on the Valuation Day. The Transferor has until 1.00pm on the next Business Day to resolve any such notification. Energia ask that a 4.5 hour extension of this time is allowed to bring this time to 5.30pm on the day after the notification.	Amended to read 5pm Dublin Time

83	Viridian (Energia)	Credit Support Annex (CSA)	Clause 14.12(b)	App B. 40.	This states that only Party B will be required to make transfers of Eligible Credit Support Clarity is requested that this does not prevent the Transferee from issuing refunds when the Eligible Credit Support held is in excess of the Credit Support Amount.	ESB clarify that this clause does not prevent the Transferee from issuing refunds when the Eligible Credit Support held is in excess of the Credit Support Amount
84	Viridian (Energia)	Call Option	Confirmation Document	App B. 41.	The document asks the counterparty to "confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation" Given the Confirmation takes precedence over the CfD agreement, to avoid ambiguity, it is suggested that this requires an additional 4 words to ensure it is linked to the relevant Transaction - these words are highlighted in Bold hereafter - to "confirm that the foregoing correctly sets forth the terms of our agreement pertaining to this Transaction by executing a copy of this Confirmation"	Additional wording is not considered necessary
85	Viridian (Energia)	Call Option	Confirmation Document	App B. 42.	As drafted ESB are issuing a confirmation of the Commodity Call Option to the Counterparty The Confirmation should come from the Seller of the particular item, as in the case of ESB selling a CfD to the Counterparty. The Commodity Call Option is being sold to ESB by the Counterparty (hence defined as the Commodity Option Seller). This should be reflected in this Confirmation with the Counterparty being detailed beside "From" and ESB being detailed beside "To".	ESB will issue Confirmations for each of the 2-way CfD and linked Commodity Call Option which comprise the ISEM product offering
86	Viridian (Energia)	Call Option	Confirmation Document	App B. 42.	The Option Style is termed "European" As detailed in comment 25 above this does not add any clarity to Energia in this regard and therefore ESB are asked to provide details of what they believe a "European" Option is.	See definition added under FEMA
87	Viridian (Energia)	Call Option	Confirmation Document	App B. 43.	The document asks the counterparty to "confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation" Similar to Comment 32 above given the Confirmation takes precedence over the CfD agreement, to avoid ambiguity, it is suggested that this requires an additional 4 words to ensure it is linked to the relevant Transaction - these words are highlighted in Bold hereafter - to "confirm that the foregoing correctly sets forth the terms of our agreement pertaining to this Transaction by executing a copy of this Confirmation	Additional wording is not considered necessary

88	Viridian (Energia)	Call Option	Confirmation Document	App B. 44.	The document asks the counterparty to "confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation" Similar to Comment 32 above given the Confirmation takes precedence over the CfD agreement, to avoid ambiguity, it is suggested that this requires an additional 4 words to ensure it is linked to the relevant Transaction - these words are highlighted in Bold hereafter - to "confirm that the foregoing correctly sets forth the terms of our agreement pertaining to this Transaction by executing a copy of this Confirmation	Additional wording is not considered necessary
89	Viridian (Energia)	Credit Support Annex (CSA)	Part 7 – Credit Support Documents and Credit Support Provider(s)	App B. 45.	In the definition of "Letter of Credit" the required minimum credit rating for the leading commercial bank is set as A- from Standard and Poors (or A3 from Moodys) It is argued this is overly onerous on participants given most banks in Ireland (including AIB and BOI) do not meet this standard. It is hereby formally requested that this minimum credit rating be set to BBB from Standard and Poors which is more reflective of banks in Ireland.	See response to 2.8 above
90	Viridian (Energia)	Subscription Rules	Subscription Rules	App B. 46.	in line 4 it refers to the I-SEM market. Given the market post go-live of the ISEM arrangements will still be the "SEM Market" referring to the I-SEM market may not be appropriate here.	Amended to include relevant clarifying language
91	Viridian (Energia)	Subscription Rules	Subscription Rules	App B. 47.	The document states that "the SEM Committee has reviewed and decided to approve" the guideline document on behalf of the CER. As changes to this document are being consulted upon in this process, it is assumed that the SEM Committee has in fact not approved the proposed changes subject to conclusion of the consultation process	This is not a change to the document - Version 2 will become effective upon approval by RA
92	Viridian (Energia)	Subscription Rules	Clause 3.5	App B. 48.	ESB has to provide a copy of the Specification to the Supplier a minimum of two business days prior to trading As ESB alone has control of whether or not this action is achieved, this action/document should not form part of the pre-requisites for a Supplier to trade. Thus Clause 3.5 should be deleted, but reference to ESB supplying this document to the Supplier can be added in the body text of the clause.	Agreed. Have amended to make clear this is an ESB requirement.
93	Viridian (Energia)	Subscription Window	Subscription Rules	App B. 49.	This refers to the I-SEM Subscription Windows (i.e. Subscription Windows prior to the conclusion of the Forwards and Liquidity Consultation Process). ESB are asked to clarify what stage of the Forwards and Liquidity consultation process they believe the market is at, if it has not concluded.	RAs to advise.

94	Viridian (Energia)	Subscription Rules	Clause 6 & 7	App B. 50-51.	Various references are made to times being GMT times As GMT ignores DST (Daylight Savings Time) it means in the Summer the time in Ireland is British Summer Time (BST) which is GMT+1. ESB are asked to confirm their intention is for all these times in these clauses to be GMT times and thus ignore BST which is GMT+1?	Reference to GMT deleted
95	Viridian (Energia)	Subscription Rules	Clause 7	App B. 52.	Line one states that "New entrants who were licenced circa one week prior to the opening …." It is suggested that it is clearer if this stated "New entrants who were licenced a minimum of one week prior to the opening …."	Change duly noted.
96	Viridian (Energia)	Subscription Rules	Clause 8	App B. 53.	Reference is made to ESBs Group Risk policy as a defined term. ESB are asked to provide details from the ESB Group Risk policy that are relevant to the DC Contracting process given such document has an influence on such process	Individual requirements in respect of credit cover will be discussed and negotiated on a by counterparty basis with ESB.
97	Viridian (Power NI)	Minimial Change Rationale	General		Power NI supports the fact ESB have looked to adopt the SEM Committee's policy of minimal change to facilitate I-SEM in the context of DC's. However, although this was highlighted by ESB as being the key consideration in their rationale for the proposed new contractual arrangements, it is Power NI's view that the current proposal is at odds with this minimal change rationale.	As noted by several respondents, the existing SEM DC contract is not a master agreement. For this reason, the contract, as drafted, does not work for ISEM. PowerNI have advised the current contract has been restated several times and suggest a similar restatement for ISEM be supported in view of compressed timetables. As per our previous comment, ESB believe further amendment of the current SEM DC contract is not a sustainable solution for ISEM going forward, thus , ESB's decision to progress the FEMA for purposes of its NDC offering.
98	Viridian (Power NI)	FEMA	General		A compressed response time horizon has been afforded to both consultations. Following on from above and combined with the fact that what is being proposed was unexpected, at face value over-engineered and not based on other standard agreements in the Irish wholesale electricity market, Power NI and wider industry requested from the RAs an extension to the consultation deadline. This extension was disappointingly not facilitated. It is on this basis therefore that this response is being submitted. Further feedback from detailed legal reviews and further due diligence will be fed back directly to ESB.	RAs to advise.
99	Viridian (Power NI)	FEMA	General		It is disappointing that the proposal put forward by ESB and the SEM Committee's consultation has come this late in the wider I-SEM project plan. At this stage of the plan market participants are working towards all aspects of market trials and go-live readiness and a further pull on resources, both in terms of time and unbudgeted costs, for example associated with legal reviews, is an unfortunate and in Power NI's view an unnecessary complication at this juncture.	RAs to advise.

100	Viridian (Power NI)	FEMA	General		The existing DC master agreement has been in existence for over 10 years and has been amended and restated a number of times. It does however work and is familiar to SEM market participants. Although what is being proposed by ESB, the Financial Energy Master Agreement (FEMA) appears to be a standard document, it is a standard document in the Nordic regions. Being used in a 'niche' energy market does not necessarily mean it is comparable. A contract that is standard and familiar to the GB market, a market which is linked to the SEM would appear more appropriate. Although the FEMA arrangements are inherently similar to the commonly used International Swaps and Derivatives Association (ISDA) arrangements, it does represent a novel departure and an arrangement that Power NI from initial review has not seen utilised in GB.	The GB forward power market is physical - the GTMA is a physical contract. The Irish power market is currently a financially traded market, thus the rationale for using the FEMA as a functional base and a contract familiar in the European energy markets. We would further note that the EFET Power/EFET GTMA Appendix is the preferred master agreement used by the majority of European energy market participants to facilitate trading in the GB power markets.
101	Viridian (Power NI)	Call Option	Call Option		Power NI understands the need for amendments to the existing contract structure to accommodate the RO element on the new capacity market and to avoid generators being exposed to double payments should the reference price outturn higher than the RO strike price. What is being proposed under the FEMA arrangements i.e. the selling of a call option by the supplier alongside the traditional 2-way CfD, at face value seems overly complex. From a conceptual view point the same outcome can be achieved very simplistically under the existing structures by simply capping the DC difference payment at the RO strike price.	As per our Explanatory Note, ESB have taken regulatory advisement as to appropriate approach to accommodate the RO introduced by ISEM and have progressed on the basis of the two products as set out under the Confirmation templates posited under the DC proposal. As set out in our commentary to respondent Energia who also propose a simplified solution using a single Transaction, i.e. 1-way CfD, to cap the CfD Strike price at the RO Strike Price - insofar as ESB is a semi-state company it is precluded from entering into embedded options under the Specification - thus this approach is not possible. Moreover, it is unclear as to how such Transaction would be reported to ensure EMIR compliance.
102	Viridian (Power NI)	General	General		ESB also alluded to a CBI (Central Bank of Ireland) consultation relating to proposed measures on the sale and distribution of CfDs to retail clients. The issue being that retail clients may not be aware of the risks and potential complex structure of such transactions. Power NI sees no relevance of this consultation to the DC contractual arrangements where CfDs are typically bought and sold to mitigate risks and price fluctuations for participants' with underlying generation and/or demand positions. CfDs have been part of the SEM for many years.	See above (cf 54)

103	Viridian (Power NI PPB)	FEMA	General		Prior to the SEM PPB commented extensively on the drafting of the DC Master Agreement and argued at that time that the Master Agreement should be generic such that any form of forward contract could be transacted under a single Master Agreement. Following the Regulators decision to implement a customised DC Master Agreement, PPB, in collaboration with ESB, led the drafting of an NDC Master Agreement that was aligned with the standard form of ISDA/GTMA master agreements that are generally used for energy and energy derivative trading in GB markets. PPB's Master Agreements have been evergreen since 2007, with a few updates (with one restatement) executed in the intervening period, mainly to reflect changed financial regulation obligations, for example in relation to EMIR.	The GB forward power market is physical - the GTMA is a physical contract. The Irish power market is currently a financially traded market, thus the rationale for using the FEMA as a functional base and a contract familiar in the European energy markets. We would further note that the EFET Power/EFET GTMA Appendix is the preferred master agreement used by the majority of European energy market participants to facilitate trading in the GB power markets.
104	Viridian (Power NI PPB)	Minimial Change Rationale	General		We agree with the policy of minimal change to the arrangements, particularly given the current draw on resources to meet the significant challenge of I-SEM readiness. We do not consider the approach proposed by ESB meets the objective of minimal change and we believe that the changes to address the issues identified in paragraph 1.7 of the consultation paper (reference price and reliability option) can easily be dealt with under the existing contractual framework with minor changes to the description of the product covered the forward contract transaction, be that a DC or NDC transaction.	As PPB have reiterated throughout their analysis, the existing SEM Contract is not a master agreement and as such only SEM DC CfDs are contemplated. Given the complexities introduced by ISEM, fundamental changes are required to ensure its ISEM compliance. Moreover, the resulting contract will remain bespoke and can be used only to transact the ISEM product offering. Of import, at Go-Live the SEM DC Contracts will terminate. In contrast, if the FEMA had been in place, the transition to the ISEM product offering would easily have been achieved, i.e. the pre-printed master agreement would be amended to accommodate the new products under Section 2(d) and with regard margining, no changes would be required under the industry standard EFET CSA - indeed, the FEMA easily contemplates both the CfD and an Option. Terms in relation to "new" products are clearly set out under the Confirmation template which aligns to the ISDA definitions for the relevant products.
105	Viridian (Power NI PPB)	FEMA	General		The ESB explanatory note states that ESB has determined the most appropriate contract to use as a basis for the I-SEM is the FEMA that is used in Nordic markets. We have trawled our legal advisors and other commodity trading counter-parties to assess the prevalence of the use of FEMA and have found no evidence of its use by any of those parties. The FEMA therefore appears to have little foothold in the GB markets which is the only market directly connected to Ireland and the most likely region from which additional liquidity could emerge.	See above (cf 55)

106	Viridian (Power NI PPB)	Copyright	General		The explanatory note also states that “ESB has received relevant copyright approvals for the use of each of the FEMA and CSA by NAET and EFET, respectively”. It isn’t clear whether all participants would require copyright clearance if they sought to adopt the FEMA for their trades. Further the arrangements for future updating is unclear and hence it is not possible to comment on whether there is any future-proofing benefit.	Copyright clearance has been procured by NAET and EFET for counterparties entering into the FEMA/CSA.
107	Viridian (Power NI PPB)	General	Insufficient Time allowed for proper analysis		Our legal advisors, who drafted the current CfD Master Agreement (including the modification required to implement EMIR), and who advise on our ISDAs have never been asked to provide legal advice on a FEMA agreement. Given the lack of use in our neighbouring markets, the merits of proceeding with the FEMA are questionable and hence a full legal review could be nugatory work, particularly in our case as we are not a counter-party in relation to DCs. Further we have no approval from the Utility Regulator to incur the cost of such a review and even if we had authority to proceed, the time available to conduct a detailed legal review would have been insufficient, particularly as the proposed FEMA is not a simple lift of the standard Nordic Association of Electricity Traders (NAET) agreement but has been modified by ESB.	RAs to advise.
108	Viridian (Power NI PPB)	General	The proposed FEMA agreement is not a true “Master Agreement”		A primary objective for the forward market should be to have a single Master Agreement (MA) under which different forward hedging transactions can be concluded. The draft agreement as set out is not a generic MA but is very much a bespoke MA covering only DC transactions. This implies that separate agreements will be required for other forms of hedging transactions which somewhat defeats the purpose of the master agreement concept. This bespoke nature is readily apparent from : the Recitals which refer to DCs only; Section 2(a) which refers to the DC subscription rules; and Section 11(p) which deals with termination by agreement with the RAs. If the objective is to adopt a new standardised MA, then it would be better to design the documentation such that the MA is generic and that different transaction types are documented in Schedules (similar to ISDAs) which can capture the unique features of any traded products.	We disagree. Unlike the SEM DC contract, as such the FEMA easily accommodates new products such as those posited for ISEM, i.e. Commodity Option. As directed by the CRU, the FEMA presented for purposes of SEM-17-065 is for regulated DC contracts to which specific requirements apply, e.g.. Subscription Rules, thus the need for the Recitals. Similarly, such recitals would be required for PSOs. However, ESB is using the FEMA to sell NDCs with only minor amendments to the DC functional base template. To PPBs point, whereas the NDC will be the generic MA for all products, the DC FEMA is an MA designed specifically for the DC market.

109	Viridian (Power NI PPB)	Call Option	Call Option		The approach to maintain the existing 2-way CfD, overlaid with a Commodity Call Option is unnecessary and the relevance of the CBI consultation paper is not apparent. It is clear from the intent and from the drafting that there is no optionality and that the repayment and set-off of money, in excess of the RO strike price, is being settled in all circumstances and therefore it is not an "option" and does not requirement treatment as such. We do not believe that the proposed approach is necessary and we consider that the transaction can simply be captured as a capped exposure CfD which works such that where the DAM price exceeds the CfD strike price then the payment due from the Seller to the Buyer	As per our Explanatory Note, ESB have taken regulatory advisement as to appropriate approach to accommodate the RO introduced by ISEM and have progressed on the basis of the two products as set out under the Confirmation templates posited under the DC proposal. As set out in our commentary to respondent Energia who also propose a simplified solution using a single Transaction, i.e. 1-way CfD, to cap the CfD Strike price at the RO Strike Price - insofar as ESB is a semi-state company it is precluded from entering into embedded options under the Specification - thus this approach is not possible. Moreover, it is unclear as to how such Transaction would be reported to ensure EMIR compliance.