

## Annex 2: ENA amendments to Condition 38B

### Condition 1. Definitions and Interpretation

**Claimant** means an Electricity Supplier and/or any LRSP Permitted Assignee entitled to receive ~~the benefit of~~ a Last Resort Supply Payment in accordance with a Valid Claim.

**LRSP Permitted Assignee** means a person to whom ~~the Authority has consented to~~ an Electricity Supplier ~~assigning~~has assigned or otherwise ~~disposing~~disposed of all or any of its rights in relation to or arising from a Last Resort Supply Payment with the Authority's consent.

**Specified Amount** means the ~~amount specified in a Valid Claim (or, where the context requires, the total~~ amount specified in a Valid Claim ~~in respect of a particular Regulatory Year).~~

### Condition 38B. Treatment of payment claims for last-resort supply where Valid Claim is received on or after 1 April 2019

#### Application of this condition

38B.1 Subject to paragraph 38B.2, this condition applies if the licensee:

- (a) receives from any Claimant a Valid Claim for a Last Resort Supply Payment on or after 1 April 2019; or
- (b) receives from any Claimant a Valid Claim for a Last Resort Supply Payment before 1 April 2019 and has not yet commenced the process of recovering the Valid Claim through Use of System Charges in accordance with standard condition 38A.1(a).

38B.2 This condition does not apply following a successful application for an Energy Supply Company Administration Order in accordance with section 96 Energy Act 2011.

#### Obligation to pay the Claimant

38B.3 Subject to paragraph 9 and paragraph 9A of this condition, where the licensee receives a Valid Claim, the licensee must make payments to the Claimant, by monthly or quarterly instalments commencing three months after the date on which the Valid Claim was received, such three month period to include the date of receipt of the Valid Claim, so that the total Specified Amount ~~(or in respect of Valid Claims to which paragraph 38.9A applies that part of the Specified Amount that relates to the Relevant Regulatory Year)~~ has been paid in full in accordance with a schedule defined by the Authority, and in any event by no later than 15 months from the date on which the Valid Claim was received.

#### Cumulative effect of separate claims

38B.4 Where the licensee makes payments in respect of more than one Valid Claim within the Regulatory Year t, SLRA<sub>t</sub> (as defined in CRC 2B, Calculation of Allowed Pass-Through Items) shall be treated as a

single aggregated figure representing the total value of payments made to all Claimants in the Regulatory Year  $t$ , excluding Valid Claims subject to paragraph 38B.9 [and paragraph 38B.9A](#) of this condition.

## Application of Materiality Threshold

- 38B.5 If the value of aggregated payments to be made by a licensee in respect of Valid Claims, less the aggregated payments to be made by a licensee in respect of Valid Claims subject to paragraph 38B.9 [and paragraph 38B.9A](#) of this condition, in any Regulatory Year would exceed the Materiality Threshold amount applicable to the licensee, as shown in Appendix 1 (the “Materiality Threshold”), the licensee may within 28 days of receipt of the Valid Claim that results in breach of the Materiality Threshold give notice to the Authority of its intention to increase its Use of System Charges for the Relevant Regulatory Year to the extent that the licensee reasonably estimates is necessary in order to recover the Excess Specified Amount as defined in 38B.7.
- 38B.6 Subject to paragraph 38B.5 of this condition, where the licensee requires a derogation in order to increase its Use of System Charges for the Relevant Regulatory Year, the Authority may, after consulting with the licensee, give a direction (“a derogation”) to the licensee relieving it of its obligations under the relevant conditions to such extent, for such period of time, and subject to such conditions as may be specified in the derogation.
- 38B.7 Subject to paragraphs 38B.5 and 38B.6 of this condition, the Excess Specified Amount will equate to the aggregate value of Valid Claims received in a Regulatory Year that would cause the Materiality Threshold in any single Regulatory Year to be breached.
- 38B.8 Any Valid Claim received after paragraph 38B.7 of this condition has effect, in any Regulatory Year: (a) which does not result in the aggregate value of payments made in respect of Valid Claims exceeding the Materiality Threshold; or (b) in respect of which the licensee has not provided notice under paragraph 38B.5 of this condition; or (c) in relation to which a derogation required by the licensee is not given by the Authority under paragraph 38B.6 of this condition, may not be included in the Excess Specified Amount. The aggregate value of payments made in respect of such Valid Claims shall be recovered in  $SLRA_t$  (as defined in CRC 2B, Calculation of Allowed Pass-Through Items) in accordance with paragraph 38B.4 of this condition.
- 38B.9 Where the licensee has given notice under 38B.5 of this condition and, if applicable, the Authority has given a derogation under paragraph 38B.6 of this condition, it must, [subject to paragraph 38B.9A and](#) unless the Authority directs otherwise:
- (a) in the Relevant Regulatory Year, increase  $ESA_t$  in accordance with paragraph 2B.35 of Licence Condition CRC 2B (or paragraph 2B.38 for SSEH), (Calculation of Allowed Pass-Through Items by the Excess Specified Amount);
  - (b) in the Relevant Regulatory Year, increase its Use of System Charges in accordance with the approved Use of System Charging Methodology in force under standard condition 13 (Charging Methodologies for Use of System and connection); and
  - (c) during the Relevant Regulatory Year, make payments to the Claimant by monthly or quarterly instalments that equate to the total Specified Amount for that Regulatory Year.

38.9A Where the licensee receives a Valid Claim that contains provision for the payment of the amount specified in the Valid Claim to be paid over a period longer than 12 months and where such Valid Claim specifies this paragraph 38B.9A applies then:

~~(a single Regulatory Year)~~ the licensee ~~must~~shall make payments ~~(including such adjustments for interest and other payments as the Authority may direct)~~ to the Claimant in accordance with a schedule ~~defined~~specified by the Authority with the Valid Claim, ~~and such schedule may be~~ updated annually thereafter by direction given by the Authority not less than 3 months prior to the start of the next Regulatory Year, setting out the amount to be paid to the Claimant in ~~the Relevant~~respect of each particular Regulatory Year-; and

~~(b)~~ The licensee shall treat each amount stated in the Authority's schedule and annual direction provided pursuant to ~~this paragraph as a Valid Claim received in each Relevant Regulatory Year for the purposes of payment pursuant to paragraph 38B.3 or 38B.9, as appropriate~~paragraph 38B.9A(a) as an Excess Specified Amount under paragraphs 38B.9 (a) and (b) for the particular Regulatory Year in which it is paid.

38B.10 The provisions of this condition have effect even if the licensee has not provided the Notice required under paragraph 11 of standard condition 14 (Charges for Use of System and connection).

38B.11 The licensee shall never be obliged to make payments to the Claimant in excess of the Valid Claim. Any payment of an amount to an LRSP Permitted Assignee shall discharge any requirement to pay that amount to the related Electricity Supplier.

## Interpretation

~~38B.11~~38B.12 For the purposes of this condition:

**Excess Specified Amount** means the aggregate value of Valid Claims which, in any Regulatory Year, would cause a breach of the Materiality Threshold recovered in accordance with paragraph 38B.9 of this condition.

**Materiality Threshold** means the amount determined for each licensee in Appendix 1 of this condition.

**Relevant Regulatory Year** means, in relation to any Valid Claim(s) resulting in breach of the Materiality Threshold:

- (a) where the claim was received by the licensee at least three months before the beginning of the next Regulatory Year, that Regulatory Year; or
- (b) where the claim was received by the licensee less than three months before the beginning of the next Regulatory Year, the year after the next Regulatory Year.