

[CCB/RO] Account Declaration of Trust dated [●]

[Licensee Name]¹ (registered number [●]) a [private limited company incorporated under the laws of England and Wales whose registered office is at [●] as the **Licensee** and as the **Trustee** hereby declares on [insert date] a trust over the Trust Account in favour of [The Gas and Electricity Markets Authority, a [●] incorporated under the laws of England and Wales whose office is at 10 South Colonnade, Canary Wharf, London E14 4PU, United Kingdom as the **Beneficiary**]² / [the Beneficiaries]³ on the terms set out in this [CCB/RO] Account Declaration of Trust.

Recitals

The Trustee has declared a trust over the Trust Account to Protect [the RO Credit Cover Amount in accordance with that Standard Licence Condition (SLC) 30 of the electricity supply licence / the Protected Amount in accordance with SLC 4D with respect to Domestic Customer Credit Balances] in accordance with the terms of this Deed.

1 Definitions and Interpretation

1.1 Unless otherwise defined in this Deed, any capitalised terms have the meaning given to them in the applicable Licence unless otherwise stated as below:

“**Account Bank**” means the bank account with which the Trust Account is held.

“**Authority**” means The Gas and Electricity Markets Authority.

“**Beneficiaries**” means each of:

- (a) the Licensee; and
- (b) any licensee which the Authority directs to act as a Supplier(s) of Last Resort in relation to Fixed Direct Debit Domestic Customers of the Licensee or, if no such direction has been made, the Fixed Direct Debit Domestic Customers of the Licensee as a whole.⁴

“**Credit Event**”⁵ means:

- (a) any of the following shall occur with respect to the Licensee (excluding a winding-up petition which the Beneficiary considers to be frivolous or vexatious, or to have no real prospect of success, and which is discharged, stayed or dismissed within ten days of its presentation and, in any event, before it is advertised):

¹ Query whether we need to cover where the licence holder is a different entity to that dealing with payments and accounting.

² Ofgem is sole beneficiary of the RO Account Declaration of Trust.

³ See definition below for CCB Account Declaration of Trust

⁴ Only to include in the CCB Account Declaration of Trust; to check capitalised terms are defined in the SLCs.

⁵ Always retain this definition. It is required for cover of both the Domestic Customer Credit Balances and the Renewables Obligation.

- (i) the Licensee is unable or admits inability to pay its debts as they fall due or suspends making payments on any of its debts; or
 - (ii) a moratorium is declared in respect of any indebtedness of the Licensee;
 - (iii) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Licensee;
 - (B) a composition, compromise, assignment or arrangement with any creditor of the Licensee; or
 - (C) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect the Licensee or any of its assets; or
- (b) any analogous procedure or step is taken in any jurisdiction.

"Encumbrance" means any mortgage, standard security, charge, pledge, lien, assignation in security, trust, hypothecation or other interest creating or evidencing an encumbrance of assets.

"Liability" means, in respect of any person, any loss, damage, cost, charge, award, claim, demand, expense, judgment, decree, action, proceeding (or threats of any action or proceeding) or other liability whatsoever including without limitation legal costs and expenses and any Taxes (other than Taxes on net income, profit or gains) and related interest and penalties incurred by that person and **"Liabilities"** shall be construed accordingly.

"Licence" means any electricity supply licence or gas supply licence for supplies in Great Britain granted to the Licensee.

"Licence Event" means the Authority has revoked a Licence of the Licensee;

["Non-Payment Event" means any failure by the Licensee to pay an amount as and when that amount is due or payable under the Renewables Obligation, including, without limitation and for the avoidance of doubt, any failure to pay such an amount to the Authority by 1 September as required by Article 67 of the Renewables Obligation Order 2015 or Article 43 of the Renewables Obligation (Scotland) Order 2009.]⁶

["Renewables Obligation" has the meaning set out in the Renewables Obligation Order 2015 and the Renewables Obligation (Scotland) Order 2009].⁷

"Taxes" means any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever (and whatever called) imposed, assessed or levied in any jurisdiction or by any authority of it having power to tax, and shall include any interest or

⁶ Only include in RO Declaration of Trust, not CCB Declaration of Trust.

⁷ Only include in RO Declaration of Trust, not CCB Declaration of Trust.

penalties which may attach as a consequence of failure to pay on the due date and/or non-payment, and "Tax", "Taxation" and similar words shall be construed accordingly.

"**Trust Account**" means [*include account details – to be a dedicated and segregated bank account in the name of the Licensee with a bank branch in England or Wales*].

1.2 In this Deed:

1.2.1 The singular includes the plural (and vice versa);

1.2.2 Headings are for convenience only and do not affect the construction of this Deed;

1.2.3 References to clauses and schedules are to Clauses of and Schedules to this Agreement;

1.2.4 References to any person or entity include successors of such person or entity and its permitted assignees and transferees; and

1.2.5 All references to an account include all replacement accounts for such account.

2 The Trust

2.1 The Trustee declares that it shall hold all its right, title, benefit and interest, present and future, in and to the Trust Account (including all amounts standing to the credit of the Trust Account) from time to time (for the purpose of this Deed, the **Trust Property**) on trust for the [Beneficiary / Beneficiaries].

2.2 The Trust Property shall be dealt with by the Trustee in accordance with the terms of this Deed and the applicable Licence, and the Trustee (as trustee of the Trust Property) expressly acknowledges and declares that the interests and entitlements of [the Beneficiary in its capacity as beneficiary / the Beneficiaries in their capacity as beneficiaries] of the trust created by this Deed and to the property held on trust shall be vested and indefeasible, such that the [Beneficiary is / Beneficiaries are] absolutely entitled to the assets comprised in the Trust Property as they are received and as income thereon arises.

2.3 The Trustee may only withdraw amounts standing to the credit of the Trust Account:

2.3.1 (A) to the extent that such amounts exceed the then applicable [RO Credit Cover Amount / the Protected Amount]⁸; or

(B) in accordance with directions by, or consent of, the Authority; or

(C) if the Authority determines that the Trust Property no longer need be held on trust by the Trustee on the terms of this Declaration of Trust; [or

(D) to refund to Fixed Direct Debit Domestic Customers overpayments by such Fixed Direct Debit Domestic Customers, subject to the terms of the applicable Licence]⁹,

⁸ RO Declaration of Trust to refer to RO Credit Cover Amount; CCB Declaration of Trust to refer to Protected Amount

⁹ CCB Declaration of Trust only.

by paying such amounts to a different bank account of the Licensee (and, following the transfer of any such amounts to such other bank account of the Licensee, such amounts shall cease to form part of the Trust Property); or

2.3.2 following a Credit Event or a Licence Event [or a Non-Payment Event]¹⁰, to the [Beneficiary¹¹ / Supplier(s) of Last Resort nominated from time to time by the Authority or otherwise in accordance with the directions of the Authority¹²]; or

2.3.3 [in the case of a sale by the Licensee of the accounts of any Fixed Direct Debit Domestic Customers], the portion of Protected Amount allocable to the Consumer Credit Balances of such Fixed Direct Debit Domestic Customers]¹³.

2.4 The Trustee shall ensure that the Trust Account shall not go into overdraft.

3 Acknowledgements of the Trustee

3.1 No right to Trust Account

The Trustee acknowledges that, subject to clause 2.3 above, it has no right at any time to set off or transfer any of the amounts standing to the credit of the Trust Account in or towards satisfaction of any of the Liabilities of [the / any] Beneficiary to the Trustee or of any of the Liabilities of the Trustee to any other person.

3.2 Security over property of Trustee

The Trustee acknowledges and declares that the trust constituted by this Deed is not intended to create, nor does it create, any Encumbrance in favour of any person over any property or assets of the Trustee but rather is intended clearly to delineate the beneficial interest of the [Beneficiary / Beneficiaries] in the Trust Property.

3.3 No delegation or investment

Except insofar as is required or permitted pursuant to the applicable Licence:

3.3.1 the Trustee shall have no power to delegate to any other person any of the rights, powers, authorities, duties or obligations directed or authorised pursuant to this Deed; and

3.3.2 the Trustee shall have no further or other powers of investment with respect to the property held on trust and for the avoidance of doubt, the provisions of the Trustee Act 2000 relating to trustee investments shall not apply.

3.4 No encumbrance

The Trustee hereby acknowledges and agrees that it will not encumber or dispose of any of its right, title, interest and benefit, present and future in the Trust Account or the amounts standing

¹⁰ Only include in RO Declaration of Trust, not CCB Declaration of Trust

¹¹ For RO Declaration of Trust.

¹² CCB Declaration of Trust only

¹³ To include in CCB Declaration of Trust only

to the credit of the Trust Account other than in accordance with this Deed or the applicable Licence.

3.5 No transfer or disposal

The Trustee hereby agrees that it shall not, at any time, hold itself out to any person as being beneficially entitled to the Trust Account or the amounts standing to the credit of the Trust Account, and shall only be entitled to effect any transfer or disposal of any of its right, title, interest and benefit in the Trust Property or the amounts standing to the credit of the Trust Account comprising the Trust Property in accordance with clause 2.3 above.

3.6 Notice of Declaration of Trust

The Trustee undertakes to give notice of this Declaration of Trust to the Account Bank as soon as reasonably practicable in the form set out in Schedule 1 (*Form of Notice of Account Declaration of Trust*).

4 Resignation

The Trustee may only resign as trustee after the Trustee has transferred any credit balance standing to the credit of the Trust Account in accordance with the directions of the Authority.

5 Partial Invalidity

The invalidity, illegality or unenforceability of a provision of this Deed does not affect or impair the continuation in force of the remainder of this Deed.

6 Amendments

Amendments to this Declaration of Trust can be made with the consent of the Authority [and without the need for any consent by the Beneficiaries]¹⁴.

7 Perpetuity Period

The perpetuity period for the purposes of this declaration of trust shall be the period of 125 years from the date hereof.

8 Trustee Act

The duty of care contained in section 1 of the Trustee Act 2000 shall not apply to any trust or fiduciary relationship created or purported to be created by this Deed.

9 Execution

The Trustee has executed this Deed as a deed and intends to deliver, and does deliver, this Deed on the date stated above.

¹⁴ Add to CCB Declaration of Trust only.

10 Governing Law

This Deed (and any non-contractual obligations arising out of or in connection with it) is governed by, and shall be construed in accordance with, English law.

11 Submission to Jurisdiction

The Trustee hereby irrevocably submits to the exclusive jurisdiction of the English courts in any action or proceeding arising out of or in relation to this Deed, and hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined by such courts. The Trustee hereby irrevocably waives, to the fullest extent it may possibly do so, any defence or claim that the English courts are an inconvenient forum for the maintenance or hearing of such action or proceeding.

12 Further Assurance

The Trustee shall (at its own cost) do and execute, or arrange for the doing and executing of, each act, document and thing requested of it by the Authority in order to implement and/or give effect to this Declaration of Trust.

Beneficiary

Signed and delivered as a Deed
for and on behalf of
[Licensee Name]
by its lawfully authorised signatory

)
)
) Authorised Signatory signature
)

.....
Print Authorised Signatory name

in the presence of:

.....
Witness signature

.....
Print Witness name

.....
Witness address

Schedule 1 – Form of Notice of Account Declaration of Trust

To: [Name of Bank]

[•]

[•]

[DATE]

Dear Sirs

Account Declaration of Trust

- 1 We refer to the account held with you in our name (Sort Code: [•]; Account Number: [•]) (the **Trust Account**).
- 2 We hereby give you notice that by an account declaration of trust dated on or about the date hereof we have declared a trust over all amounts credited to the Trust Account from time to time in favour of) [The Office of Gas and Electricity Markets in its capacity as beneficiary]¹⁵ / [(ourselves and any licensee which the The Office of Gas and Electricity Markets (the **Authority**) directs to act as Supplier(s) of Last Resort in relation to our Fixed Direct Debit Domestic Customers or, prior to the appointment of any such Supplier of Last Resort(s), our Fixed Direct Debit Domestic Customers as a whole]¹⁶.
- 3 We should be grateful if you would sign and return the attached copy of this letter to confirm that you have received this notice of such declaration of trust.

Yours faithfully

.....
For and on behalf of [Licensee Name]

Acknowledgement of receipt

.....
For and on behalf of [Bank Name]

¹⁵ RO Declaration of Trust

¹⁶ CCB Declaration of Trust