
included in [CCB/ RO] Escrow AgreementParties

1. Escrow Bank¹:
2. [Licensee] (the "**Licensee**")
3. The Gas and Electricity Markets Authority (the "**Authority**")

Recital:

The Licensee is entering into this Escrow Agreement 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]².

Operative provisions**1 Definitions**

In this Agreement any capitalised terms have the meaning given to them in the applicable Licence unless otherwise stated as below:

["Beneficiaries" means each of:

- (a) the Licensee; and
- (b) any licensee which the Authority directs as 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.³

"Credit Event"⁴ means:

- (c) any of the following shall occur with respect to the Licensee (excluding a winding-up petition which the Authority 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):
 - 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:

¹ To be a bank incorporated within the United Kingdom, with experience of operating escrow accounts

² Delete as appropriate.

³ Only to include in the CCB Escrow Account.

⁴ Always retain this definition. It is required for cover of both the Domestic Customer Credit Balances and the Renewables Obligation.

- 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;
 - 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
- iv. 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.

"**Escrow Account**" means *[include account details]*.

"**Escrow Amount**" means all amounts for the time being held in the Escrow Account, including all Interest accrued thereon (if any) and credited to the Escrow Account from time to time.

"**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 2009.⁵

"**Renewables Obligation**" has the meaning set out in the Renewables Obligation Order 2015 and the Renewables Obligation (Scotland) Order 2009.⁶

2 Fees

The expenses and fees *[Set out basis on which fees will be charged here]* of the Escrow Bank under this Agreement shall be borne by the Licensee only.

3 No overdraft

The Escrow Account may not go into overdraft.

⁵ Only include in RO Escrow Account Agreement, not CCB Escrow Account Agreement.

⁶ Only include in RO Escrow Account Agreement, not CCB Escrow Account Agreement.

4 Trust

- 4.1 The Escrow Bank declares that it shall hold all its right, title, benefit and interest, present and future, in and to the Escrow Account (the **Trust Property**) on trust for the [Authority⁷/ Beneficiaries⁸].
- 4.2 The Trust Property shall be dealt with by the Escrow Bank in accordance with the terms of this Deed and the applicable Licence, and the Escrow Bank (as trustee of the Trust Property) expressly acknowledges and declares that the interests and entitlements of [the Authority 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 [Authority is / Beneficiaries are] absolutely entitled to the assets comprised in the Trust Property as they are received and as income thereon arises.
- 4.3 The Escrow Bank acknowledges that, subject to clause 6 (*Withdrawals*) below, 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 Authority or the Licensee⁹ / any Beneficiary¹⁰] to the Escrow Bank or of any of the Liabilities of the Escrow Bank to any other person.
- 4.4 The Escrow Bank 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 Escrow Bank but rather is intended clearly to delineate the beneficial interest of the [Authority / Beneficiaries] in the Trust Property.
- 4.5 The Escrow Bank 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 to the credit of the Trust Account other than in accordance with this Deed or the applicable Licence.
- 4.6 The Escrow Bank 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 6 (*Withdrawals*) below.
- 4.7 The perpetuity period for the purposes of this declaration of trust shall be the period of 125 years from the date hereof.

5 No encumbrances

Licensee 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 Escrow Account or the amounts standing to the credit of the Escrow Account other than in accordance with this Agreement or the Standard Licence Conditions.

⁷ Only include in RO Escrow Account Agreement, not CCB Escrow Account Agreement.

⁸ Only include in CCB Escrow Account Agreement, not RO Escrow Account Agreement.

⁹ RO Escrow Agreement only.

¹⁰ CCB Escrow Agreement only.

6 Withdrawals

6.1 The Escrow Bank shall only withdraw amounts standing to the credit of the Escrow Account:

6.1.1 in accordance with any instruction delivered to the Escrow Bank in the form set out in Schedule 1 (*Form of Release Notice – Release by Licensee*) signed by an Authorised Representative of Licensee to withdraw an amount standing to the credit of the Escrow Account to a designated account of the Licensee. The Licensee shall only deliver any such instruction to the Escrow Bank to withdraw any amount of the Escrow Amount:

- (a) to the extent that such amount exceeds the then applicable [RO Credit Cover Amount / the Protected Amount]¹¹; or
- (b) in accordance with directions by, or consent of, the Authority; or
- (c) [if the Authority determines that the amount to be withdrawn no longer need be held in the Escrow Account; or]¹²
- (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]¹³; or
- (e) [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].

6.1.2 in accordance with any instruction delivered to the Escrow Bank in the form set out in Schedule 2 (*Form of Release Notice – Release by Gas and Electricity Markets Authority*) signed by an Authorised Representative of the Authority (or any assignee of the Authority) to transfer the Escrow Amount or any portion thereof to any designated person. The Authority shall only deliver any such instruction to the Escrow Bank to withdraw any amount of the Escrow Amount following a Credit Event or a Licence Event [or a Non-Payment Event]¹⁴.

6.2 The Escrow Bank shall process any such Release Notice and release funds from the Escrow Account in accordance with such Release Notice.

6.1 Liability of the Escrow Bank¹⁵

6.1.1 Escrow Bank's reliance

The Escrow Bank may rely upon and shall incur no liability in contract or in tort to any party whomsoever in acting or refraining from acting or relying upon any written notice, direction, request, waiver, consent, receipt or other paper or document which the Escrow Bank believes in good faith to be genuine and to have been signed or presented by the proper party or parties.

¹¹ RO Escrow Agreement to refer to RO Credit Cover Amount; CCB Escrow Agreement to refer to Protected Amount

¹² CCB Escrow Agreement only

¹³ CCB Escrow Agreement only.

¹⁴ Only include in RO Escrow Agreement, not CCB Escrow Agreement

¹⁵ These provisions can be amended to reflect the Escrow Bank's standard disclaimers.

6.1.2 Escrow Bank's limitation of liability

The Escrow Bank shall not be liable whether in contract or in tort for any error of judgment, or for any act done or step taken or omitted by it in good faith or for any mistake in fact or law, or for anything which it may do or refrain from doing in connection with this agreement, except if and only to the extent such error, act or mistake is the result of its own gross negligence or fraud.

6.1.3 Escrow Bank's entitlement to make enquiries and appoint lawyers

The Escrow Bank shall be entitled to undertake such reasonable enquiries and obtain such information as it may consider appropriate (and may seek the advice of a solicitor and/or counsel of its choice and independent of all other parties) in the event of any dispute or question as to the construction of any of the provisions of this agreement or its duties hereunder or as to the validity of any notification or instruction which purports to be notification made pursuant to Clause 6 (*Withdrawals*). The Escrow Bank will incur no liability in contract or in tort to any party whomsoever in respect of any action taken, omitted or suffered by it in accordance with the opinion of such solicitor or counsel.

6.1.4 Indemnity in favour of Escrow Bank

The Escrow Bank shall be indemnified by the Licensee against all losses, costs and expenses (including reasonable legal costs) which may be incurred by it as a result of or arising out of this agreement, including its involvement in any litigation arising from performance of its duties under this agreement, other than litigation resulting from or with respect to any action taken or omitted by the Escrow Bank which amounts to gross negligence or fraud. Such indemnification shall survive termination of this agreement.

6.1.5 Escrow Bank's rights in the event of a dispute

If a dispute arises between two or more of the parties to this agreement concerning the payment or non-payment of any sum out of the Escrow Account, or as to any other matter arising out of or relating to the Escrow Account or the operation of this agreement, the Escrow Bank shall not be required to determine the matter in dispute and need not make any distribution of the Escrow Account or issue any instructions in respect thereof but may retain the same and shall not be obliged to take any action hereunder until the parties have resolved the dispute or the rights of the parties to the dispute have been judicially determined.

6.2 Notifications

[Add notices clause]

7 Amendments

Amendments to this Escrow Agreement can be made with the consent of the Authority [and without the need for any consent by the Beneficiaries]¹⁶.

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 Escrow Agreement.

9 Governing law

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

10 Execution

The Parties have executed this Escrow Agreement as a deed and each party intends to deliver, and does deliver, this Escrow Agreement as a deed on the date stated above.

¹⁶ Add to CCB Escrow Agreement only.

Form of Release Notice – Release by Licensee

To: [Name of Escrow Bank]
 Copy to: The Gas and Electricity Markets Authority
 Date: [***]

Escrow Agreement dated [*] between [***]**

Unless otherwise specified, capitalised terms used but not defined herein have the respective meanings specified in the Escrow Agreement.

This Release Notice is being provided to you in accordance with Clause [***] of the Escrow Agreement, to transfer £[***] (the “**Withdrawal**”) to the following bank account:

Licensee hereby certifies through the undersigned [authorised representative of Licensee] that:

- (a) The Withdrawal is not less than the amount by which the credit balance of the Escrow Account exceeds the applicable [RO Credit Cover Amount / the Protected Amount]¹⁷; and/or
- (b) The Gas and Electricity Markets Authority has directed or consented to the Withdrawal; and/or
- (c) [The Gas and Electricity Markets Authority has determined that the Withdrawal no longer need be held in the Escrow Account]¹⁸; and / or
- (d) [The Withdrawal is being used to refund to Fixed Direct Debit Domestic Customers overpayments by such Fixed Direct Debit Domestic Customers, subject to the terms of the applicable Licence]¹⁹; and / or
- (e) [The Withdrawal is the portion of Protected Amount allocable to the Consumer Credit Balances of Fixed Direct Debit Domestic Customers whose accounts have been sold by the Licensee as part of a trade sale in accordance with the applicable Licence].

In accordance with the Escrow Agreement, the Escrow Bank is hereby directed to transfer the Withdrawal Amount from the Escrow Account to the account specified below.

Correspondent Bank: SWIFT Code/Sort Code: IBAN: Payee Bank: SWIFT Code/Sort Code:

¹⁷ RO Escrow Account Agreement to refer to RO Credit Cover Amount; CCB Escrow Account Agreement to refer to Protected Amount
¹⁸ CCB Escrow Agreement only
¹⁹ CCB Escrow Agreement only.

IBAN: Account Name: Account Number: Reference (if applicable): Amount: [Include in words] Currency: GBP
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This release notice and any non-contractual obligations arising out of or in connection with it shall be construed in accordance with and governed by English law.

Designated Energy Supplier

By: _____

Print name: _____

Authorised representative

Form of Release Notice – Release by The Gas and Electricity Markets Authority or its assignee

To: [Name of Escrow Bank]

Copy to: [Licensee]

Date: [***]

Escrow Agreement dated [*] between [***]**

Unless otherwise specified, capitalised terms used but not defined herein have the respective meanings specified in the Escrow Agreement.

This Release Notice is being provided to you in accordance with Clause [***] of the Escrow Agreement.

[The Gas and Electricity Markets Authority / [****] as assignee of The Gas and Electricity Markets Authority] hereby confirms that a Credit Event, a Licence Event or a Non-Payment Event has occurred.

In accordance with the Escrow Agreement, the Escrow Bank is hereby directed to transfer the amount of the Escrow Amount specified below from the Escrow Account to the account specified below.

<p>Escrow Amount to be paid to the Authority</p>	<p>Correspondent Bank: SWIFT Code/Sort Code: IBAN: Payee Bank: SWIFT Code/Sort Code: IBAN: Account Name: Account Number: Reference (if applicable): Amount: [Include in words] Currency: GBP</p>
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This release notice and any non-contractual obligations arising out of or in connection with it shall be construed in accordance with and governed by English law.

[The Gas and Electricity Markets Authority / [****] as assignee of The Gas and Electricity Markets Authority]

By: _____

Print name: _____

Authorised representative