

## Form of First Demand Guarantee

Form of First Demand Guarantee to be provided in respect of a licensee's obligations [under the Renewables Obligation][ and][ with respect to Customer Credit Balances]<sup>1</sup>.

[On headed paper of the Guarantor/Approved Guarantor]

To: Gas and Electricity Markets Authority

10 South Colonnade

Canary Wharf

London

E14 4PU

(the "**Beneficiary**")

[Date]

### Irrevocable First Demand Guarantee dated [ ]

At the request of [*insert full legal name of the Licensee*] (the "**Licensee**"), and in order that the Licensee may be granted, retain or comply with its License(s) on favourable terms, we, [*insert full legal name of Guarantor*], (the "**Guarantor**") issue this irrevocable and unconditional First Demand Guarantee (this "**First Demand Guarantee**") in your favour as its Beneficiary.

Capitalised terms used in this paragraph which are not defined in this First Demand Guarantee shall have the meanings from time to time given to those terms in the Licence(s). This First Demand Guarantee is issued to you in respect of the Licensee's obligations to Protect [the RO Credit Cover Amount in accordance with Standard Licence Condition 30 of the Licensee's electricity supply licence<sup>2</sup>][ and ][the Protected Amount in accordance with Standard Licence Condition 4D<sup>3</sup>]<sup>4</sup> and on the following terms and conditions:

## 1 Definitions

In this First Demand Guarantee:

"**Assignee**" means an entity to whom the Beneficiary has assigned its right to claim, make Demands and receive payment from the Guarantor under this First Demand Guarantee as permitted by paragraph 7(a) below;

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

"**Credit Event**"<sup>5</sup> means 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,

---

<sup>1</sup> The template can cover Domestic Customer Credit Balances or the Renewables Obligation or both.

<sup>2</sup> Retain where the Renewables Obligation is covered.

<sup>3</sup> Retain where Domestic Customer Credit Balances are covered.

<sup>4</sup> The template can cover Domestic Customer Credit Balances or the Renewables Obligation or both.

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

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):

- (a) the Licensee is unable or admits its inability to pay its debts as they fall due or suspends making payments on any of its debts; or
- (b) a moratorium is declared in respect of any indebtedness of the Licensee;
- (c) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) 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;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Licensee;
  - (iii) 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;

**["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 Beneficiary by 1 September as required by Article 67 of the Renewables Obligation Order 2015 or Article 43 of the Renewables Obligation (Scotland) Order 2009<sup>6</sup>;

**"Demand"** means a demand for a payment by the Beneficiary pursuant to this First Demand Guarantee which is substantially in the form set out in the schedule to this First Demand Guarantee, with square bracketed passages or options completed, selected or deleted (as applicable) and which appears on its face to comply with the terms of this First Demand Guarantee;

**"Expiry Date"** means 5pm London time on *[insert expiry date [falling 18 months from date of issue where the First Demand Guarantee covers RO only, or RO and DCCB /falling 12 months from the date of issue where the First Demand Guarantee covers DCCB only]]*;

**"Licence Event"** means either<sup>7</sup>the Beneficiary has revoked the Licensee's Licence(s);

**"Licence(s)"** means the Licensee's [electricity supply licence/gas supply licence/electricity supply licence or its gas supply licence or both<sup>8</sup>] for supplies in Great Britain; [and]

**"Maximum Amount"** means *[insert currency and amount in words and then in figures<sup>9</sup>]*; [and]

---

<sup>6</sup> Delete this definition if the First Demand Guarantee of Credit only covers Domestic Customer Credit Balances.

<sup>7</sup> Always retain this definition. It is required whether the First Demand Guarantee covers RO only or DCCB only or both.

<sup>8</sup> Depending on which licences the Licensee holds, remove the square brackets and delete the option which does not apply.

<sup>9</sup> Ofgem is open, in appropriate cases, to discussing quarterly amendments to the Maximum Amount.

["**Renewables Obligation**" means the Renewables Obligation Order 2015 or, as applicable in relation to the Licensee, the Renewables Obligation (Scotland) Order 2009<sup>10</sup>].

## **2 Guarantor's obligations independent, primary and autonomous**

- (a) The Guarantor's obligations under this First Demand Guarantee are absolute, irrevocable, unconditional, independent, primary and autonomous and this shall be so notwithstanding any other term of this First Demand Guarantee or any Demand including, without limitation, any reference in this First Demand Guarantee or in any Demand to any underlying or related relationships, events or circumstances.
- (b) The Guarantor's obligations under this First Demand Guarantee are not the obligations of a mere surety under a secondary or conditional instrument.
- (c) Without prejudice to paragraph 5 below, the Guarantor's payment undertaking in this First Demand Guarantee shall be completely free of and not in any way subject to or affected by any claims or defences arising in any way out of any relationship other than the relationship between the Guarantor and the Beneficiary created by the express terms of this First Demand Guarantee.
- (d) In acting under this First Demand Guarantee, the Guarantor deals in and with Demands and other documents only.
- (e) Any Demand received by the Guarantor under this First Demand Guarantee that appears on its face to comply with the terms of this First Demand Guarantee shall be full, final, binding and conclusive proof for all purposes of this Guarantee of the matters stated in that Demand and the Guarantor irrevocably agrees that it shall not argue to the contrary, nor be entitled or obliged to question or verify anything in such a Demand.

## **3 Guarantor's undertaking to pay against Demands**

- (a) The Beneficiary may claim under this First Demand Guarantee by giving to the Guarantor a duly completed Demand. A Demand must be received by the Guarantor by no later than [5]pm ([London<sup>11</sup>] time) on the Expiry Date.
- (b) Subject to the terms of this First Demand Guarantee, the Guarantor unconditionally and irrevocably undertakes to the Beneficiary that it will promptly, and in any event within three Business Days of receiving a Demand:
  - (i) pay to the Beneficiary the amount demanded to the account specified in that Demand; or
  - (ii) notify the Beneficiary that a complying presentation has not been made, specifying the reasons for the presentation's non-compliance.
- (c) A Demand may be made for less than the Maximum Amount and more than one Demand may be made.

---

<sup>10</sup> Delete if this First Demand Guarantee only covers Domestic Customer Credit Balances.

<sup>11</sup> If this First Demand Guarantee is given by an Authorised Guarantor situated outside Great Britain, consider replacing "London" with the name of the leading financial centre in the country in which the Authorised Guarantor is situated.

- (d) The Guarantor will not be obliged to make a payment of the full amount demanded in a Demand under this First Demand Guarantee to the extent that, as a result of that full payment, the aggregate of all payments made by it under this First Demand Guarantee would exceed the Maximum Amount.

#### **4 Expiry**

- (a) The Guarantor shall be released from its obligations under this First Demand Guarantee on the date (if any) notified by the Beneficiary to the Guarantor in writing as the date upon which the obligations of the Guarantor under this First Demand Guarantee are released.
- (b) Unless previously released under paragraph 4(a) above, on 23:59 (London time) on the Expiry Date the obligations of the Guarantor under this First Demand Guarantee will cease with no further liability on the part of the Guarantor except in relation to any compliant Demand validly made under this First Demand Guarantee prior to the Expiry Date that remains unpaid.
- (c) When the Guarantor is no longer under any further obligations under this First Demand Guarantee, the Beneficiary shall return the original of this First Demand Guarantee to the Guarantor. However, no failure to return that original shall prevent paragraphs 4(a) or 4(b) from operating in accordance with their terms.

#### **5 Payments**

All payments under this First Demand Guarantee shall be made in pounds sterling, for value on their due date, to the account of the Beneficiary specified in the relevant Demand, in full and without any deduction for or on account of any type of set-off, abatement, counterclaim or withholding whatsoever.

#### **6 Address for Demands**

- (a) Each Demand shall be in writing and sent by letter or email in legible form to the Guarantor at its address and by or for the attention of the particular department or officer (if any) set out below:

Attention: [ ]

Address: [ ]

Email: [ ]

- (b) The Beneficiary shall not be required to deliver the original or a copy of this First Demand Guarantee when presenting a Demand.

#### **7 Assignment**

- (a) Except as stated in this paragraph 7, the Beneficiary's rights under this First Demand Guarantee may not be assigned or transferred without the Guarantor's consent. However, the Beneficiary may freely assign its rights to claim, make Demands and receive payment under this First Demand Guarantee to an Assignee:

- (i) under an assignment that the Beneficiary notifies to the Guarantor in writing within 10 Business Days of the date of that assignment;
  - (ii) where that notice of assignment is sent by the Beneficiary to the postal or email address set out in paragraph 6(a) above and quotes the name of the Guarantor, the Guarantor's postal address set out in 6(a) and the date of this First Demand Guarantee; and
  - (iii) where that notice of assignment contains the Beneficiary's certification that the Beneficiary considers the assignment desirable in connection with the operation of the Great Britain energy markets (including, without limitation, because the Assignee is, or is to be, a special administrator or a supplier of last resort).
- (b) Within [five] Business Days of receipt, the Guarantor shall acknowledge to both the Beneficiary and the Assignee any notice of assignment which it receives and which appears on its face to comply with paragraph 7(a).

## 8 Governing Law

This First Demand Guarantee and any non-contractual obligations arising out of or in connection with it are governed by English law.

## 9 Jurisdiction and service of process

- (a) The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this First Demand Guarantee (including a dispute relating to any non-contractual obligation arising out of or in connection with this First Demand Guarantee) (each, a "**Dispute**").
- (b) [<sup>12</sup>The Guarantor agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and that it will not argue to the contrary.
- (c) Subject to paragraph 9(e) below, the address for service of the Guarantor under this paragraph 9 is:
- FAO: [name(s)]
- [name of Licensee]
- [address of Licensee in England or Wales].
- (d) Without prejudice to any other mode of service allowed under any relevant law, any Service Document relating to proceedings before the English courts may be served on the Guarantor at its address for service given in this paragraph 9. That service may be made by pre-paid first class recorded delivery post or any other method allowed by law.

---

<sup>12</sup> Delete paragraphs 9(b) to 9(f) inclusive if the Guarantor is incorporated in England and Wales or has a place of business in England and Wales.

- (e) If the Guarantor wishes to change its address for service to a different address in England or Wales, it may do so by giving the Beneficiary at least 20 Business Days' written notice of its new address for service.
- (f) In this paragraph 9, "**Service Document**" means any claim form, application notice, judgment, order or other notice of legal process relating to this Guarantee or any Demand.]

**10 [13Waiver of immunity**

- (a) The Guarantor waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:
  - (i) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
  - (ii) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.
- (b) The Guarantor agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purposes of the English State Immunity Act 1978.]

Yours faithfully,

Guarantor's Authorised Signatory

Signature:

First Name:

Surname:

Position:

Date Signed:

**For and on behalf of the Guarantor**

---

<sup>13</sup> Delete unless the Guarantor enjoys sovereign immunity or other immunity.

## Schedule – Form of Demand

To: [*insert Guarantor's full name and its postal address from paragraph 6(a)*] ("**you**" or the "**Guarantor**")

Date: [ ]

### **Demand under Irrevocable First Demand Guarantee dated [ ] and issued by you in favour of the Gas and Electricity Markets Authority (the "First Demand Guarantee")**

- 1 We refer to the First Demand Guarantee. Terms defined in the First Demand Guarantee have the same meaning when used in this Demand. We are the [Beneficiary of the First Demand Guarantee/the Assignee of the Beneficiary of the First Demand Guarantee under an assignment that complies with paragraph 7 of the First Demand Guarantee<sup>14</sup>].
- 2 [Option 1: We certify that a Non-Payment Event<sup>15</sup> has occurred with respect to the Licensee. / Option 2: We certify that a Licence Event has occurred with respect to the Licensee. / Option 3: We certify that a Credit Event has occurred with respect to the Licensee<sup>16</sup>.]
- 3 We therefore now demand payment of the sum of £[*insert amount demanded in figures*].

- 4 Payment should be made to the following account:

Name: [ ]

Account Number: [ ]

Bank: [ ]

- 5 We confirm that the date of this Demand is no later than the Expiry Date.

Yours faithfully

Authorised Signatory of the [Beneficiary/Assignee<sup>17</sup>]

Signature:

First Name:

Surname:

Position:

Date Signed:

---

<sup>14</sup> Remove the square brackets and delete the option which does not apply.

<sup>15</sup> Non-Payment Events are only relevant where the First Demand Guarantee covers the Renewables Obligation.

<sup>16</sup> Remove the square brackets and delete the options which do not apply.

<sup>17</sup> Remove the square brackets and delete the option which does not apply.

**For and behalf of [Gas and Electricity Markets Authority (as Beneficiary)/insert full legal name of the assignee (as Assignee)<sup>18</sup>**

---

<sup>18</sup> Remove the square brackets and delete the option which does not apply.