

Form of Standby Letter of Credit

Form of standby letter of credit to be provided in respect of a licensee's obligations [under the Renewables Obligation][and][with respect to Customer Credit Balances]¹.

[On headed paper of the Issuer]

To: Gas and Electricity Markets Authority

10 South Colonnade

Canary Wharf

London

E14 4PU

(the "**Beneficiary**")

[Date]

Irrevocable Standby Letter of Credit with reference number []

At the request of [insert full legal name of the applicant] (the "**Applicant**"), we, [insert full legal name of Issuer], (the "**Issuer**") issue this irrevocable and unconditional standby letter of credit (this "**Letter of Credit**") in your favour as its Beneficiary.

Capitalised terms used in this paragraph which are not defined in this Letter of Credit shall have the meanings from time to time given to those terms in the Licence(s). This Letter of Credit 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 licence²][and][the Protected Amount in accordance with Standard Licence Condition 4D³]⁴ and on the following terms and conditions:

1 Definitions

In this Letter of Credit:

"**Assignee**" means an entity to whom the Beneficiary has assigned its right to draw, make Demands and receive payment from the Issuer under this Letter of Credit as permitted by paragraph 6(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**"⁵ 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,

¹ The template can cover Domestic Customer Credit Balances or the Renewables Obligation or both.

² Retain where the Renewables Obligation is covered.

³ Retain where Domestic Customer Credit Balances are covered.

⁴ The template can cover Domestic Customer Credit Balances or the Renewables Obligation or both.

⁵ 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 2009⁶;

"Demand" means a demand for a payment by the Beneficiary pursuant to this Letter of Credit substantially in the form set out in the schedule to this Letter of Credit, with square bracketed passages or options completed, selected or deleted (as applicable);

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

["ISP 98" is defined in paragraph 7 below⁷;

"Licence Event" means either⁸ that 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 both⁹] for supplies in Great Britain;

"Licensee" means [the Applicant/*insert the Licensee's full legal name instead where the Licensee is **not** the Applicant¹⁰*];

⁶ Delete this definition if the Letter of Credit only covers Domestic Customer Credit Balances.

⁷ Delete if this Letter of Credit will be governed by UCP 600.

⁸ Always retain this definition. It is required whether the First Demand Guarantee covers RO only or DCCB only or both.

⁹ Depending on which licences the Licensee holds, delete the option which does not apply.

¹⁰ Remove the square brackets and delete the option which does not apply.

"Maximum Amount" means [*insert currency and amount in words and then in figures*¹¹]; [and]

["Renewables Obligation" means the Renewables Obligation Order 2015 or, as applicable in relation to the Licensee, the Renewables Obligation (Scotland) Order 2009¹²]; [and]

["UCP 600" ¹³means the Uniform Customs and Practice for Documentary Credits (UCP), 2007 Revision, ICC Publication No. 600 (UCP 600).]

2 Issuer's agreement

- (a) The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuer a duly completed Demand. A Demand must be received by the Issuer by no later than 5pm (London time) on the Expiry Date.
- (b) Subject to the terms of this Letter of Credit, the Issuer 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 presentation may be made for less than the Maximum Amount and more than one presentation may be made.
- (d) The Issuer will not be obliged to make a payment of the full amount demanded in a Demand under this Letter of Credit to the extent that, as a result of that full payment, the aggregate of all payments made by it under this Letter of Credit would exceed the Maximum Amount.

3 Expiry

- (a) The Issuer shall be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuer in writing as the date upon which the obligations of the Issuer under this Letter of Credit are released.
- (b) Unless previously released under paragraph 3(a) above, on 23:59 (London time) on the Expiry Date the obligations of the Issuer under this Letter of Credit will cease with no further liability on the part of the Issuer except in relation to any compliant Demand validly presented under the Letter of Credit prior to the Expiry Date that remains unpaid.
- (c) When the Issuer is no longer under any further obligations under this Letter of Credit, the Beneficiary shall return the original of this Letter of Credit to the Issuer. However,

¹¹ Ofgem is open, in appropriate cases, to discussing monthly amendments to the Maximum Amount where this Letter of Credit covers Domestic Customer Credit Balances and more frequent amendments where it covers the Renewables Obligation.

¹² Delete if this Letter of Credit only covers Domestic Customer Credit Balances.

¹³ Delete if this Letter of Credit will be governed by ISP 98.

no failure to return that original shall prevent paragraphs 3(a) or 3(b) from operating in accordance with their terms.

4 Payments

All payments under this Letter of Credit 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.

5 Delivery of Demand

- (a) Each Demand shall be in writing and may be made by letter or email and must be received in legible form by the Issuer 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 Letter of Credit when presenting a Demand.

6 Assignment

- (a) Except as stated in this paragraph 6, the Beneficiary's rights under this Letter of Credit may not be assigned or transferred without the Issuer's consent. However, the Beneficiary may freely assign its rights to draw, make Demands and receive payment under this Letter of Credit to an Assignee:

- (i) under an assignment that the Beneficiary notifies to the Issuer 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 5(a) above and quotes the name of the Issuer, the Issuer's postal address set out in 5(a) and the reference number and date of this Letter of Credit; 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 Issuer 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 6(a).

7 [ISP 98/UCP 600¹⁴]

- (a) Except to the extent that it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the [International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590 ("**ISP 98**")/the Uniform Customs and Practice for Documentary Credits (UCP), 2007 Revision, ICC Publication No. 600 ("**UCP 600**"), but excluding Article 32 of UCP 600¹⁵].
- (b) **[[ISP 98 version¹⁶]**However, an assignment by the Beneficiary to an Assignee that complies with paragraph 6 above shall be deemed for all purposes of this Letter of Credit fully to comply with and satisfy all conditions, requirements, procedures or other terms set out in Rule 6 of ISP 98 and to be fully effective in accordance with its express terms to assign or transfer the rights to draw, make Demand and receive payment under a complying Demand which that assignment purportedly assigns to the Assignee notwithstanding anything to the contrary in that Rule 6 and this shall be so whether or not the Issuer acknowledges the Beneficiary's notice of assignment under paragraph 6 above. **][[UCP 600¹⁷]**However, an assignment by the Beneficiary to an Assignee that complies with paragraph 6 above shall be deemed for all purposes of this Letter of Credit to be fully effective in accordance with its express terms to assign or transfer the rights to draw, make Demand and receive payment under a complying Demand which that assignment purportedly assigns to the Assignee notwithstanding anything to the contrary in UCP 600 and this shall be so whether or not the Issuer acknowledges the Beneficiary's notice of assignment under paragraph 6 above.]

8 Governing Law

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

9 Jurisdiction

The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit)¹⁸.

Yours faithfully,

Issuer's Authorised Signatory

Signature:

First Name:

¹⁴ Select ISP 98 unless the Issuer, or the Issuer and any confirming bank, prefers UCP 600 or it is otherwise difficult or impossible to use ISP 98.

¹⁵ Select ISP 98 unless the Issuer, or the Issuer and any confirming bank, prefers UCP 600, or it is otherwise difficult or impossible to use ISP 98.

¹⁶ Guidance note only – delete when producing the draft Letter of Credit.

¹⁷ Guidance note only – delete when producing the draft Letter of Credit.

¹⁸ Further dispute resolution clauses (such as process agency or address for service) have been omitted as the Letter of Credit will either be issued by a bank or financial institution operating within the UK, or confirmed by a bank or financial institution operating within the UK.

Surname:

Position:

Date Signed:

For and on behalf of the Issuer

Schedule – Form of Demand

To: [*insert Issuer's full name and its postal address from paragraph 5(a)*] ("you" or the "Issuer")

Date: []

Demand under Irrevocable Standby Letter of Credit reference number [] dated [] and issued by you in favour of the Gas and Electricity Markets Authority (the "Letter of Credit")

1 We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand. We are the [Beneficiary of the Letter of Credit/the Assignee of the Beneficiary of the Letter of Credit under an assignment that complies with paragraph 6 of the Letter of Credit¹⁹].

2 [Option 1: We certify that a Non-Payment Event²⁰ 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 Licensee²¹.]

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/Assignee²²]

Signature:

First Name:

Surname:

Position:

Date Signed:

¹⁹ Remove the square brackets and delete the option which does not apply.

²⁰ Non-Payment Events are only relevant where the First Demand Guarantee covers the Renewables Obligation.

²¹ Remove the square brackets and delete the options which do not apply.

²² 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)²³

²³ Remove the square brackets and delete the option which does not apply.