

To: All holders of an electricity supply licence

**Electricity Act 1989
Section 11A(1)(b)**

Modification of the standard conditions of all electricity supply licences

1. Each of the licensees to whom this document is addressed has an electricity supply licence which has been granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 (the Act).
2. Under section 11A(2) of the Act the Gas and Electricity Markets Authority ('the Authority')¹ gave notice on 5 April 2023 ('the Notice') that we propose to introduce a new standard condition 4D in the manner described in the "Decision on Introducing a Minimum Capital Requirement and Ringfencing Customer Credit Balances (CCBs) by Direction" accompanying this notice². We stated that any representations to the modification proposal must be made on or before 5 May 2023.
3. A copy of the Notice was sent to the Secretary of State in accordance with section 11A(4)(b) of the Act, and we have not received a direction that the change should not be made.
4. We received 15 responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website. Our response to these comments is set out in the accompanying Decision Document letter.
5. It is necessary to make a number of minor alterations to the modifications set out in the Notice. These alterations are shown in the attached Schedule 1 (a key has been provided for ease of reference). The reasons for any differences between the modifications set out in the Notice and the modifications reflected in Schedule 1 are to address minor issues and corrections raised in the consultation responses.
6. We are making this licence change because recent events in the energy market have demonstrated that some retail businesses had insufficient capital to withstand market shocks and manage their business specific risks. A cohort of suppliers have been overly reliant on CCBs for working capital and are generally insufficiently capitalised, despite strengthened guidance and regulations. These suppliers are more vulnerable to market shocks and therefore more likely to fail and exit the market due to insolvency. It is also the case that these suppliers have insufficient liquidity to refund CCBs.
7. The effect of the modification will be to both reduce the risk of supplier failures, and, where suppliers do fail, to reduce the Mutualised Costs associated with these failures. The effect of this specific modification is to allow the Authority to issue specific requirements in relation to the amount of domestic customer credit balances which must be protected and the sources of funding which may be used to provide cover for the Protected Amount. The rolling requirement on the licensee to calculate and notify the Authority of the Protected Amount on a monthly basis will enable the Authority to ascertain whether the licensee has suitable protection in respect to its domestic customer credit balances.

8. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 11C of the Act, Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules³ requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-sensitive notice setting out the matters required in Rule 5.2. The attached Schedule 2 provides a list of the relevant licence holders in relation to this modification. Section 11A(10) of the Act sets out the meaning of 'relevant licence holder'.

Under the powers set out in section 11A(1)(b) of the Act, we hereby modify the standard licence conditions for all electricity supply licences in the manner specified in attached Schedule 1. This decision will take effect from 20 September 2023.

This document is notice of the reasons for the decision to modify the electricity supply licences as required by section 49A(2) of the Act.



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Rohan Churm
Interim Director of Financial Resilience and Controls
Duly authorised on behalf of the
Gas and Electricity Markets Authority

26 July 2023

Schedule 1 – Draft of proposed modifications to the standard conditions (SLCs) of all electricity supply licences

We have included SLC4D below which shows the modifications that are being made alongside any changes to the proposed modifications made in April 2023. A key has been provided for ease of reference.

The drafting below will be placed after 4C (Ongoing fit and proper requirement)

Key

- **No format** = current wording in the licence that is being kept
- **Strikethrough** = proposed modification to remove wording from licence that is being kept
- **Underlined** = proposed modification that is being kept
- **Underlined + strikethrough** = proposed modification but not being kept
- **Dashed underlined** = proposed to be removed but being reinstated now
- **Double underlined + yellow** = modification not previously proposed but being introduced now

SLC 4D Protecting Domestic Customer Credit Balances

Credit Balance Support Arrangements

4D.1 The licensee must comply with the provisions of this condition where the Authority has issued a direction pursuant to standard condition ~~4B.10~~ **4B.23** setting out the Adjustment Percentage for the purposes of calculating the Protected Amount in accordance with the formula set out in paragraph 4D.4 of this condition.

4D.2 The licensee must:

- put in place and thereafter maintain Credit Balance Support Arrangements that covers the Protected Amount in full for the duration of the Initial Period and thereafter each consecutive calendar month; and
- confirm to the Authority that the Credit Balance Support Arrangements Protect the Protected Amount.

4D.3 The licensee's Credit Balance Support Arrangements must be notified to the Authority in the form **published** provided for in the guidance on standard condition 4D ("the Guidance on the Operational Capability and Financial Responsibility Principles") **on the Authority website and which the Authority may from time-to-time revise following consultation.**

Calculating the Protected Amount

4D.4 The Protected Amount for the Initial Period and each subsequent calendar month.(each being a "Relevant Period") shall be:

the Gross Credit Balance minus the Unbilled Consumption multiplied by the Adjustment Percentage.

4D.5 The Gross Credit Balance and the Unbilled Consumption for a Relevant Period are nominal values recorded by the licensee at the close of business the day after the date of the direction in respect of the Initial Period or the nominal values recorded by the licensee at the close of business on the last day of the calendar month immediately preceding the commencement of such Relevant Period.

4D.6 For each consecutive Relevant Period, the licensee must ensure that:

- i) its existing Credit Balance Support Arrangements cover the Protected Amount in full for the duration of each Relevant Period; or
- ii) if it has modified or supplemented its Credit Balance Support Arrangements, the modified or new Credit Balance Support Arrangements cover the Protected Amount in full for the duration of the Relevant Period.

Process for calculating the Protected Amount

4D.7 Following a direction by the Authority, the licensee must calculate and notify to the Authority the Protected Amount for each Relevant Period in accordance with the provisions of paragraph 4D.4 of this condition. Day 1 of the Initial Period commences on the date specified in the direction. Day 1 of each subsequent Relevant Period commences on the first day of each calendar month.

4D.8 The licensee must:

- a) assess the sum total of funds to be protected for the duration of the Relevant Period;
- b) submit the calculation of the funds to be protected including any information data or analysis used to make the final calculation;
- c) source and arrange one or more of the following Credit Balance Support Arrangements to cover the Protected Amount in full for the duration of the Relevant Period:
 - i. Letter of Credit;
 - ii. First Demand Guarantee; or
 - iii. Cash deposited in a Credit Balance Trust Account.
- d) submit written confirmation from a Director with responsibility or oversight for the licensee's finances that the calculation of the Protected Amount made and notified to the Authority has been made in accordance with paragraph 4D.4 4D.7 of this condition;
- e) evidence that the licensee's Credit Balance Support Arrangements cover the most recently calculated Protected Amount, including (where applicable) the most recent bank statement in relation to any Credit Balance Trust Account and copies of its Credit Balance Support Arrangements
- f) submit to the Authority the information set out in sub-paragraphs (b), (d) and (e) above in the form provided for in the Guidance on the Operational Capability and Financial Responsibility Principles for each consecutive Relevant Period on or before Day 14 of the Relevant Period.

Guidance

4D.9 The licensee must have regard to any Guidance (in addition to the 'Guidance on the Operational Capability and Financial Responsibility Principle') referred to in condition 4D.3) issued and from time-to-time revised, following consultation, in respect of standard condition 4D.

Methodology and Definitions

4D.10 For the purpose of this condition:

Phrase

Acceptable Bank

Definition

A bank or other regulated financial institution situated in the United Kingdom that has an Acceptable Credit Rating.

Acceptable Credit Rating

An Acceptable Credit Rating is an assessment by —
i. Fitch Ratings as having a long term debt rating of "F1" or better,
ii. Moody's as having a long term debt rating of "A3" or better, or;
iii. Standard and Poor's as having a long term debt rating of "A1" or better.

An Acceptable Credit Rating is an assessment by at least two of Fitch Ratings, Moody's and Standard and Poor's that the bank or other regulated financial institution has a long-term debt rating of "A-" or better (in the case of Fitch Ratings and Standard and Poor's) or "A3" or better by Moody's.

Adjustment Percentage

is the % the Authority directs in accordance with standard condition 4B.25 4B.29.

Credit Balance Support Arrangements

One or more of the following:

- (i) Standby Letter of Credit;
- (ii) First Demand Guarantee; or
- (iii) Cash deposited in a Credit Balance Trust Account.

Credit Balance Trust Account

A dedicated and segregated bank account in the name of the licensee (i) with a bank branch in England or Wales, (ii) over which the licensee has declared a trust complying with the Credit Balance Trust Requirements.

Credit Balance Trust Beneficiaries

Means both:

- (i) the licensee and
- (ii) any Supplier(s) of Last Resort nominated from time to time by the Authority in relation to

Fixed Direct Debit Domestic Customers of the licensee or, prior to the appointment of any such Supplier(s) of Last Resort, the Fixed Direct Debit Domestic Customers of such licensee as a whole.

Credit Balance Trust Requirements

~~A trust in the form provided for in the Guidance on the Operational Capability and Financial Responsibility Principle declared by a licensee in favour of the Credit Balance Trust Beneficiaries, over a dedicated and segregated bank account of the licensee meeting the following requirements:~~

A dedicated and segregated bank account in the name of the licensee: (i) with a bank branch in England and Wales; (ii) over which the licensee has declared a trust in favour of the Credit Balance Trust Beneficiaries in the form published on the Authority's website that meets the following requirements:

- a) the trust provides for the licensee to hold the entire benefit of the Credit Balance Trust Account, and all funds from time to time standing to the credit of the Credit Balance Trust Account, on trust for the Credit Balance Trust Beneficiaries as the only beneficiaries;
- b) the trust allows funds standing to the credit of the Credit Balance Trust Account in excess of the then applicable Protected Amount to be released from the Credit Balance Trust Account to a general operations account of the licensee;
- c) the Protected Amount shall be payable to the Authority or any nominee of the Authority on demand; the payment of the Protected Amount, following a Credit Event or a Licence Event, to the Supplier of Last Resort nominated from time to time by the Authority, or, 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 to the relevant purchaser, or otherwise in accordance with the directions of the Authority;
- d) the trust prohibits:
 - (i) any security being created by the licensee over the Credit Balance Trust Account;
 - (ii) the Credit Balance Trust Account being overdrawn;

- (iii) withdrawals of the Protected Amount from the Credit Balance Trust Account other than: (A) in excess of the then applicable Protected Amount, (B) to refund to Fixed Direct Debit Domestic Customers overpayments by such Fixed Direct Debit Domestic Customers, (C) if the Authority determines that the Licensee no longer needs to hold its interest in Credit Balance Trust Account on trust, or (D) as mentioned in paragraph (c) of this definition of Credit Balance Trust Requirements; and or (E) in accordance with directions by the Authority;
- (iv) the crediting of funds to the Credit Balance Trust Account that are not Domestic Consumer Credit Balances or interest accruing on the Credit Balance Trust Account;
- and
- e) notice of such trust has been given to the relevant account bank.

Credit Event

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):
- (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.

Director

A person legally responsible for running the company with knowledge and understanding of the licensee's finances.

Domestic Customer Credit Balance

Means, during any period, the aggregate amount by which payments to be made by Fixed Direct Debit Domestic Customers under or in accordance with the relevant Domestic Supply Contracts exceeds the total amount of Charges which are to become payable by Fixed Direct Debit Domestic Customers under those Domestic Supply Contracts during such period minus any amount refunded to the Domestic Customer during that period.

Domestic Supply Contract

As defined in standard condition 1.3.

First Demand Guarantee

Means an An irrevocable, unconditional, independent, primary and autonomous (in all circumstances) guarantee in the form ~~provided for in the Guidance on the Financial Responsibility Principle published on the Authority's website from time to time provided by a person established within the~~

~~United Kingdom or in an EU member state or European Economic Area member state that is bound by the 2005 Hague Convention on Choice of Laws and incorporated it into its law with a credit rating of at least BBB on issuance and maintained throughout the Liability Period, and that meets the following requirements:~~ provided by a person established within the United Kingdom or in an EU member state, or European Economic Area member state, that is bound by the 2005 Hague Convention on Choice of Court Agreements and has incorporated that convention into its laws, with a long term credit rating by at least two of Fitch Ratings, Moody's and Standard and Poor's that the guarantor has a long-term debt rating of "A-" or better (in the case of Fitch Ratings and Standard and Poor's) or "A3" or better by Moody's on issuance and maintained throughout the tenor of the First Demand Guarantee and that meets the following requirements:

- a) ~~it does not contain any surety defence waivers or other drafting that is more characteristic of a suretyship guarantee than a primary and autonomous first demand instrument;~~
- b) ~~it is issued in favour of the Authority as the beneficiary, or in favour of any other beneficiary that the Authority shall nominate;~~
- c) ~~it provides for drawing rights and their proceeds expressly to be freely assignable by the Authority or the Authority's nominee; it expressly provides the Authority with the right freely to assign the proceeds of any drawing under the First Demand Guarantee;~~
- d) ~~it is available for drawing on demand for the full duration of the Liability Period; it is available for drawing on demand for throughout its tenor, with that tenor automatically extending annually by 365 days unless the beneficiary receives a notice no earlier than 60, and no later than 45, clear days before the date upon which that tenor would otherwise automatically extend, stating that the tenor of the First Demand Guarantee shall not extend beyond that date (a "Non-Extension Notice");~~
- e) ~~it provides for a compliant demand to state that, by reason of the insolvency of the licensee or revocation of the licensee's licence, the beneficiary is entitled to demand, and does demand, payment of an amount equal to, or less than, the Protected Amount~~

~~prevailing on the date of the demand and provides a form of compliant demand in an annex to the guarantee; it provides for a compliant demand to state that, by reason of (i) certain specified insolvency events occurring with respect to the licensee or any of its assets, or receipt by the beneficiary of a Non-Extension Notice under and relating to that First Demand Guarantee; or (ii) revocation or surrender of the licensee's licence , the beneficiary is entitled to demand, and does demand, payment of an amount equal to, or less than, the Protected Amount prevailing on the date of the demand and provides a form of compliant demand in an annex to the guarantee;~~

- f) ~~it provides for all demands to be full, final, binding and conclusive proof for all purposes of the guarantee of their contents, including (without limitation) that the entity issuing such a guarantee may not dispute any demand on these matters;~~
- g) ~~it permits partial and multiple demands that, in aggregate, do not exceed the then-current Protected Amount;~~
- h) ~~it provides for the Protected Amount to be available for drawing throughout the Liability Period and for that amount automatically to be topped up quarterly to the full amount required to be available for drawing under this Condition it provides for the Protected Amount to be available for drawing throughout its tenor~~
- i) ~~it provides for all payments under the guarantee to be made in full, on demand and without any deduction for or on account of any type of set-off or counterclaim to such entity and account as the beneficiary shall specify in a demand; and~~
- j) ~~it is expressly governed by UCP 600 (excluding article 32) or ISP 98, governed by English law, with an exclusive jurisdiction clause in favour of the English courts; and the guarantee has been executed and delivered as a deed by the guaranteeing party. the guarantee is in the form published on the Authority's website from time to time.~~

Fixed Direct Debit

Means an instruction from the customer to their bank or building society that authorises an organisation to collect a fixed amount from the customer's account at regular intervals, provided

that advance notice of the amount and the dates of collection have been provided.

Gross Credit Balance

Means the aggregate of the licensee's Domestic Customer Credit Balances held in relation to Fixed Direct Debit Domestic Customers.

Initial Period

Means the 28-day period commencing on the date the direction is issued pursuant to standard condition 4B.10 ~~4B.23~~.

ISP 98

Means the International Chamber of Commerce's International Standby Practices (ICC Publication No 590)

Licence Event

Means:

- (a) the Authority has revoked the Licensee's Licence; or
- (b) the Licensee has surrendered its Licence.

Payment on Demand

Means immediate, unconditional and irrevocable payment of any amount demanded by the Authority which is equal to or less than the Protected Amount. For an SBLC or First Demand Guarantee, Payment on Demand may only be deferred for such period of days as may be specified on the face of the SBLC or First Demand Guarantee in question.

Protect

To put in place, and continuously maintain in effect, a Credit Balance Support Arrangement in respect of the Protected Amount that protects that sum of money in the event of the licensee's being subject to specified insolvency events, or licence revocation or licence surrender. "Protecting" and "Protection" shall be construed accordingly and shall extend to requiring that SBLCs or First Demand Guarantees be available for drawing if a Non-Extension Notice (as defined above or, as applicable, below) is served under the instrument in question on the beneficiary of that instrument.

Protected Amount

Means the Domestic Customer Credit Balance multiplied by the Adjustment Percentage.

Relevant Period

Means either the Initial Period or a calendar month.

Standby Letter of Credit or "SBLC"

An irrevocable, independent, primary and autonomous **standby** letter of credit in the form provided for in the Guidance on the Operational Capability and Financial Responsibility Principle issued (or confirmed) **published on the Authority's website from time to time, that is issued or confirmed** by an Acceptable Bank in favour of the Authority, or any other beneficiary that the Authority may nominate, that meets the following requirements:

- a) **it contains express provision for the drawing rights and their proceeds under the SBLC to be freely assignable by the Authority or to any entity nominated by the Authority; it must be available for drawing on demand throughout its tenor, with the tenor of the SBLC automatically renewing annually for 365 days, unless its issuing bank (or confirming bank) serves a notice on the beneficiary of the SBLC no earlier than 60, and no later than 45, clear days before the date upon which the tenor of the SBLC would otherwise automatically extend. Such notice stating that the tenor of that SBLC shall not extend beyond that date (a "Non-Extension Notice");**
- b) the SBLC must either be available for drawing on demand for the full duration of the Liability Period or, during the full term of the Liability Period, the SBLC shall automatically renew annually for 365 days, but with the final renewal expiring at the end of Liability Period and an issuing bank (or confirming bank) may refuse to renew the SBLC on its expiry only if it gives written notice (a Cancellation Notice) to both the beneficiary and the Authority, such notice to be received by the beneficiary and the Authority not less than 120 calendar days before the date upon which the SBLC would otherwise renew; **it does not limit the ability of the beneficiary freely to assign the proceeds of any drawing under the SBLC;**
- c) a demand must either state that, by reason of (i) certain insolvency of the Licensee or revocation of its Licence, or (ii) receipt by the beneficiary of a Cancellation Notice relating to the SBLC, the beneficiary is entitled to demand, and does demand, payment of an amount equal to, or less than, the Protected Amount prevailing on the date of the

demand; a demand must either state that, by reason of (i) certain specified insolvency events occurring with respect to the licensee or any of its assets or receipt by the beneficiary of a Non-Extension Notice under and relating to the SBLC; or (ii) revocation or surrender of its licence, the beneficiary is entitled to demand, and does demand, payment of an amount equal to, or less than, the Protected Amount prevailing on the date of the demand;

- d) all demands to be full, final and conclusive proof for all purposes of the SBLC of their contents, including (without limitation) as to statements (i) or (ii) in the previous bullet point and neither the issuing bank nor any confirming bank may look behind any demand on these matters;
- e) a form of a compliant demand shall be annexed to the SBLC;
- f) Partial and multiple demands permitted in aggregate total amount up to the maximum amount of the SBLC;
- g) All payments under the SBLC shall be made in full, on demand and without any deduction for or on account of any type of set-off or counterclaim to such entity and account as the beneficiary shall specify in a demand under the SBLC; and
- h) The SBLC is expressed to be governed by UCP 600 (excluding article 32) or ISP 98, governed by English law, with an exclusive jurisdiction clause in favour of the English or Scottish courts.

UCP 600

Means the International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits (2007 Revision)

Unbilled Consumption

Means the value of the energy by the licensee to likely be consumed by all Fixed Direct Debit Domestic Customers and calculated in accordance with the terms of the relevant Domestic Supply Contracts, but not yet included in a Bill or deducted from that Fixed Direct Debit Domestic Customer's Domestic Customer Credit Balance.

Schedule 2: list of the relevant licence holders in relation to this modification

Electricity Supply licence holders are listed at: [List of all electricity licensees including suppliers | Ofgem](#)