

## SECTION M: CREDIT COVER AND CREDIT DEFAULT

### 1. GENERAL

#### 1.1 Introduction

1.1.1 This Section sets out:

- (a) the basis on which a Trading Party's Energy Indebtedness will be calculated;
- (b) the basis on which Trading Parties may provide Credit Cover in respect of their Energy Indebtedness;
- (c) the basis on which a Trading Party's Energy Credit Cover will be determined;
- (d) circumstances which will constitute Credit Default in relation to a Trading Party, and the consequences of such Credit Default;
- (e) arrangements for payment of compensation to Trading Parties in certain circumstances where errors have been made in calculations under this Section M.

#### 1.2 Energy Indebtedness

1.2.1 For the purposes of the Code:

- (a) in relation to a Settlement Period  $j$  the "**Energy Indebtedness**" ( $EI_{pj}$ , in MWh) of a Trading Party  $p$  shall be the algebraic sum of:
  - i) the algebraic sum of Actual Energy Indebtedness for Trading Party  $p$  for those Settlement Days  $d$  within the 29 day period for which (at Gate Closure for Settlement Period  $j$ ), Gate Closure has passed for the first Settlement Period of the Settlement Day following that on which the Settlement Calendar specifies that the Interim Information Settlement Run for Settlement Day  $d$  is to take place (but excluding those days for which, as a result of a delay in the Interim Information Settlement Run in accordance with Section T1.4, the ECVA does not receive the Interim Information Settlement Run data from the SAA by Gate Closure for the first Settlement Period of the Settlement Day containing Settlement Period  $j$ ); and
  - ii) the algebraic sum of Credit Assessment Energy Indebtedness for Trading Party  $p$  in relation to that Settlement Period and all prior Settlement Periods in days falling within the 29 day period for which paragraph 1.2.1(a)(i) does not apply;
- (b) a reference to a Trading Party's Energy Indebtedness at any time is to its Energy Indebtedness in relation to the latest Settlement Period for which Gate Closure occurred before such time;
- (c) in relation to a Settlement Period, the 29 day period means the period of 29 Settlement Days expiring on (and including) the Settlement Day which includes that Settlement Period;
- (d) for the purposes of paragraph 1.2.1(a)(i), where (by Gate Closure for the first Settlement Period of the Settlement Day containing the Settlement Period  $j$ ), the ECVA does not receive the Interim Information Settlement Run data from the

SAA in accordance with Section T5.3.5 for any Settlement Day  $d$  within the 29 day period to which paragraph 1.2.1(a)(i) applies (other than as a result of a delay in the Interim Information Settlement Run in accordance with Section T1.4), the ECVAA shall use the Credit Assessment Energy Indebtedness for the Settlement Periods in that Settlement Day  $d$  but without prejudice to paragraph 4; and

- (e) in relation to a Trading Party and Settlement Day, where BSCCo:
- i) is aware that the ECVAA has not received relevant Interim Information Settlement Run data from the SAA in accordance with Section T5.3.5; or
  - ii) has substantial evidence or other reasons to believe that the data to be derived from the Initial Settlement Run for that Trading Party and that Settlement Day are likely to be significantly different (in the context of that particular Trading Party) from the corresponding Interim Information Settlement Run data received by the ECVAA from the SAA in accordance with Section T5.3.5;

the absence of such data or the likelihood of such a significant difference (as the case may be) may, if BSCCo so decides and to the extent that it materially affects matters, constitute a material doubt for the purposes of paragraph 3.4.3(a)(ii).

- 1.2.2 For the purposes of paragraph 1.2.1, the Credit Assessment Energy Indebtedness ( $CEI_{pj}$ , in MWh) of a Trading Party in relation to a Settlement Period shall be determined as follows:

$$CEI_{pj} = - \left( \sum_{a,i} CAQCE_{iaj} - \sum_a QABC_{aj} \right)$$

where:

- (a) summation on 'a' extends to the Production Energy Account and Consumption Energy Account of the Trading Party, and
- (b)  $CAQCE_{iaj}$  is the Credit Assessment Credited Energy Volume in accordance with paragraph 1.2.3.

- 1.2.3 The Credit Assessment Credited Energy Volume ( $CAQCE_{iaj}$ , in MWh) shall be determined:

- (a) for each BM Unit which is a Consumption BM Unit, and for each Energy Account which is a Subsidiary Energy Account for that BM Unit, as follows:

$$CAQCE_{iaj} = (SPD * BMCAIC_i) * (QMPR_{iaj}/100) + QMFR_{iaj}$$

- (b) for each BM Unit which is a Production BM Unit, and for each Energy Account which is a Subsidiary Energy Account for that BM Unit, as follows:

$$CAQCE_{iaj} = (SPD * BMCAEC_i) * (QMPR_{iaj}/100) + QMFR_{iaj}$$

- (c) for each BM Unit which is a Consumption BM Unit, for the Energy Account which is the Lead Energy Account for that BM Unit, as follows:

$$CAQCE_{iaj} = (SPD * BMCAIC_i) - \sum_a CAQCE_{iaj}$$

- (d) for each BM Unit which is a Production BM Unit, for the Energy Account which is the Lead Energy Account for that BM Unit, as follows:

$$CAQCE_{iaj} = (SPD * BMCAEC_i) - \sum_a CAQCE_{iaj}$$

where, for the purposes of paragraphs 1.2.3(c) and 1.2.3(d) only,  $\Sigma_a$  represents the sum over all Energy Accounts other than the Lead Energy Account.

1.2.4 A change in the value of BM Unit Credit Assessment Export Capability or BM Unit Credit Assessment Import Capability for a BM Unit shall apply for the purposes of the determination of values of Credit Assessment Credited Energy Volume (for relevant Trading Parties) in respect of Settlement Periods from and including the first Settlement Period of the day on which, in accordance with paragraph 1.6, the change becomes effective.

1.2.5 For the purposes of paragraph 1.2.1, in relation to a Settlement Day d, the Actual Energy Indebtedness of Trading Party p ( $AEI_p$ , expressed in MWh) shall be determined as follows:

$$AEI_p = \text{Trading Charges} / CAP$$

where:

- (a) CAP is the Credit Assessment Price in accordance with paragraph 1.4 prevailing at the time the relevant calculation is to be made by the ECVAAs; and
- (b) The Trading Charges are the single net credit or debit amount (expressed in £) for that Trading Party, determined by the Interim Information Settlement Run, for Settlement Day d as referred to in paragraph T5.3.3 (c).

1.2.6 The ECVAAs shall determine each Trading Party's Energy Indebtedness in relation to each Settlement Period as soon as reasonably practicable after Gate Closure for that Settlement Period.

### 1.3 Authority for steps under Sections M and P

1.3.1 In relation to the provisions of this Section M and Section P (and without prejudice to the generality of Section U2.6, but without prejudice to the ability of a Trading Party to raise a Trading Dispute), each Trading Party:

- (a) acknowledges that the calculation of Energy Indebtedness and other matters to be calculated under this Section M involves the possibility of error;
- (b) agrees that (subject to paragraph 3.2.4) the steps provided for in paragraph 3 and Sections P2.4 and P3.4 are to be taken notwithstanding any such error;
- (c) acknowledges that such Trading Party may avoid any such steps being taken, including by providing additional Credit Cover (on the basis that it may withdraw such additional Credit Cover in accordance with paragraph 2.3.3 following resolution of such error).

1.3.2 Each Trading Party:

- (a) hereby authorises the Panel, any Panel Committee, BSCCo, the ECVAAs and the SAA to take any step contemplated by paragraph 3 and Sections P2.4 and P3.4; and
- (b) agrees that (without prejudice to the generality of any other provision of the Code which limits or excludes liability), the Panel, each Panel Committee,

BSCCo, and each BSC Agent shall have no liability (in contract or tort including negligence or otherwise) to such Trading Party for the taking of any such step, except as provided in paragraph 4, and waives any such liability that any such body or person might otherwise have.

- 1.3.3 Nothing in paragraph 1.3.2(b) shall exclude or limit the liability of any person for death or personal injury resulting from that person's negligence.

#### **1.4 Credit Assessment Price**

- 1.4.1 For the purposes of the Code the "**Credit Assessment Price**" shall be such amount (in £/MWh) as the Panel shall from time to time determine, after consultation with Trading Parties, as the price which it would be appropriate to use to determine the equivalent financial amount of Trading Parties' Energy Indebtedness for the purposes of this Section M.

- 1.4.2 Whenever the Panel determines to revise the Credit Assessment Price:

- (a) the Panel shall notify the revised Credit Assessment Price to each Trading Party, the FAA and the ECVA;A;
- (b) the revised Credit Assessment Price shall be effective for the purposes of the Code from the date specified by the Panel, which shall not be earlier than the 20th Business Day following the date of notification by the Panel under paragraph (a).

#### **1.5 Credit Assessment Load Factor**

- 1.5.1 The Panel shall establish and may from time to time revise, and shall provide to BSCCo and make available to all Trading Parties, principles or guidance as to the basis on which values of Credit Assessment Load Factor are to be assigned to BM Units of different types (of such descriptions as the Panel shall decide).

- 1.5.2 Where (in accordance with Section K3) a Party applies to register a BM Unit or a Supplier is to be registered as holding Base BM Units:

- (a) the CRA shall so notify BSCCo;
- (b) BSCCo shall (in accordance with the prevailing principles or guidance established by the Panel under paragraph 1.5.1) determine and notify to the CRA and to the Party a value of Credit Assessment Load Factor for such (or each such) BM Unit.

- 1.5.3 BSCCo may from time to time determine (in accordance with the prevailing principles or guidance established by the Panel under paragraph 1.5.1) and notify to the CRA and the Lead Party a revised value of Credit Assessment Load Factor for a BM Unit, together with the date (not sooner than 20 Business Days after such notification, unless the Lead Party agrees otherwise) with effect from which such value is to become effective.

- 1.5.4 A Party shall, if requested by BSCCo, provide to BSCCo such information as BSCCo may reasonably so request for the purposes of determining a value or revised value of Credit Assessment Load Factor for any BM Unit of which that Party is or has applied to be Lead Party.

- 1.5.5 Any value of Credit Assessment Load Factor determined and notified pursuant to paragraph 1.5.2(b) or 1.5.3 by BSCCo shall be the Credit Assessment Load Factor for the BM Unit upon its registration or (as the case may be) the effective date notified under

paragraph 1.5.3, and shall be binding on all Parties for that purpose, but without prejudice to paragraph 1.5.6.

1.5.6 The Lead Party in respect of a BM Unit may, within a period of two months following:

- (a) the determination by BSCCo of a value or revised value of Credit Assessment Load Factor, or
- (b) any revision by the Panel of the principles or guidance under paragraph 1.5.1

by notice to the Panel Secretary request the Panel to re-determine the value of Credit Assessment Load Factor for the time being applying in respect of the BM Unit.

1.5.7 The Panel will consider any request of a Party pursuant to paragraph 1.5.6, wherever practicable at the next meeting of the Panel, and will either confirm the prevailing value or determine a new value of Credit Assessment Load Factor, and BSCCo shall notify the decision of the Panel to the Party and the CRA.

1.5.8 Where the Panel is requested to redetermine the value of Credit Assessment Load Factor for a BM Unit, the Panel may do so without reference to the principles and guidance for the time being established under paragraph 1.5.1 if it considers it appropriate to do so.

1.5.9 Where the Panel determines (pursuant to paragraph 1.5.7) a new value of Credit Assessment Load Factor, that value shall become the Credit Assessment Load Factor for the BM Unit with effect from the third Business Day (or such later day as the Panel may decide) after the meeting of the Panel at which it was decided.

## 1.6 Import and Export Capabilities

1.6.1 For the purposes of the Code:

- (a) the BM Unit Credit Assessment Export Capability ( $BMCAEC_i$ ) for a Production BM Unit shall be the quantity (in MW) determined as follows:

$$BMCAEC_i = CALF_i * GC_i$$

- (b) the BM Unit Credit Assessment Import Capability ( $BMCAIC_{ij}$ ) for a Consumption BM Unit shall be the quantity (in MW) determined as follows:

$$BMCAIC_i = CALF_i * DC_i$$

where:

$CALF_i$  is the Credit Assessment Load Factor applying in relation to the relevant BM Unit;

$GC_i$  is the Generation Capacity of the BM Unit;

$DC_i$  is the Demand Capacity of the BM Unit.

1.6.2 For each BM Unit the CRA shall:

- (a) upon the registration of the BM Unit, and
- (b) thereafter upon any change in the Credit Assessment Load Factor, Generation Capacity or (as the case may be) Demand Capacity of the BM Unit

determine and record in the CRS the BM Unit Credit Assessment Export Capability or (as the case may be) BM Unit Credit Assessment Import Capability for that BM Unit.

## **2. CREDIT COVER AND ENERGY CREDIT COVER**

### **2.1 Provision of Credit Cover**

2.1.1 A Trading Party may on any Business Day provide Credit Cover by delivering to the FAA on behalf of the BSC Clearer:

- (a) a Letter of Credit valid for an initial period of not less than 3 months, and/or
- (b) cash which will be credited by the FAA on behalf of the BSC Clearer to the Reserve Account.

2.1.2 A Trading Party may from time to time (by giving notice to the FAA) alter the amounts provided (as Credit Cover) between different Letters of Credit and/or by way of Letter of Credit and cash, provided that (but without prejudice to paragraph 2.3.1) the amount of the Credit Cover provided by the Trading Party is not thereby reduced.

2.1.3 The amount of a Trading Party's Credit Cover at any time shall be:

- (a) the sum of:
  - (i) the maximum undrawn amount for the time being of any Letter of Credit delivered by it, and
  - (ii) the principal amount of any cash paid by it (for value not later than that time) and credited to the Reserve Account by the FAA on behalf of the BSC Clearer;

less

- (b) the sum of any amounts payable by the Trading Party in respect of Trading Charges which:
  - (i) have become due for payment and have not been paid by the Trading Party on the relevant Payment Date in accordance with Section N, and
  - (ii) remain unpaid at such time.

Provided that if the amount so determined is negative, the amount of the Credit Cover shall be zero.

2.1.4 The form of Letter of Credit (subject as provided in the definition thereof) is set out in Annex M-1.

### **2.2 Letter of Credit**

2.2.1 Without prejudice to paragraphs 2.1.2 and 2.3, where a Trading Party has delivered a Letter of Credit (the "**current**" Letter of Credit) by way of providing Credit Cover:

- (a) not later than 10 Business Days before the current Letter of Credit is due to expire, the Trading Party shall:

- (i) provide to the FAA confirmation from the issuing bank that the validity of the current Letter of Credit will be extended by a further period of not less than 3 months, or
  - (ii) provide to the FAA a new Letter of Credit, valid for a period of not less than 3 months commencing not later than the expiry of the current Letter of Credit and for an amount not less than that of the current Letter of Credit;
- (b) if at any time the issuing bank ceases to have the required credit rating specified in the definition of Letter of Credit, the Trading Party shall forthwith and in any event within 3 Business Days after notice from the FAA, either:
  - (i) provide to the FAA a new Letter of Credit, issued by a bank which has such required credit rating, valid for a period of not less than 3 months; and/or
  - (ii) deliver cash to the FAA on behalf of the BSC Clearer in accordance with paragraph 2.1.1

and the amount of any new Letter of Credit plus cash so delivered shall not less than that of the current Letter of Credit;
- (c) where paragraph (b) applies, the current Letter of Credit shall continue to be counted in determining the Trading Party's Credit Cover during the period (of up to 3 Business Days) until the Trading Party provides a new Letter of Credit as referred to in that paragraph.

2.2.2 If in relation to a Letter of Credit a Trading Party fails to comply (by the time therein required) with paragraph 2.2.1(a) or (b), the FAA on behalf of the BSC Clearer shall immediately, without notice to the Trading Party, demand payment of the entire amount of the Letter of Credit and credit the Reserve Account with the proceeds.

2.2.3 Where a Trading Party has provided a Letter of Credit, the FAA shall notify the Trading Party of the date on which it is due to expire, not less than 20 Business Days before that date (but any failure of the FAA to do so shall not prejudice the application of paragraphs 2.2.1 and 2.2.2).

## **2.3 Reduction of Credit Cover**

2.3.1 If a Trading Party wishes at any time to reduce the amount of its Credit Cover:

- (a) the Trading Party shall give notice to that effect to the ECVAAs;
- (b) the ECVAAs shall determine and notify to the FAA and the Trading Party, on the first Business Day after the expiry of the waiting period, the minimum eligible amount;
- (c) the Trading Party may, not later than the second Business Day following the ECVAAs' notification under paragraph (b), by notice to the FAA request, and the FAA on behalf of the BSC Clearer shall consent to:
  - (i) a reduction in the amount of a Letter of Credit provided by the Trading Party, and/or
  - (ii) a withdrawal of cash deposited by the Trading Party

provided that the amount of the Trading Party's Credit Cover following such reduction and/or withdrawal is not less than the minimum eligible amount and that that Trading Party is not in default of any obligation to make a payment to the BSC Clearer and is not a Defaulting Party (as defined in Section H3).

2.3.2 For the purposes of paragraph 2.3.1:

- (a) the "**waiting period**" is the period of 10 Settlement Days commencing with the Settlement Day on which the Trading Party's notice under paragraph 2.3.1(a) was received by the ECVAA;
- (b) the "**minimum eligible amount**" is the lowest amount for which the Trading Party's Credit Cover Percentage, if it were redetermined for each Settlement Period in the waiting period on the assumption that the Trading Party's Credit Cover were equal to that amount, would be not greater than 75% in relation to any such Settlement Period.

2.3.3 If at any time:

- (a) the ECVAA has given to a Trading Party a level 1 default notice which was not cancelled pursuant to paragraph 3.2.4, or notified a Trading Party that it is in Credit Default;
- (b) following such notice or notification the Trading Party provided additional Credit Cover; and
- (c) after the Trading Party provided additional Credit Cover, the ECVAA established that, or it is determined pursuant to Section W that, the level 1 default notice should not have been given or that the Trading Party was not in Credit Default

then paragraph 2.3.4 shall apply.

2.3.4 In the circumstances described in paragraph 2.3.3:

- (a) the Trading Party may reduce the amount of its Credit Cover, by an amount not exceeding the amount of the additional Credit Cover provided by it as referred to in paragraph 2.3.3(b), in accordance with paragraph 2.3, but on the basis that:
  - (i) the waiting period is a period of one Settlement Day;
  - (ii) the figure of 80% is substituted for 75% in paragraph 2.3.2(b);
- (b) except as provided in paragraph 4, the Trading Party shall have no other claim or remedy for having so provided additional Credit Cover.

## 2.4 Determination of Energy Credit Cover

2.4.1 A Trading Party's "**Energy Credit Cover**" ( $ECC_p$ ) at any time is the amount (in MWh) determined as:

$$CC_p / CAP$$

where:

$CC_p$  is the amount of the Trading Party's Credit Cover at that time;



CAP is the Credit Assessment Price prevailing at such time.

2.4.2 The FAA shall:

- (a) monitor the amount of each Trading Party's Credit Cover;
- (b) determine in accordance with paragraph 2.4.1 the amount from time to time of each Trading Party's Energy Credit Cover;
- (c) notify to the ECVA and the Trading Party the amount of each Trading Party's Energy Credit Cover:
  - (i) on the day on which that Party becomes a Trading Party; and
  - (ii) upon each occasion on which the amount of such Energy Credit Cover changes, as soon as reasonably practicable after becoming aware of the change (and in any event within one Business Day after the change occurs);

2.4.3 For the purposes of this Section M, a reference to the amount of a Trading Party's Energy Credit Cover is to the amount most recently notified by the FAA to the ECVA under paragraph 2.4.2(c) (or to an amount of zero if no such amount has been so notified).

2.4.4 For the purposes of paragraph M4, the time at which (upon a change as referred to in paragraph 2.4.2(c)(ii)) the correct amount of a Trading Party's Energy Credit Cover should be notified by the FAA to the ECVA, shall be 17:00 hours on the Business Day after the change occurred, or such earlier time as the correct amount was actually so notified.

### 3. CREDIT DEFAULT STATUS

#### 3.1 General

3.1.1 In relation to any Settlement Period, a Trading Party's "**Credit Cover Percentage**" ( $CCP_{pj}$ , %) is:

- (a) where  $ECC_p$  does not equal zero:

$$CCP_{pj} = (EI_{pj} / ECC_p) * 100$$

- (b) where  $ECC_p$  equals zero:

then,

$$\text{if } EI_{pj} = 0, \text{ then } CCP_{pj} = 0$$

$$\text{if } EI_{pj} > 0, \text{ then } CCP_{pj} = + 1000$$

$$\text{if } EI_{pj} < 0, \text{ then } CCP_{pj} = - 1000$$

where

$EI_{pj}$  is the Trading Party's Energy Indebtedness in relation to that Settlement Period;

$ECC_p$  is the amount of the Trading Party's Energy Credit Cover most recently notified by the FAA under paragraph 2.4.2(c).

3.1.2 In relation to a Settlement Period, a Trading Party's Credit Cover Percentage **"becomes"** greater, or not greater, than a specified percentage where:

- (a) such Credit Cover Percentage in relation to that Settlement Period is greater, or (as the case may be) not greater, than that percentage, and
- (b) the Trading Party's Credit Cover Percentage in relation to the preceding Settlement Period was not greater, or (as the case may be) was greater, than that percentage.

3.1.3 Where under this Section M:

- (a) the ECVAA is required or entitled to take any step in relation to any Settlement Period in which a Trading Party's Credit Cover Percentage becomes greater, or not greater, or less, than a specified percentage, and
- (b) the ECVAA does not (within the time required under this Section M) take that step in relation to that Settlement Period

nothing in this Section M shall prevent the ECVAA from taking that step in relation to any later Settlement Period in relation to which that Trading Party's Credit Cover Percentage remains greater, or (as the case may be) not greater, or less, than the specified percentage.

3.1.4 The ECVAA will:

- (a) for each Settlement Period, as soon as practicable after Gate Closure, determine the Credit Cover Percentage for each Trading Party; and
- (b) for each Settlement Day, as soon as reasonably practicable after the end of the Settlement Day, notify each Trading Party of its Credit Cover Percentage as calculated in respect of the last Settlement Period in that Settlement Day.

## 3.2 Level 1 Credit Default

3.2.1 If in relation to any Settlement Period a Trading Party's Credit Cover Percentage, as determined by the ECVAA, becomes greater than 80%:

- (a) the ECVAA shall, as soon as possible after Gate Closure:
  - (i) give notice ("**level 1 default notice**") to the Trading Party to that effect (in addition to the notification under paragraph 3.1.4); and
  - (ii) submit a copy of such notice to BSCCo; and
- (b) the Trading Party may, at any time before the expiry of the Query Period, give notice ("**default query notice**") to the ECVAA that it considers that its Credit Cover Percentage has been determined erroneously, and may provide information supporting its view.

3.2.2 In relation to any level 1 default notice, the "**Query Period**" is the period commencing at Gate Closure for the Settlement Period in relation to which the ECVAA determines that the Trading Party's Credit Cover Percentage becomes greater than 80% and ending 24 hours after the time at which the level 1 default notice is treated as received by the Trading Party (in accordance with Section O).

3.2.3 If a Trading Party gives a default query notice to the ECVAA:

- (a) the ECVAA shall, before the expiry of the Query Period, review its determination of the Trading Party's Credit Cover Percentage and if the Trading Party so requests, shall discuss the same by telephone with a representative of the Trading Party;
  - (b) if requested by the ECVAA, the Trading Party shall provide further information and explanation in support of its view that the ECVAA's determination of the Credit Cover Percentage was erroneous;
  - (c) at the expiry of the Query Period (and whether or not any consensus has been reached between the ECVAA and the Trading Party as to the matters notified by the Trading Party), the ECVAA will redetermine the Trading Party's Credit Cover Percentage for the relevant Settlement Period (and for the avoidance of doubt, such redetermination may be the same as its original determination), and will give notice to the Trading Party of the Credit Cover Percentage as redetermined;
  - (d) the ECVAA will correct its determination of the Trading Party's Credit Cover Percentage for any subsequent Settlement Period, so far as such determination is shown to be erroneous by reference to (or to the matters taken into account in) the ECVAA's redetermination under paragraph (c).
- 3.2.4 If the redetermined Credit Cover Percentage under paragraph 3.2.3(c) is not greater than 80% the level 1 default notice will be deemed to be cancelled and no further action taken under this paragraph 3.2 in relation to Energy Indebtedness in the relevant Settlement Period (but without prejudice to the application of this paragraph 3.2 in relation to any later Settlement Period).
- 3.2.5 If the redetermined Credit Cover Percentage under paragraph 3.2.3(c) is greater than 80%, or if no default query notice was given, the Trading Party shall secure that its Credit Cover Percentage becomes not greater than 75% in relation to at least one Settlement Period in the period (the "**default cure period**"):
  - (a) commencing on the expiry of the Query Period, and
  - (b) expiring at 2400 hours on the first Business Day after the day in which the Query Period expires.
- 3.2.6 At the end of the default cure period, if the Credit Cover Percentage (as determined by the ECVAA in relation to each Settlement Period) was greater than 75% in relation to every Settlement Period in the default cure period, then subject to an authorisation notice being in force in relation to that Trading Party pursuant to paragraph 3.4 (or if later, with effect from such notice being given):
  - (a) the Trading Party shall be in "**Level 1 Credit Default**";
  - (b) the ECVAA shall (as soon as reasonably practicable after 0900 hours on the day following the expiry of the default cure period) notify the Trading Party that it is Level 1 Credit Default and post on the BMRS or the BSC Website a Level 1 Credit Default statement in relation to the Trading Party.
- 3.2.7 The Trading Party will cease to be in Level 1 Credit Default with effect from Gate Closure for the next Settlement Period (if any) in relation to which the Trading Party's Credit Cover Percentage becomes not greater than 75%; and as soon as practicable after Gate Closure for that Settlement Period the ECVAA will cancel the Level 1 Credit Default statement on the BMRS or (as the case may be) the BSC Website.

### 3.3 Level 2 Credit Default

- 3.3.1 If, in relation to any Settlement Period (period J), a Trading Party's Credit Cover Percentage as determined by the ECVAAs becomes greater than 90%, irrespective of whether or not Settlement Period J falls in a Query Period or a default cure period (in accordance with paragraph 3.2), then subject to an authorisation notice being in force in relation to that Trading Party pursuant to paragraph 3.4 (or if later, with effect from such notice being given):
- (a) the Trading Party shall be in "**Level 2 Credit Default**";
  - (b) the ECVAAs shall, as soon as reasonably practicable after Gate Closure for Settlement Period J, notify the Trading Party that it is in Level 2 Credit Default and post a Level 2 Credit Default statement on the BMRS or the BSC Website in relation to the Trading Party.
- 3.3.2 The Trading Party will cease to be in Level 2 Credit Default with effect from Gate Closure for the next Settlement Period (if any) in relation to which the Trading Party's Credit Cover Percentage becomes not greater than 90%; and as soon as practicable after Gate Closure for that Settlement Period the ECVAAs will cancel the Level 2 Credit Default statement on the BMRS.
- 3.3.3 Where a Trading Party is in Level 2 Credit Default:
- (a) for the purposes of the provisions of Section P as to the refusal and rejection of Energy Contract Volume Notifications and Metered Volume Reallocation Notifications, subject to paragraph 3.3.5:
    - (i) the "**Credit Default Refusal Period**" is the period from Gate Closure for Settlement Period J until Gate Closure for the Settlement Period after the first subsequent Settlement Period in relation to which the Credit Cover Percentage for the Trading Party becomes not greater than 90%;
    - (ii) the "**Credit Default Rejection Period**" is the period from Gate Closure for Settlement Period J+3 until Gate Closure for the third Settlement Period after the first subsequent Settlement Period in relation to which the Credit Cover Percentage for the Trading Party becomes not greater than 90%;
  - (b) as soon as reasonably practicable after Gate Closure for Settlement Period J, the ECVAAs will post on the BMRS or (as the case may be) the BSC Website a notice of the start of the Credit Default Rejection Period in relation to the Trading Party (but a failure to post such notice will have no effect in relation to the start of the Credit Default Rejection Period).
- 3.3.4 For the purposes of paragraph 3.3.3, a relevant Query Period is the Query Period in relation to any Settlement Period, not later than Settlement Period J, for which the Trading Party had given a default query notice.
- 3.3.5 The following provisions apply for the purposes of addressing delays in the completion of credit checking (and references in the Code to Credit Default Refusal Periods and Credit Default Rejection Periods shall be construed accordingly):

- (a) a Credit Default Refusal Period and a Credit Default Rejection Period shall not commence if credit checking for Settlement Period J is not completed by the half-hour deadline, but without prejudice to paragraph 3.1.3;
- (b) a Credit Default Refusal Period excludes the period from Gate Closure for Settlement Period J until credit checking for that Settlement Period is completed;
- (c) a Credit Default Refusal Period excludes the period (if any) from completion of credit checking for Gate Closure for the first subsequent Settlement Period referred to in paragraph 3.3.3(a)(i) until the half-hour deadline;
- (d) if a Credit Default Refusal Period has commenced and credit checking for any Settlement Period has not been completed by the half-hour deadline, the Credit Default Refusal Period shall be suspended (and accordingly exclude the period) from the time at which the ECVAAs determine that credit checking has not been completed by the half-hour deadline, until such time as credit checking for a Settlement Period is completed by the half-hour deadline;
- (e) if a Credit Default Rejection Period has commenced and credit checking for any Settlement Period (the "relevant" Settlement Period) has not been completed by the half-hour deadline, Gate Closure for the third Settlement Period after the relevant Settlement Period shall be considered (for the purposes of the Code including Sections P2.4.2 and P3.4.2) not to fall within the Credit Default Rejection Period.

3.3.6 For the purposes of paragraph 3.3.5, in relation to each Settlement Period:

- (a) completion of credit checking means the time (determined by the ECVAAs) at which the ECVAAs complete the determination, for each Trading Party, of Credit Cover Percentage pursuant to paragraph 3.1.4(a); and references to credit checking being completed shall be construed accordingly;
- (b) references to a case in which credit checking is not completed by the half-hour deadline include a case where the ECVAAs have earlier determined that it will be unable to complete credit checking by that deadline;
- (c) if requested by BSCCo in relation to any Settlement Period, the ECVAAs will inform BSCCo of the time of completion of credit checking;
- (d) the half-hour deadline means the time of Gate Closure for the following Settlement Period.

3.3.7 Without prejudice to paragraph 3.1.3, where a Trading Party has not been treated as in Level 2 Credit Default in relation to a Settlement Period, irrespective of any error made by the ECVAAs in the application of the provisions of this Section M, no Party may raise a Trading Dispute to the effect that the Trading Party should have been treated as being in Credit Default or that a Credit Default Refusal Period or Credit Default Rejection Period should have commenced in relation to the Trading Party.

### **3.4 Authorisation by BSCCo**

3.4.1 In accordance with paragraphs 3.2.6 and 3.3.1, a Trading Party will not be in Credit Default unless:

- (a) BSCCo has given to the ECVAAs a authorisation notice in relation to that Trading Party; and

- (b) the authorisation notice remains in force.
- 3.4.2 For the purposes of this Section M, an "**authorisation notice**" is a notice authorising the ECVAA, at any time while the notice is in force, to take the steps referred to in paragraph 3.2.6(b) and 3.3.1(b) in relation to a Trading Party.
- 3.4.3 Where the ECVAA submits to BSCCo a copy of a level 1 default notice under paragraph 3.2.1 in relation to a Trading Party:
- (a) BSCCo shall, promptly upon (but not earlier than) the expiry of the Query Period, give an authorisation notice to the ECVAA unless:
    - (i) BSCCo has been notified by the ECVAA that in the ECVAA's opinion there is, or
    - (ii) BSCCo otherwise has substantial evidence that, or other reasons to believe that, there is

a material doubt as to whether, at the time, the systems and processes used by the ECVAA are giving correct determinations of the values of Credit Cover Percentage for that Trading Party;
  - (b) subject to paragraph (c), BSCCo shall not be required to make any enquiry of the Trading Party or any other person (but will take into account any information already provided by the Trading Party which is relevant to the matter in paragraph (a));
  - (c) if (pursuant to paragraph (a)(i) or (ii)) BSCCo withholds an authorisation notice:
    - (i) BSCCo shall investigate the matter; and
    - (ii) if at any time it concludes that there is not (or no longer is) any material doubt as to the matter in paragraph (a), BSCCo shall promptly give the authorisation notice.
- 3.4.4 An authorisation notice shall remain in force until such time as:
- (a) it is established or determined (as provided in paragraph 3.5.1) that the Credit Cover Percentage of Trading Party was not and has not since become greater than 80%; or
  - (b) the ECVAA notifies BSCCo that the Trading Party's Credit Cover Percentage has become lower than 75% for any Settlement Period after the authorisation notice was given; or
  - (c) BSCCo in its discretion determines that (as a result of the passage of time, or because of any other matter of which notice has been given to BSCCo) the authorisation notice should lapse, and gives notice to that effect to the ECVAA.
- 3.4.5 For the avoidance of doubt, paragraph 3.4.3 is without prejudice to the ability of a Party to raise a Trading Dispute in respect of any step taken or determination made by BSCCo or the ECVAA pursuant to this Section M.
- 3.4.6 Notwithstanding any other provision of this Section M, BSCCo shall and shall be treated as having refused to give to the ECVAA any authorisation notice in relation to the Replacement Supplier in respect of any Settlement Period for which Gate Closure falls

within the first 14 days after the Appointment Day for such Replacement Supplier (counting the Appointment Day itself for these purposes).

### **3.5 Result of Trading Dispute, etc**

3.5.1 If at any time a Trading Party has been treated as in Credit Default, and it is established or pursuant to the resolution of a Trading Dispute determined that (by reason of such Trading Party's Credit Cover Percentage having been erroneously determined or otherwise) such Trading Party should not have been so treated:

- (a) with effect as soon as practicable following the resolution of such Trading Dispute, BSCCo will post a notice on the BMRS and the BSC Website, referring to the relevant notices of Credit Default and stating that the Trading Party should not have been in Credit Default;
- (b) the ECVAAs shall take account of such determination in the further application (in relation to Settlement Periods after such resolution) of this Section M in respect of that Trading Party;
- (c) the determination that the Trading Party should not have been treated as in Credit Default shall not affect or prejudice:
  - (i) the treatment (as refused or rejected) of any Energy Contract Volume Notifications or Metered Volume Reallocation Notifications which were treated as refused during the relevant Credit Default Refusal Period or treated as rejected during the relevant Credit Default Refusal Period, and no adjustment or reconciliation shall be made in respect thereof;
  - (ii) any other step taken under the Code while the Party was treated as in Credit Default,

but subject thereto, the Trading Party shall be treated for the purpose of the Code as never having been in Credit Default;
- (d) the Trading Party shall have no other right or remedy in respect thereof except as described in paragraph (a) and (b) and pursuant to paragraph 4 where applicable.

3.5.2 This paragraph 3 and paragraph 4 are subject to the provisions of Section P6.

### **3.6 BMRS and BSC Website**

3.6.1 Provisions of this Section M requiring any statement or notice to be posted or cancelled on the BMRS or the BSC Website shall be subject to the provisions of Section V4.

## **4. CREDIT COVER ERRORS AND COMPENSATION**

### **4.1 Introduction**

4.1.1 If a Trading Party's Credit Cover Percentage is incorrectly determined and as a result a level 1 default notice was given to the Trading Party and/or the Trading Party was in Credit Default, the Trading Party shall be entitled to be paid compensation ("**Credit Cover Error Compensation**") subject to and in accordance with the further provisions of this paragraph 4.

- 4.1.2 Any Credit Cover Error Compensation paid to a Trading Party pursuant to this paragraph 4 shall be paid by BSCCo and accordingly shall be a BSC Cost; provided that BSCCo shall not be required to include any amount in respect of such compensation in the Annual Budget or to revise the Annual Budget if any such compensation becomes payable.
- 4.1.3 The provisions of this paragraph 4 are independent of any provision of a BSC Agent Contract pursuant to which any amount may be payable (by way of damages, liquidated damages, service credit or otherwise) in respect of the circumstances resulting in a Credit Cover Error; and it is acknowledged and agreed that any such amount will be paid to BSCCo and will accordingly reduce BSC Costs.
- 4.1.4 For the purposes of this paragraph 4:
- (a) there is a "**Credit Cover Error**" where the Credit Cover Percentage determined (in the application of paragraph 3) for a Trading Party in respect of any Settlement Period was incorrect, and as a result (in relation to that or any earlier Settlement Period) a level 1 default notice was given to the Trading Party or the Trading Party was in Level 2 Credit Default;
  - (b) in relation to a Credit Cover Error
    - (i) the "**first error**" Settlement Period is the first Settlement Period in relation to which the Credit Cover Error occurred (in other words, for which the incorrect Credit Cover Percentage was determined as described in paragraph (a));
    - (ii) the "**Credit Cover Error Period**" is the period commencing on the earlier of:
      - (1) in relation to the first error Settlement Period, the expiry of the Query Period (the "**error**" Query Period) , and
      - (2) where as a result of the Credit Cover Error the Trading Party was determined to be in Level 2 Credit Default, the start of the Credit Default Rejection Period
- and continuing until the first Settlement Period (after the Credit Cover Error has been corrected) for which the Trading Party's Credit Cover Percentage Energy is determined (in the application of paragraph 3) without such error.

## 4.2 Credit Cover Error Compensation

- 4.2.1 The amount of Credit Cover Error Compensation (CCEC<sub>p</sub>, in £) payable to a Trading Party in respect of a Credit Cover Error shall be determined as follows:

$$CCEC_p = \sum_j \max (ECA_{pj}, ECB_{pj}, 0)$$

where:

$\sum_j$  is summation over all Settlement Periods falling within the Credit Cover Error Period;

$ECA_{pj}$  is the Credit Cover Error Interest Amount, determined in accordance with paragraph 4.2.2;



$ECB_{pj}$  is the Credit Cover Error Imbalance Amount, determined in accordance with paragraph 4.2.3.

4.2.2 For a Settlement Period within the Credit Cover Error Period,  $ECA_{pj}$  shall be determined as follows:

$$ECA_{pj} = \{0.02 / (365 * 48)\} * CAP * \{(EEI_{pj} / 0.8) - \max(IECC_p, (EI_{pj} / 0.8))\}$$

where:

$EEI_{pj}$  (Erroneous Energy Indebtedness) is an amount (in £), determined as:

(i)  $(ECC_p * CCP_{pj})$ , or

(ii) if  $ECC_p$  is zero,  $EI_{pj}$

in respect of the first error Settlement Period, as incorrectly determined or redetermined (on the basis of the Credit Cover Error) in the application of paragraph 3 as at the expiry of the error Query Period;

$IECC_p$  (Initial Energy Credit Cover) is the correct amount of the Trading Party's Energy Credit Cover as at Gate Closure for the first error Settlement Period;

$EI_{pj}$  is the Trading Party's Energy Indebtedness for Settlement Period  $j$ , as correctly determined after the Credit Cover Error was corrected.

4.2.3 For a Settlement Period within the Credit Cover Error Period,  $ECB_{pj}$  shall be determined as follows:

$$ECB_{pj} = (SBP_j - SSP_j) * \sum_a \min(REJ_{aj}, QAEI_{aj}) * FLAG_{pj}$$

where:

$\sum_j$  is summation over both Energy Accounts of the Trading Party;

$REJ_{aj}$  (Credit Cover Error Rejection Volume) is the volume (in MWh) determined for Energy Account  $a$  of the Trading Party as the sum of:

(i) the sum of the Energy Contract Volume Data specified in Energy Contract Volume Notifications for which the Trading Party holds the Energy (From) Account less the sum of Energy Contract Volume Data specified in Energy Contract Volume Notifications for which the Trading Party holds the Energy (To) Account,

(ii) the aggregate of the Metered Volume Reallocation Fixed Data, and the aggregate amount determined in accordance with paragraph 4.2.5 in respect of Metered Volume Reallocation Percentage Data, which was the subject of Metered Volume Reallocation Notifications;

which (pursuant to Section P2.4.2 or P3.4.2) were treated as rejected and ineffective in respect of Settlement Period  $j$  by reason of there being a Credit Default Rejection Period in respect of the Trading Party;

$FLAG_{pj}$  shall have the value 1 if the condition in paragraph 4.2.4 is satisfied and otherwise the value zero.

- 4.2.4 The condition (in relation to Settlement Period  $j$ ) is that, if the Trading Party's Credit Cover Percentage had been correctly determined (with the Credit Cover Error corrected), but otherwise assuming that all steps and notifications (by the ECVA and BSCCo) under paragraphs 3.3 and 3.4 had been taken in accordance with that paragraph, Settlement Period  $j$  would not have fallen within a Credit Default Rejection Period.
- 4.2.5 The value of  $REJ_{aj}$  (so far as relating to Metered Volume Reallocation Percentage Data) shall be determined:
- (a) by reference to the formula in Section T4.5.1 or T4.5.2 by which Credited Energy Volume is determined, but assuming a value of one for the term  $TLM_{ij}$  and disregarding the term  $QMFR_{iaj}$  in that formula; and
  - (b) by reference to BM Unit Metered Volumes as determined in the Volume Allocation Run (for the Settlement Period  $j$ ) most recently carried out before the date upon which the Trading Party submits its claim under paragraph 4.3.1(a).

### 4.3 Procedures

- 4.3.1 A Trading Party shall not be entitled to be paid Credit Cover Error Compensation:
- (a) unless the Trading Party has submitted a claim for such compensation to BSCCo, within a period of 3 months after the Settlement Day in which the first error Settlement Period fell, setting out the amount which the Trading Party considers to be so payable and the basis on which the Trading Party has calculated such amount;
  - (b) if the amount which would be payable by way of Credit Cover Error Compensation (determined for the whole of the Credit Error Period) is less than £1,000.
- 4.3.2 BSCCo shall determine and make payment of the amount payable by way of Credit Cover Error Compensation to a Trading Party as soon as reasonably practicable after the Trading Party submits its claim under paragraph 4.3.1(a).
- 4.3.3 The ECVA shall provide all such assistance and information as BSCCo may reasonably require to enable it to determine any amount payable by way of Credit Cover Error Compensation.

## ANNEX M-1

### Form of Letter of Credit

To: Elxon Clear Limited (the "BSC Clearer")

At the request of [*name of Trading Party*] (the "applicant") we have opened in favour of the BSC Clearer our irrevocable Letter of Credit Number ( ) for £[ ] (amount in words).

This Letter of Credit is available against sight drafts issued by the BSC Clearer accompanied by a signed statement issued by the BSC Clearer either:

- (a) that the applicant has failed to pay to BSC Clearer the amount you are claiming under the terms of the Balancing and Settlement Code (as modified from time to time, the "Code"); or
- (b) that the amount of the Letter of Credit has become payable pursuant to the Code by reason of the Letter of Credit not being extended or replaced in accordance with the requirements of the Code or that we have ceased to have the credit rating required under the Code.

Payments under this Letter of Credit shall be effected immediately to [*insert relevant account details*].

Partial drawings are allowed hereunder.

Claims under this Letter of Credit shall be made at the counters of [*insert details of the branch of the issuing/advising/confirming bank*].

This Letter of Credit expires on [ ].

We waive any right to set off against any amount payable hereunder any claims we may have against you.

Any sight draft and statement to be issued by the BSC Clearer for the purposes of this Letter of Credit may be signed by [*insert name of FAA*] (the "FAA") on behalf of the BSC Clearer.

Any demand hereunder must comply with all the above requirements and signatures (on behalf of the BSC Clearer or the FAA) thereon must be confirmed by your Bankers.

This Letter of Credit is subject to Uniform Customs and Practice for Documentary Credits (1993 Revision) published by the International Chamber of Commerce.

We undertake that drafts and documents drawn under and in strict conformity with the terms of this credit will be honoured upon presentation.

This Letter of Credit shall be governed by and construed in accordance with English law.

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