

**To: Forbury Assets Limited (company registration number  
11024024)**

## **Electricity Act 1989**

### **Section 8A(3)**

#### **Notice of statutory consultation on a proposal to modify the standard conditions of the electricity distribution licence that we are minded to grant to Forbury Assets Limited**

1. On 31 January 2018 the Gas and Electricity Markets Authority ('the Authority')<sup>1</sup> received an application from Forbury Assets Limited (company number 11024024) for an electricity distribution licence ('the Licence') under section 6(1)(c) of the Electricity Act 1989 ('the Act').
2. Under section 8A(2) of the Act, we propose to modify the standard conditions of the Licence, which we are minded to grant to Forbury Assets Limited by removing the entire of Section B (Additional Standard Conditions for Electricity Distributors who are Distribution Services Providers).
3. We also propose to insert into the Licence a new Section BA to include the following amended standard conditions:
  - (a) Standard Licence Condition BA1. Not used;
  - (b) Standard Licence Condition BA2. Regulation of charging arrangements;
  - (c) Standard Licence Condition BA3. Credit Rating of Licensee; and

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<sup>1</sup> The terms "the Authority", "we" and "us" are used interchangeably in this document.

- (d) Standard Licence Condition BA4. Indebtedness.
4. These conditions are set out in the Annex to this notice.
5. We are proposing these modifications to protect the interests of consumers by:
- (a) ensuring that the standard licence conditions applicable to Distribution Services Providers are disappplied in relation to Electricity Distributors to whom the requirements of Section B of the standard conditions do not apply;<sup>2</sup>
  - (b) regulating Forbury Assets Limited's charges in respect of domestic customers for the use of its distribution system on grant of the Licence; and
  - (c) imposing requirements on Forbury Assets Limited in respect of its creditworthiness and indebtedness on grant of the Licence.
6. The effect of the proposed licence modifications is to:
- (a) establish arrangements for regulating Forbury Assets Limited's charges to domestic customers for the use of its distribution system on grant of the Licence;
  - (b) set out requirements for Forbury Assets Limited to maintain an investment grade credit rating or to comply with alternative arrangements approved by us on grant of the Licence; and
  - (c) place restrictions on Forbury Assets Limited relating to its indebtedness and the types of payments and transfers it can make on grant of the Licence.

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<sup>2</sup> Under Standard Condition 32.1, Section B of the Distribution Licence has effect if either of the following two circumstances apply: (a) the Secretary of State has provided, by a scheme made under Schedule 7 to the Utilities Act 2000, that Section B will have effect; or (b) the Authority has given a Distribution Services Direction to the licensee under paragraph 3 of Standard Condition 3. Neither of these circumstances applies to Forbury Assets Limited.

7. A copy of the proposed modifications and other documents referred to in this Notice have been published on our website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)). Alternatively they are available from [foi@ofgem.gov.uk](mailto:foi@ofgem.gov.uk).
  
8. Any representations with respect to the proposed licence modifications must be made on or before 22 January 2020 to: Industry Codes and Licensing, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk).
  
9. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.

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**Barry Coughlan**  
**Head of Licensing Frameworks**  
**Duly authorised on behalf of the**  
**Gas and Electricity Markets Authority**

**18 December 2019**

## ANNEX

### **AMENDED STANDARD CONDITIONS PARTICULAR TO THIS LICENCE**

#### **SECTION BA. SPECIFIC**

##### **Standard Condition BA1.**

Not used

##### **Standard Condition BA2. Regulation of charging arrangements**

###### **Introduction**

1. The licensee must make, and continue to make, charges available, in accordance with the requirements of this condition, for the provision of Use of System to any Authorised supplier of electricity that uses or wishes to use the licensee's Distribution System to supply electricity to Domestic Customers.

###### **Setting and restriction of charges**

2. The licensee's Use of System Charges in relation to Domestic Customers may vary according to the Distribution Services Area of the Electricity Distributor within which Domestic Premises are connected to the licensee's Distribution System.
3. The licensee must set those Use of System Charges so that, except with the Authority's consent, the standing charge, unit rate, and any other component of the charges does not exceed the Use of System Charges to equivalent Domestic Customers ("the equivalent charges").
4. For the purposes of paragraph 3, equivalent charges are the Use of System Charges made by the Electricity Distributor which has a Distribution Services Direction that specifies the Distribution Services Area in which the Domestic Premises connected to the licensee's Distribution System are located.
5. The Authority may give the licensee a direction that specifies which of the Use of System Charges made by the Distribution Services Provider for the Distribution

Services Area mentioned in paragraph 4 are relevant for the purposes of determining the equivalent charges.

### **Procedure for disapplying this condition**

6. The charging arrangements set out above apply for so long as this licence continues in force but shall cease to have effect (in whole or in part) if the licensee makes a Disapplication Request to the Authority in accordance with paragraphs 7 to 18 of this condition and:
  - (a) the Authority agrees in Writing to the Disapplication Request; or
  - (b) the provisions that are the subject of the Disapplication Request are disappplied by a Disapplication Notice given by the licensee in accordance with the provisions of this condition.
7. The licensee may ask the Authority to consent to the disapplication of this condition (in whole or in part) by giving it a Disapplication Request made in accordance with paragraph 8.
8. A Disapplication Request must:
  - (a) be in Writing addressed to the Authority;
  - (b) specify the paragraph or paragraphs of this condition (or any part or parts thereof) to which the request relates;
  - (c) provide a full statement of the licensee's reasons for making the Disapplication Request;
  - (d) contain such other information or analysis as the licensee considers necessary to enable the Authority fully to assess the Disapplication Request; and
  - (e) state the date that is proposed by the licensee (which must not be earlier than the date specified in paragraph 9) on and after which the specified paragraph or

paragraphs (or any part or parts thereof) would no longer have effect (“the Disapplication Date”).

9. Except with the Authority’s consent, no disapplication of this condition following its receipt of a Disapplication Request under paragraph 7 may have effect until a date not less than 18 months after receipt of the Disapplication Request.
10. A Disapplication Request may apply to a specified geographic area.
11. If, within 10 working days of receipt of a Disapplication Request, the Authority gives notice to the licensee:
  - (a) specifying any further information or analysis that it reasonably considers is required in order to assess the Disapplication Request; and
  - (b) requesting the licensee to provide that information or analysis, the Disapplication Request will be treated for the purposes of this condition as not delivered to the Authority until that further information or analysis is provided. If in consequence the Disapplication Date set out in the Disapplication Request no longer complies with paragraph 9, the Disapplication Date shall be treated as being the earliest date that would comply with that paragraph.
12. The giving of notice under paragraph 11 shall not preclude the Authority from making such further requests for information or analysis, or for the reformatting of information or analysis already provided, as it may consider it requires to assess the proposal.
13. The licensee may withdraw a Disapplication Request at any time.

### **Licensee’s right to disapply this condition under a Disapplication Request**

14. If the licensee has made a Disapplication Request that complies with the requirements of paragraphs 8 and 9 of this condition, and the circumstances described in paragraphs 15 or 17 of this condition apply, it may subsequently serve a Disapplication Notice on the Authority disapplying some or all of the provisions that are the subject of the Disapplication Request.

## **Disapplication without involvement of the Competition and Markets**

### **Authority**

15. The licensee may serve a Disapplication Notice on the Authority if, by the Disapplication Date specified in the relevant Disapplication Request, the Authority has not responded to the request by publishing a decision under section 11A of the Act to modify this condition in either of the ways described in paragraph 16.
16. The ways referred to in paragraphs 15 are:
  - (a) modify any of the provisions referred to in the Disapplication Request; or
  - (b) modify this condition so as to remove the licensee's right to serve a Disapplication Notice on the Authority in respect of the relevant Disapplication Request.

## **Disapplication after involvement of the Competition and Markets**

### **Authority**

17. The licensee may also serve a Disapplication Notice on the Authority if the Authority has published a decision described in paragraph 16 of this condition but:
  - (a) the licensee has exercised its right to appeal to the Competition and Markets Authority against the decision of the Authority as provided for by section 11C of the Act;
  - (b) the Competition and Markets Authority has quashed the Authority's decision, and has included in its direction to the Authority a provision relating to the right for the licensee to serve a Disapplication Notice on the Authority; and
  - (c) no more than 20 working days have elapsed since the date from which the licensee may serve a Disapplication Notice on the Authority under the Competition and Markets Authority's direction.

18. A Disapplication Notice under paragraphs 15 and 17 must also comply with any terms or conditions specified in the Competition and Markets Authority's direction.
  
19. For the purposes of this condition:
  - (a) **Disapplication Notice** means a notice served on the Authority in accordance with paragraphs 15 and 17 of this condition disapplying some or all of the provisions the subject of a Disapplication Request.
  
  - (b) **Disapplication Request** means a request made to the Authority in accordance with paragraphs 8 and 9 of this condition to disapply some or all of the charging provisions of this condition.
  
  - (c) **Writing** includes writing that is sent or received by Electronic Communication.



### **Standard Condition BA3. Credit Rating of Licensee**

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating, or with the prior written permission of the Authority, any such arrangements as the Authority considers appropriate.

2. In this condition:

“issuer credit rating” means:

- (a) an issuer credit rating by Standard & Poor’s Ratings Group or any of its subsidiaries; or
- (b) an issuer credit rating by Moody’s Investors Service Inc. or any of its subsidiaries; or
- (c) an issuer credit rating by Fitch Ratings Ltd or any of its subsidiaries; or
- (d) an issuer credit rating by DBRS Ratings Limited or any of its affiliates; or
- (e) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (a), (b), (c), or (d) and issued by:
  - (i) any of the credit rating agencies referred to in sub-paragraphs (a), (b), (c) or (d); or
  - (ii) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in the United Kingdom and the United States of America.

In relation to any issuer credit rating, “investment grade” means:

- (a) unless sub-paragraph (b) below applies:

- (i) an issuer credit rating of not less than BBB- by Standard & Poor's Ratings Group or any of its subsidiaries; or
  - (ii) an issuer credit rating of not less than Baa3 by Moody's Investors Service Inc. or any of its subsidiaries; or
  - (iii) an issuer credit rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
  - (iv) an issuer credit rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; or
  - (v) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (i), (ii), (iii) or (iv) and issued by:
    - aa) any of the credit rating agencies referred to in sub-paragraphs (i), (ii), (iii) or (iv), or;
    - bb) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in the United Kingdom and the United States of America.
- (b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade issuer credit rating.

## **Standard Condition BA4. Indebtedness**

1. In addition to the requirements of standard condition 29 (Disposal of Relevant Assets) as in force at 31 May 2008, the licensee shall not without the prior written consent of the Authority (following the disclosure by the licensee of all material facts):
  - (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into or continue or permit to remain in effect any guarantee or any obligation otherwise than:
    - (i) on an arm's length basis,
    - (ii) on normal commercial terms,
    - (iii) for a permitted purpose, and
    - (iv) (if the transaction is within the ambit of standard condition 29 (Disposal of Relevant Assets)) in accordance with that condition;
  - (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the licensee otherwise than by way of:
    - (i) a dividend or other distribution out of distributable reserves,
    - (ii) repayment of capital,
    - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms,
    - (iv) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and made in compliance with the payment condition referred to in paragraph 2,

(v) repayment of or payment of interest on a loan not prohibited by sub-paragraph (a),

(vi) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received, or

(vii) an acquisition of shares or other investments in conformity with paragraph 2 of standard condition BA2 (Restriction on Activity and Financial Ring Fencing) as in force at 31 May 2008, made on an arm's length basis and on normal commercial terms,

provided, however, that the provisions of paragraph 3 or 4 below, as the case may be, shall prevail in any circumstances described or referred to therein;

(c) enter into an agreement or incur a commitment incorporating a cross-default obligation; or

(d) continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation subsisting at date of this licence, save that the licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous, provided, however, that the provisions of sub-paragraphs (c) and (d) shall not prevent the licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).

2. The payment condition referred to in paragraph 1(b)(iv) is that the consideration due in respect of the transaction in question is paid in full when the transaction is entered into unless either:

(a) the counter-party to the transaction has and maintains until payment is made in full an investment grade issuer credit rating; or

(b) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade issuer credit rating.

3. Where the Authority has not granted permission for the use of alternative arrangements in accordance with paragraph 1 of standard condition BA3 (Credit Rating of Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 10, if any of the circumstances set out in paragraphs 4 to 8 applies.
4. The circumstance described by this paragraph is that the licensee does not hold an investment grade issuer credit rating.
5. The circumstance described by this paragraph is that the licensee holds more than one issuer credit rating, and one or more of the ratings so held is not investment grade.
6. The circumstance described by this paragraph is that any issuer credit rating held by the licensee is BBB- by Standard & Poor's Ratings Group or Fitch Ratings Ltd or Baa3 by Moody's Investors Service, Inc. or BBB (low) by DBRS Ratings Ltd or any of its affiliates (or such higher issuer credit rating as may be specified by any of these credit rating agencies from time to time as the lowest investment grade issuer credit rating), or is an equivalent rating from another agency that has been notified to the licensee by the Authority as of comparable standing for the purposes of standard condition BA3 (Credit Rating of Licensee) and:
  - (a) is on review for possible downgrade; or
  - (b) is on Credit Watch or Rating Watch with a negative designation; or, where neither (a) nor (b) applies:
  - (c) the rating outlook of the licensee as specified by any credit rating agency referred to in paragraph 6 which at the relevant time has assigned the lower or lowest

investment grade issuer credit rating held by the licensee has been changed from stable or positive to negative.

7. The circumstance described by this paragraph is that the licensee has:

(a) given the Authority a certificate in the form of Certificate 3F under the requirement set out in paragraph 30.2 of standard condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition; or

(b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 30.4 of standard condition 30 (Availability of resources) and:

(i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an associate of the licensee, and

(ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;

or

(c) informed the Authority of any circumstance of the type referred to at paragraph 30.7 of standard condition 30 (Availability of resources) and:

(i) the circumstances giving rise to the licensee's report relate to the licensee's financial resources and the licensee has not subsequently given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or

(ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:

(aa) relate in whole or in part to circumstances affecting an associate of the licensee; and

(bb) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.

8. The circumstance described by this paragraph is that the licensee has, after 1 April 2013, materially breached any formal covenant contained in any loan agreement, commercial paper, bond issue or committed facility that it has entered into with a counterparty, unless one of the following applies:

(a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;

(b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;

and in either case (a) or (b) the remedy or renegotiation has been notified in Writing to the Authority;

or

(c) in response to a written request from the licensee, either the Authority has confirmed in Writing, before the breach occurs, that the breach in question shall not trigger the provisions of Part D, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

9. Where the Authority has granted permission for the use of alternative arrangements in accordance with paragraph 1 of standard condition BA3 (Credit Rating of Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 10, if:

(a) the alternative arrangements for which the Authority has granted permission are not maintained in accordance with the conditions imposed by the Authority when giving written permission pursuant to paragraph 1 of standard condition BA3 (Credit Rating of Licensee); or

(b) either of the circumstances described in paragraphs 7 and 8 applies.

10. Where, under the provisions of either paragraph 3 or paragraph 9, the licensee is prohibited from entering into or completing any transaction of a type referred to or described in paragraph 1(b), the licensee may not without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum or sums, asset, right or benefit to any associate of the licensee as described or referred to in paragraph 1(b), otherwise than by way of:

- (a) payment properly due for any goods, services or assets in relation to commitments entered into prior to the date on which the prohibiting circumstances arose, and which are provided on an arm's length basis and on normal commercial terms;
- (b) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into;
- (c) repayment of, or payment of interest on, a loan not prohibited by paragraph 1(a) and which was contracted prior to the date on which the prohibiting circumstances arose, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; and
- (d) payments for group corporation tax relief calculated on a basis not exceeding the value of the benefit received, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

11. In this condition:

"associate" means:

- a) an Affiliate or Related Undertaking of the licensee;
- b) an Ultimate Controller of the licensee;
- c) a participating owner of the licensee; or
- d) a common control company.

"common control company" means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the



standard conditions) but substituting that company for the licensee) is also an Ultimate Controller of the licensee.

- “cross-default obligation” means a term of any agreement or arrangement whereby the licensee’s liability to pay or repay any debt or other sum arises or is increased or accelerated or is capable of arising, increasing or of acceleration by reason of a default (howsoever such default may be described or defined) by any person other than the licensee, unless:
- a) that liability can arise only as the result of a default by a subsidiary of the licensee;
  - b) the licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors; and
  - c) that subsidiary carries on business only for a purpose within paragraph (a) of the definition of permitted purpose set out in standard condition BA2 (Restriction on Activity and Financial Ring Fencing) as in force at 31 May 2008.
- “indebtedness” means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith.
- “investment grade” has the meaning given in paragraph 2 of standard condition BA3 (Credit Rating of Licensee).
- “issuer credit rating” has the meaning given in paragraph 2 of standard condition BA3 (Credit Rating of Licensee).

"participating owner"	For the purposes of the definition of associate above, a person is subject to a participating interest by another person (a "participating owner") if:  a) that other person holds a Participating Interest in the person; or  b) the person is subject to a participating interest by a person who is himself subject to a participating interest by that other person.
"participating interest"	has the meaning given in section 421A of the Financial Services and Markets Act 2000.