

## Form of First Demand Guarantee

Form of First Demand Guarantee to be provided in respect of a licensee's obligations with respect to Domestic Customer Credit Balances.

*[On headed paper of the Guarantor/Approved Guarantor]*

To: Gas and Electricity Markets Authority

10 South Colonnade

Canary Wharf

London

E14 4PU

(the "**Beneficiary**")

[Date]

**Irrevocable First Demand Guarantee dated [ ] with reference number *[insert a unique reference number for this First Demand Guarantee]***

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

Capitalised terms used in this paragraph below, which are not defined in this First Demand Guarantee shall have the meanings from time to time given to those terms in the Licence(s). This First Demand Guarantee is issued to you in respect of the Licensee's obligations to Protect the Protected Amount in accordance with Standard Licence Condition 4D and on the following terms and conditions:

### 1 Definitions

In this First Demand Guarantee:

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

**"Credit Event"** means either:

- (a) a liquidator, receiver, administrative receiver, administrator, special administrator, compulsory manager or other similar officer is appointed in respect the Licensee or any of its assets; or
- (b) the Beneficiary receives a Non-Extension Notice from the Guarantor under paragraph 4(c) below.

**"Demand"** means a demand for a payment by the Beneficiary pursuant to this First Demand Guarantee which is substantially in the form set out in the schedule to this First Demand Guarantee, with square bracketed passages or options completed, selected or deleted (as

applicable) and which appears on its face to comply with the terms of this First Demand Guarantee;

**"Expiry Date"** means, at any time, 5pm (London time) on the date which is the then latest of:

- (a) *[insert expiry date falling 12 months from the date of issue]*; and
- (b) any date(s) to which the validity period of this First Demand Guarantee, and its availability for drawing by the Beneficiary, have automatically extended under paragraph 4(c) below;

**"Licence Event"** means either:

- ( ) the Beneficiary has revoked the Licensee's Licence(s); or
- (a) the Licensee has surrendered its Licence(s);

**"Licence(s)"** means the Licensee's [electricity supply licence/gas supply licence/electricity supply licence or its gas supply licence or both<sup>1</sup>] for supplies in Great Britain;

**"Maximum Amount"** means *[insert currency and amount in words and then in figures<sup>2</sup>]*;

**"Non-Extension Notice"** means a notice from the Guarantor under this First Demand Guarantee, which:

- ( ) is addressed to the Beneficiary at the Relevant Address and received by the Beneficiary;
- (a) identifies this First Demand Guarantee by its date and its above reference number; and
- (b) states that the validity period of this First Demand Guarantee, and its availability for drawing by the Beneficiary, shall not automatically extend on its then current Expiry Date under paragraph 4(c) below; and

**"Relevant Address"** means either:

- ( ) [Gas and Electricity Markets Authority, 10 South Colonnade, Canary Wharf, London, E14 4PU, Attention: *[Insert name of relevant department or officer]*]; or
- (a) such other address(es) as the Beneficiary may notify to the Guarantor from time to time by sending the notice(s) in question to the postal address or email address for Demands set out in paragraph 6 below.

<sup>1</sup> Depending on which licences the Licensee holds, remove the square brackets and delete the option which does not apply.

<sup>2</sup> Ofgem is open, in appropriate cases, to discussing quarterly amendments to the Maximum Amount. Any agreement by Ofgem to a reduction in the Maximum Amount, or to the continuation of such a reduction, will expressly be given subject to the condition that the Guarantor not serve a Non-Extension Notice during the 120 day period after the later of: (a) the reduction in question first taking effect; and (b) its later continuation in effect, so that service of a Non-Extension Notice during that 120 period shall automatically result in the immediate cancellation of that reduction in the Maximum Amount.

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

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

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

- (a) The Beneficiary may claim under this First Demand Guarantee by giving to the Guarantor a duly completed Demand. A Demand must be received by the Guarantor by no later than [5]pm ([London<sup>3</sup>] time) on the Expiry Date.
- (b) Subject to the terms of this First Demand Guarantee, the Guarantor unconditionally and irrevocably undertakes to the Beneficiary that it will promptly, and in any event within five Business Days of receiving a Demand:

  - (i) pay the amount demanded to such entity and account as the Beneficiary shall have specified in that Demand; or
  - (ii) notify the Beneficiary that a complying presentation has not been made, specifying the reasons for the presentation's non-compliance.
- (c) A Demand may be made for less than the Maximum Amount and more than one Demand may be made.
- (d) The Guarantor will not be obliged to make a payment of the full amount demanded in a Demand under this First Demand Guarantee to the extent that, as a result of that

<sup>3</sup> If this First Demand Guarantee is given by an Authorised Guarantor situated outside Great Britain, consider replacing "London" with the name of the leading financial centre in the country in which the Authorised Guarantor is situated.

full payment, the aggregate of all payments made by it under this First Demand Guarantee would exceed the Maximum Amount.

#### **4 Expiry**

- (a) The Guarantor shall be released from its obligations under this First Demand Guarantee on the date (if any) notified by the Beneficiary to the Guarantor in writing as the date upon which the obligations of the Guarantor under this First Demand Guarantee are released.
- (b) Unless previously released under paragraph 4(a) above, but subject to paragraph 4(c) below, at 5pm (London time) on the Expiry Date the obligations of the Guarantor under this First Demand Guarantee will cease with no further liability on the part of the Guarantor except in relation to any compliant Demand validly made under this First Demand Guarantee prior to that time on the Expiry Date that remains unpaid.
- (c) Unless the Beneficiary receives a Non-Extension Notice no earlier than 60 and no later than 45 clear days before the then current Expiry Date, the validity period of this First Demand Guarantee, and its availability for drawing by the Beneficiary, shall annually and automatically extend by one year at 4.59pm London time on the then current Expiry Date.
- (d) When the Guarantor is no longer under any further obligations under this First Demand Guarantee, the Beneficiary shall return the original of this First Demand Guarantee to the Guarantor. However, no failure to return that original shall prevent paragraphs 4(a) or 4(b) from operating in accordance with their terms.

#### **5 Payments**

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

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

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

Attention: [ ]

Address: [ ]

Email: [ ]

- (b) Where the Beneficiary sends a Demand via email, the Beneficiary must send the Demand from an email account from the following domain: "@ofgem.gov.uk".
- (c) Any Demand shall be deemed to have been received by the Guarantor for all purposes of this First Demand Guarantee, if sent by letter:

  - (i) when it has been left at the address specified in paragraph 6(a);

- (ii) where the Guarantor is situated in the United Kingdom, before 5pm (London time)<sup>4</sup> two Business Days after being deposited in the post postage prepaid in an envelope addressed to the Guarantor at the address specified in paragraph 6(a); and
  - (iii) where the Guarantor is situated outside the United Kingdom, before 5pm (London time)<sup>5</sup> five Business Days after being deposited in the post postage prepaid in an envelope addressed to the Guarantor at the address specified in 6(a).
- (d) The Beneficiary shall not be required to deliver the original or a copy of this First Demand Guarantee when presenting a Demand.

## 7 Assignment

The Beneficiary may freely assign the proceeds of any claims or Demands it shall make on the Guarantor under this First Demand Guarantee.

## 8 Governing Law

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

## 9 Jurisdiction and service of process

Paragraphs 9(b) to 9(f) only apply if the Guarantor is not incorporated in England and Wales or has a place of business outside of England and Wales.

- (a) The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this First Demand Guarantee (including a dispute relating to any non-contractual obligation arising out of or in connection with this First Demand Guarantee) (each, a "**Dispute**").

{The Guarantor agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and that it will not argue to the contrary.

- ~~(b) Subject to paragraph 9(c) below, the address for service of the Guarantor under this paragraph 9 is:~~

~~FAO: [name(s)]~~

~~[name of Licensee]~~

~~[address of Licensee in England or Wales].~~

- (c) Without prejudice to any other mode of service allowed under any relevant law, any Service Document relating to proceedings before the English courts may be served on the Guarantor at its address for service given in this paragraph 9. That service may be made by pre-paid first class recorded delivery post or any other method allowed by law.

<sup>4</sup> This should match the time and city specified in Clause 4(b).

<sup>5</sup> This should match the time and city specified in Clause 4(b).

(c) If the Guarantor wishes to change its address for service to a different address in England or Wales, it may do so by giving the Beneficiary at least 20 Business Days' written notice of its new address for service.

(d) Subject to paragraph 9(d) above, the address for service of the Guarantor under this paragraph 9 is:

FAO: [name(s)]

[name of Licensee]

[address of Licensee in England or Wales].

(f) In this paragraph 9, "**Service Document**" means any claim form, application notice, judgment, order or other notice of legal process relating to this Guarantee or any Demand.}]

## 10 <sup>6</sup>Waiver of immunity

(a) The Guarantor waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (i) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (ii) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

(b) The Guarantor agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purposes of the English State Immunity Act 1978.]

Yours faithfully,

Guarantor's Authorised Signatory

Signature:

First Name:

Surname:

Position:

Date Signed:

**For and on behalf of the Guarantor**

<sup>6</sup> Delete unless the Guarantor enjoys sovereign immunity or other immunity.

## Schedule – Form of Demand

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

Date: [ ]

**Demand under Irrevocable First Demand Guarantee dated [ ] with [*insert reference number from page one of this First Demand Guarantee*] and issued by you in favour of the Gas and Electricity Markets Authority (the "First Demand Guarantee")**

1 We refer to the First Demand Guarantee. Terms defined in the First Demand Guarantee have the same meaning when used in this Demand. We are the Beneficiary of the First Demand Guarantee.

2 [Option 1: We certify that a Licence Event has occurred with respect to the Licensee. / Option 2: We certify that a Credit Event has occurred with respect to the Licensee<sup>7</sup>.]

3 We therefore now demand payment of the sum of £[*insert amount demanded in figures*].

4 Payment should be made to the following entity and account:

Name: [*Insert the name of the relevant entity*]

Account Number: [ ]

Bank: [ ]

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

Yours faithfully

Authorised Signatory of the Beneficiary

Signature:

First Name:

Surname:

Position:

Date Signed:

**For and behalf of the Gas and Electricity Markets Authority (as Beneficiary)**

<sup>7</sup> Remove the square brackets and delete the options which do not apply.