

## Form of Standby Letter of Credit

Form of standby letter of credit to be provided in respect of a licensee's obligations with respect to Domestic Customer Credit Balances.

[On headed paper of the Issuer]

To: Gas and Electricity Markets Authority

10 South Colonnade

Canary Wharf

London

E14 4PU

(the "**Beneficiary**")

[Date]

### Irrevocable Standby Letter of Credit with reference number [ ]

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

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

## 1 Definitions

In this Letter of Credit:

**"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 Issuing Bank, or any confirming bank in respect of this Letter of Credit, under paragraph 3(c) below.

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

**"Expiry Date"** means, 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 Letter of Credit, and its availability for drawing by the Beneficiary, have automatically extended under paragraph 3(c) below;

["ISP 98" is defined in paragraph 6 below<sup>1</sup>;

"Licence Event" means either<sup>2</sup>:

- (a) the Beneficiary has revoked the Licensee's Licence(s); or
- (b) 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>3</sup>] for supplies in Great Britain;

"Licensee" means [the Applicant/insert the Licensee's full legal name instead where the Licensee is **not** the Applicant<sup>4</sup>];

"Maximum Amount" means [insert currency and amount in words and then in figures<sup>5</sup>];

"Non-Extension Notice" means a notice from the Issuing Bank, or any confirming bank under this Letter of Credit, which:

- (a) is addressed to and received by the Beneficiary;
- (b) identifies this Letter of Credit by its date and reference number; and
- (c) states that the validity period of this Letter of Credit, and its availability for drawing by the Beneficiary, shall not automatically extend on its then current Expiry Date under paragraph 3(c) below;

["UCP 600" <sup>6</sup>means the Uniform Customs and Practice for Documentary Credits (UCP), 2007 Revision, ICC Publication No. 600 (UCP 600).]

## 2 Issuer's agreement

- (a) The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuer a duly completed Demand. A Demand must be received by the Issuer by no later than 5pm (London time) on the Expiry Date.
- (b) Subject to the terms of this Letter of Credit, the Issuer unconditionally and irrevocably undertakes to the Beneficiary that it will promptly, and in any event within five Business Days of receiving a Demand:

<sup>1</sup> Delete if this Letter of Credit will be governed by UCP 600.

<sup>2</sup> Always retain this definition.

<sup>3</sup> Depending on which licences the Licensee holds, delete the option which does not apply.

<sup>4</sup> Remove the square brackets and delete the option which does not apply.

<sup>5</sup> Ofgem is open, in appropriate cases, to discussing monthly amendments to the Maximum Amount.

<sup>6</sup> Delete if this Letter of Credit will be governed by ISP 98.

- (i) pay to the Beneficiary, or such entity as the Beneficiary shall specify in the relevant Demand, the amount demanded to the account specified in that Demand; or
  - (ii) notify the Beneficiary that a complying presentation has not been made, specifying the reasons for the presentation's non-compliance.
- (c) A presentation may be made for less than the Maximum Amount and more than one presentation may be made.
- (d) The Issuer will not be obliged to make a payment of the full amount demanded in a Demand under this Letter of Credit to the extent that, as a result of that full payment, the aggregate of all payments made by it under this Letter of Credit would exceed the Maximum Amount.

### **3 Expiry**

- (a) The Issuer shall be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuer in writing as the date upon which the obligations of the Issuer under this Letter of Credit are released.
- (b) Unless previously released under paragraph 3(a) above, but subject to paragraph 3(c) below, at 5pm (London time) on the Expiry Date the obligations of the Issuer under this Letter of Credit will cease with no further liability on the part of the Issuer except in relation to any compliant Demand validly presented under the Letter of Credit prior to 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 Letter of Credit 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 Issuer is no longer under any further obligations under this Letter of Credit, the Beneficiary shall return the original of this Letter of Credit to the Issuer. However, no failure to return that original shall prevent paragraphs 3(a) or 3(b) from operating in accordance with their terms.

### **4 Payments**

All payments under this Letter of Credit shall be made in pounds sterling, for value on their due date and 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.

### **5 Delivery of Demand**

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

Attention: [ ]

Address: [ ]

Email: [ ]

- (b) 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) The Beneficiary shall not be required to deliver the original or a copy of this Letter of Credit when presenting a Demand.

## 6 **{ISP 98/UCP 600<sup>7</sup>}**

Except to the extent that it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the [International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590 ("**ISP 98**")]/[the Uniform Customs and Practice for Documentary Credits (UCP), 2007 Revision, ICC Publication No. 600 ("**UCP 600**"), but excluding Article 32 of UCP 600<sup>8</sup>].<sup>7</sup>

## 7 **Governing Law**

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

## 8 **Jurisdiction**

The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit)<sup>9</sup>.

Yours faithfully,

Issuer's Authorised Signatory

Signature:

First Name:

Surname:

Position:

Date Signed:

**For and on behalf of the Issuer**

<sup>7</sup> ~~Select ISP 98 unless the Issuer, or the Issuer and any confirming bank, prefers UCP 600 or it is otherwise difficult or impossible to use ISP 98. [delete option as appropriate]~~

<sup>8</sup> ~~Select ISP 98 unless the Issuer, or the Issuer and any confirming bank, prefers UCP 600, or it is otherwise difficult or impossible to use ISP 98.~~

<sup>9</sup> Further dispute resolution clauses (such as process agency or address for service) have been omitted as the Letter of Credit will either be issued by a bank or financial institution operating within the UK, or confirmed by a bank or financial institution operating within the UK.

## Schedule – Form of Demand

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

Date: [ ]

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

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

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>10</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 name of 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 Gas and Electricity Markets Authority (as Beneficiary)**

<sup>10</sup> Remove the square brackets and delete the options which do not apply.