

CCB Account Declaration of Trust dated [●]

[Licensee Name] (registered number [●]) a [private limited company incorporated under the laws of England and Wales whose registered office is at [●]] as the **Licensee** and as the **Trustee** hereby declares on [*insert date*] a trust over the Trust Account in favour of the Beneficiaries on the terms set out in this CCB Account Declaration of Trust.

Recitals

The Trustee has declared a trust over the Trust Account to Protect the Protected Amount in accordance with Standard Licence Condition 4D with respect to Domestic Customer Credit Balances in accordance with the terms of this Declaration of Trust.

1 Definitions and Interpretation

1.1 Unless otherwise defined in this Declaration of Trust, any capitalised terms have the meaning given to them in the applicable Licence unless otherwise stated as below:

“Account Bank” means the bank with which the Trust Account is held.

“Authority” means The Gas and Electricity Markets Authority.

“Beneficiaries” means each of:

- (a) the Licensee; and
- (b) any Supplier(s) of Last Resort nominated from time to time by the Authority in relation to Fixed Direct Debit Domestic Customers of the Licensee or, prior to the appointment of any such Supplier(s) of Last Resort, the Fixed Direct Debit Domestic Customers of the Licensee as a whole.

“Credit Event” means the appointment of a liquidator, receiver, administrative receiver, administrator, special administrator, compulsory manager or other similar officer in respect of the Licensee or any of its assets.

“Encumbrance” means any mortgage, standard security, charge, pledge, lien, assignation in security, trust, hypothecation or other interest creating or evidencing an encumbrance of assets.

“Liability” means, in respect of any person, any loss, damage, cost, charge, award, claim, demand, expense, judgment, decree, action, proceeding (or threats of any action or proceeding) or other liability whatsoever including without limitation legal costs and expenses and any Taxes (other than Taxes on net income, profit or gains) and related interest and penalties incurred by that person and **“Liabilities”** shall be construed accordingly.

“Licence” means any electricity supply licence or gas supply licence for supplies in Great Britain granted to the Licensee.

“Licence Event” means the Authority has revoked a Licence of the Licensee;

“Taxes” means any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever (and whatever called) imposed, assessed or levied in

any jurisdiction or by any authority of it having power to tax, and shall include any interest or penalties which may attach as a consequence of failure to pay on the due date and/or non-payment, and "Tax", "Taxation" and similar words shall be construed accordingly.

"Trust Account" means [*include account details – to be a dedicated and segregated bank account in the name of the Licensee with a bank branch in England or Wales*].

"Trust Property" has the meaning set out in Clause 2.1

1.2 In this Declaration of Trust:

1.2.1 The singular includes the plural (and vice versa);

1.2.2 Headings are for convenience only and do not affect the construction of this Declaration of Trust;

1.2.3 References to clauses and schedules are to Clauses of and Schedules to this Agreement;

1.2.4 References to any person or entity include successors of such person or entity and its permitted assignees and transferees; and

1.2.5 All references to an account include all replacement accounts for such account.

2 The Trust

2.1 The Trustee declares that it shall hold all its right, title, benefit and interest, present and future, in and to the Trust Account (including all amounts standing to the credit of the Trust Account) from time to time (for the purpose of this Declaration of Trust, the **Trust Property**) on trust for the Beneficiaries.

2.2 The Trust Property shall be dealt with by the Trustee in accordance with the terms of this Declaration of Trust and the applicable Licence, and the Trustee (as trustee of the Trust Property) expressly acknowledges and declares that the interests and entitlements of the Beneficiaries in their capacity as beneficiaries of the trust created by this Declaration of Trust and to the property held on trust shall be vested and indefeasible, such that the Beneficiaries are absolutely entitled to the assets comprised in the Trust Property as they are received and as income thereon arises.

2.3 The Licensee may only withdraw amounts standing to the credit of the Trust Account:

(A) to the extent that such amounts (together with the then Maximum Amount under any Standby Letter of Credit or First Demand Guarantee issued to Protect the then applicable Protected Amount) exceed the then applicable Protected Amount; or

(B) in accordance with directions by, or consent of, the Authority; or

(C) if the Authority determines that the Trust Property no longer need be held on trust by the Trustee on the terms of this Declaration of Trust; or

(D) to refund to Fixed Direct Debit Domestic Customers overpayments by such Fixed Direct Debit Domestic Customers, subject to the terms of the applicable Licence,

by paying such amounts to a different bank account of the Licensee (and, following the transfer of any such amounts to a different bank account of the Licensee, such amounts shall cease to be Trust Property).

- 2.4 Following a Credit Event or a Licence Event, the Trustee shall withdraw amounts standing to the credit of the Trust Account, by making payment to any Supplier(s) of Last Resort nominated from time to time by the Authority or otherwise in accordance with the directions of the Authority.
- 2.5 In the event of a sale by the Licensee of the accounts of any Fixed Direct Debit Domestic Customers, the Trustee shall withdraw amounts standing to the credit of the Trust Account by making payment of the portion of Protected Amount allocable to the Domestic Customer Credit Balances of such Fixed Direct Debit Domestic Customers to the purchaser of such Fixed Direct Debit Domestic Customers.
- 2.6 The Trustee shall ensure that the Trust Account shall not go into overdraft.
- 2.7 The Trustee shall not credit any funds to the Trust Account other than Domestic Customer Credit Balances or interest accruing on the Trust Account.
- 2.8 The Authority may enforce the provisions of this Declaration of Trust on behalf of any Beneficiary.
- 2.9 The Trustee irrevocably and by way of security appoints each of the Authority and any delegate of the Authority severally as its attorney, in its name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit to take any action and sign or execute any further documents which the Trustee is required to take, sign or execute in accordance with this Declaration of Trust. The Trustee agrees, promptly on the request of the Authority, to ratify and confirm all such actions taken and documents signed or executed to secure the performance of the Trustee's obligations under this Declaration of Trust.

3 Acknowledgements of the Trustee

3.1 No right to Trust Account

The Trustee acknowledges that, subject to clause 2.3 above, it has no right at any time to set off or transfer any of the amounts standing to the credit of the Trust Account in or towards satisfaction of any of the Liabilities of any Beneficiary to the Trustee or of any of the Liabilities of the Trustee to any other person.

3.2 Security over property of Trustee

Without prejudice to the security power of attorney granted by the Trustee in Clause 2.9, the Trustee acknowledges and declares that the trust constituted by this Declaration of Trust is not intended to create, nor does it create, any Encumbrance in favour of any person over any property or assets of the Trustee but rather is intended clearly to delineate the beneficial interest of the Beneficiaries in the Trust Property.

3.3 No delegation or investment

Except insofar as is required or permitted pursuant to the applicable Licence:

- 3.3.1 the Trustee shall have no power to delegate to any other person any of the rights, powers, authorities, duties or obligations directed or authorised pursuant to this Declaration of Trust; and

3.3.2 the Trustee shall have no further or other powers of investment with respect to the property held on trust and for the avoidance of doubt, the provisions of the Trustee Act 2000 relating to trustee investments shall not apply.

3.4 No encumbrance

The Trustee hereby acknowledges and agrees that it will not encumber or dispose of any of its right, title, interest and benefit, present and future in the Trust Account or the amounts standing to the credit of the Trust Account other than in accordance with this Declaration of Trust or the applicable Licence.

3.5 No transfer or disposal

The Trustee hereby agrees that it shall not, at any time, hold itself out to any person as being beneficially entitled to the Trust Account or the amounts standing to the credit of the Trust Account, and shall only be entitled to effect any transfer or disposal of any of its right, title, interest and benefit in the Trust Property or the amounts standing to the credit of the Trust Account comprising the Trust Property in accordance with clause 2.3, clause 2.4 or clause 2.5 above.

3.6 Notice of Declaration of Trust

The Trustee undertakes to give notice of this Declaration of Trust to the Account Bank as soon as reasonably practicable in the form set out in Schedule 1 (*Form of Notice of Account Declaration of Trust*).

4 Resignation

The Trustee may only resign as trustee after the Trustee has transferred any credit balance standing to the credit of the Trust Account in accordance with the directions of the Authority.

5 Partial Invalidity

The invalidity, illegality or unenforceability of a provision of this Declaration of Trust does not affect or impair the continuation in force of the remainder of this Declaration of Trust.

6 Amendments

Amendments to this Declaration of Trust can be made with the consent of the Authority and without the need for any consent by the Beneficiaries.

7 Perpetuity Period

The perpetuity period for the purposes of this declaration of trust shall be the period of 125 years from the date hereof.

8 Trustee Act

The duty of care contained in section 1 of the Trustee Act 2000 shall not apply to any trust or fiduciary relationship created or purported to be created by this Declaration of Trust.

9 Execution

The Trustee has executed this Declaration of Trust as a deed and intends to deliver, and does deliver, this Declaration of Trust on the date stated above.

10 Governing Law

This Declaration of Trust (and any non-contractual obligations arising out of or in connection with it) is governed by, and shall be construed in accordance with, English law.

11 Submission to Jurisdiction

The Trustee hereby irrevocably submits to the exclusive jurisdiction of the English courts in any action or proceeding arising out of or in relation to this Declaration of Trust, and hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined by such courts. The Trustee hereby irrevocably waives, to the fullest extent it may possibly do so, any defence or claim that the English courts are an inconvenient forum for the maintenance or hearing of such action or proceeding.

12 Further Assurance

The Trustee shall (at its own cost) do and execute, or arrange for the doing and executing of, each act, document and thing requested of it by the Authority in order to implement and/or give effect to this Declaration of Trust.

As witness whereof this Declaration of Trust has been duly executed as a deed and delivered on the date first set out above.

Beneficiary

Signed and delivered as a Deed
for and on behalf of
[Licensee Name]
by its lawfully authorised signatory

)
)
) Authorised Signatory signature
)

.....
Print Authorised Signatory name

in the presence of:

.....
Witness signature

.....
Print Witness name

.....
Witness address

Schedule 1 – Form of Notice of Account Declaration of Trust

To: [Name of Bank]

[•]

[•]

[DATE]

Dear Sirs

Account Declaration of Trust

- 1 We refer to the account held with you in our name (Sort Code: [•]; Account Number: [•]) (the **Trust Account**).
- 2 We hereby give you notice that by a declaration of trust dated on or about the date hereof we have declared a trust over all amounts credited to the Trust Account from time to time in favour of ourselves and any Supplier(s) of Last Resort nominated from time to time by ~~The Office of Gas and Electricity Markets (the Authority)~~ The Gas and Electricity Markets Authority in relation to our Fixed Direct Debit Domestic Customers or, prior to the appointment of any such Supplier of Last Resort(s), our Fixed Direct Debit Domestic Customers as a whole.
- 3 We should be grateful if you would sign and return the attached copy of this letter to confirm that you have received this notice of such declaration of trust.

Yours faithfully

.....
For and on behalf of [Licensee Name]

Acknowledgement of receipt

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