

## RO Account Declaration of Trust dated [●]

[Licensee Name]<sup>1</sup> (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 Gas and Electricity Markets Authority**, whose office is at 10 South Colonnade, Canary Wharf, London E14 4PU, United Kingdom as the **Beneficiary** on the terms set out in this RO Account Declaration of Trust.

### Recitals

The Trustee has declared a trust over the Trust Account to Protect the RO Credit Cover Amount accordance with that Standard Licence Condition (SLC) 30 of the electricity supply licence in accordance with the terms of this Deed.

### 1 Definitions and Interpretation

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

"**Account Bank**" means the bank account with which the Trust Account is held.

"**Authority**" means The Gas and Electricity Markets Authority.

"**Beneficiary**" means the Authority.

"**Credit Event**"<sup>2</sup> 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 for supplies in Great Britain granted to the Licensee.

"**Licence Event**" means the Authority has revoked a Licence of the Licensee;

<sup>1</sup> Query whether we need to cover where the licence holder is a different entity to that dealing with payments and accounting.

<sup>2</sup> Always retain this definition. It is required for cover of both the Domestic Customer Credit Balances and the Renewables Obligation.

**"Maximum Amount"** means the maximum that is available to be drawn by the Beneficiary under any Standby Letter of Credit or First Demand Guarantee to Protect the RO Credit Cover Amount.

**"Non-Payment Event"** means any failure by the Licensee to discharge its Renewables Obligation whether by failing to make payment to the Authority before 1 September in terms of Article 67 of the Renewables Obligation Order 2015 (as amended from time to time) or Article 43 of the Renewables Obligation (Scotland) Order 2009 (as amended from time to time) or by failing to produce Renewables Obligation Certificates by 1 September.

**"Renewables Obligation"** has the meaning set out in the Renewables Obligation Order 2015 and the Renewables Obligation (Scotland) Order 2009, as amended from time to time.

**"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 nonpayment, 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 Deed:

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 Deed;

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 Deed, the **Trust Property**) on trust for the Beneficiary.

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

2.3 The Licensee may withdraw amounts standing to the credit of the Trust Account by paying such amounts:

- (A) to a different bank account of the Licensee 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 RO Credit Cover Amount) exceed the then applicable RO Credit Cover Amount; or
- (B) in accordance with directions by, or consent of, the Authority; or
- (C) to a different bank account of the Licensee 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 the Authority in order to pay any RO Discharge Payment payable by the Licensee, provided that the remaining credit balance of the Trust Account shall continue to be at least equal to the RO Credit Cover Amount immediately following the payment of such RO Discharge Payment

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

2.4 Following a Credit Event or a Licence Event or a Non-Payment Event, the Trustee must withdraw amounts standing to the credit of the Trust Account, by making payment to the Beneficiary or otherwise in accordance with the directions of the Beneficiary.

2.5 The Trustee shall ensure that the Trust Account shall not go into overdraft.

### **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 the Beneficiary to the Trustee or of any of the Liabilities of the Trustee to any other person.

#### **3.2 Security over property of Trustee**

The Trustee acknowledges and declares that the trust constituted by this Deed 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 Beneficiary 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 Deed; 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 Deed 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 or clause 2.4 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 Deed does not affect or impair the continuation in force of the remainder of this Deed.

## **6 Amendments**

Amendments to this Declaration of Trust can be made with the consent of the Authority.

## **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 Deed.

## **9 Execution**

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

**10 Governing Law**

This Deed (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 Deed, 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.

**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 an account 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 The Gas and Electricity Markets Authority in its capacity as beneficiary.
- 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]**