

FROM: [***name of borrower***], a company incorporated in [***] (with company number [***]) and with its registered office located at [***] (the "**Borrower**")

TO: The Commissioners of His Majesty's Treasury ("**HMT**")

COPY TO: The Governor and Company of the Bank of England (the "**Bank**")

DATE: [***]

DIRECT LETTER OF UNDERTAKING

Energy Markets Financing Scheme (the "**Scheme**")

1. The Borrower is considering entering into a loan facility (the "**EMFS Facility**") with [***name of lender***] (the "**Lender**") for the Eligible Purpose. "**Eligible Purpose**" means the funding of the Borrower's obligations to provide initial cash margin and variation cash margin pursuant to exchange-traded and over-the-counter (OTC) Hedging Arrangements, being, in each case, contracts entered into by the Borrower to hedge its exposure under contracts entered into with third parties to purchase or sell electricity or gas that support ultimate supply in the UK domestic market.
2. The Borrower understands that HMT and the Bank are considering whether the Bank should enter into a guarantee (the "**EMFS Guarantee**") issued under the Scheme in favour of the Lender covering certain of the Borrower's payment obligations under the EMFS Facility, and that as a condition of doing so HMT requires that the Borrower issues HMT this letter. The Borrower acknowledges that issuing this letter does not commit the Bank to issuing the EMFS Guarantee, which remains at the discretion of HMT.
3. The Borrower acknowledges that if the EMFS Guarantee is issued HMT indemnifies the Bank for sums that the Bank pays out under the EMFS Guarantee (the "**HMT Indemnity**").
4. In accordance with the rules of the Scheme, the Borrower is required to enter into certain undertakings in favour of HMT as set out in this letter.
5. The Borrower shall comply with this letter and each such undertaking for the period starting on:
 - (a) the date the first loan is advanced under the EMFS Facility; and
 - (b) ending on the earliest of:
 - (i) the date on which there is no outstanding principal, interest or other sums due under the EMFS Facility and no further loans or facilities are available to be drawn under the EMFS Facility;
 - (ii) the first anniversary of such first loan advance; and
 - (iii) 31 December 2023,save that the Borrower shall comply with paragraph 11.4 below whether or not the period mentioned in this paragraph 5 ends.
6. The Borrower acknowledges that the detail provided in this letter on how the Borrower intends to comply with such undertakings will be considered by HMT. If HMT does not consider the proposals to be sufficient, the Borrower understands that HMT reserves the right to request amended proposals.

7. The Borrower acknowledges that the terms of the Scheme may be amended from time to time, and that the Borrower may be required by HMT to execute a further version of this letter if HMT deems necessary.
8. The Borrower acknowledges and agrees that if HMT determines at any time that the Borrower is not in full compliance with the terms of this letter, HMT may publish this letter together with details of such non-compliance in any manner HMT deems fit.
9. If at any time the Borrower fails to comply with paragraphs 11.1, 11.2 and/or 11.3 below:
 - (a) the Borrower hereby indemnifies HMT, and agrees to indemnify HMT, and holds HMT harmless, on demand made at any time and from time to time for and against all sums paid from time to time by HMT under the HMT Indemnity in relation to claim payments made by the Bank under the EMFS Guarantee relating to the EMFS Facility;
 - (b) the Borrower shall be bound by paragraph (a) above indefinitely and paragraph 5 above shall not apply;
 - (c) the Borrower acknowledges, to avoid doubt, that there will not necessarily be a causal link between the Borrower's failure to comply with paragraphs 11.1, 11.2 and/or 11.3 below and the Bank paying under the EMFS Guarantee or HMT paying under the HMT Indemnity;
 - (d) the Borrower shall, if required by HMT:
 - (i) not borrow any further loans or avail any other facilities under the EMFS Facility; and
 - (ii) immediately pay and repay all principal, interest and other sums outstanding (whether or not due and payable) under the EMFS Facility.
10. The remedies at paragraphs 8 and 9 above are in addition to other remedies that HMT may have in contract, law or otherwise (including usual remedies available for breach of contract).
11. The Borrower hereby agrees that it shall:

11.1 Use of funds

- (a) use all proceeds of the EMFS Facility only for the Eligible Purpose;
- (b) ensure that any margin funded by such proceeds which is due to be returned to the Borrower under the relevant hedging arrangement is paid directly to the Lender as a repayment (with accrued interest thereon) of the loan or loans outstanding under the EMFS Facility; and
- (c) by no later than the tenth day of each month, provide HMT (and/or HMT's advisers) and the Lender with evidence (with a reasonable level of detail and supporting documentation) of compliance with paragraphs (a) and (b) above for all loan advances under the EMFS Facility made during the previous month.

11.2 Capital distribution

- (a) ensure that the Borrower does not pay or make any dividends or distributions of any kind (including without limitation share buybacks, return of equity and payments under subordinated shareholder loans) to any of the Borrower's shareholders.

- (b) [Insert any additional detail on how firm intends to meet this requirement. Note HMT may require these conditions to apply to more than one entity in a group]

11.3 Pay restraint

- (a) ensure pay restraint with regard to senior management of the following entities:
 - (i) the Borrower; and
 - (ii) [HMT may require this condition to apply to more than one entity in a group];
- (b) For this purpose "senior management" means:
 - (i) members of the board of directors of the relevant entity;
 - (ii) individuals classed as directors or senior managers of the relevant entity under Section 414C of the Companies Act 2006;
 - (iii) individuals within scope of the Senior Managers Regime set out in Part V of the Financial Services and Markets Act 2000; and
 - (iv) employees below board level of the relevant entity where the risks associated with the activities in which such persons are involved are material to the entity's overall performance.
- (c) For this purpose "pay restraint" means no pay rises or discretionary cash bonuses.
- (d) [Insert any additional detail on how firm intends to meet this requirement]

11.4 Environmental

- (a) if the Borrower is a UK-listed company, disclose to HMT whether it has a net zero transition plan, and if so, within six months of the date the first loan is advanced under the EMFS Facility, deliver to HMT its then current net zero transition plan; and
- (b) within six months of the date the first loan is advanced under the EMFS Facility, deliver to HMT proportionate climate-related financial information in line with the guidance by the Taskforce on Climate-related Financial Disclosures (TCFD); for example, this should include information on the Borrower's approach to the transition to a low emission world consistent with the TCFD guidance on targets, metrics and transition plans from October 2021.
- (c) [Insert any additional detail on how firm intends to meet this requirement. HMT may require these disclosures about an alternate entity/consolidated group if the Borrower is not the same entity as the Energy Firm as per the Market Notice)].

11.5 Regulatory proceedings

- (a) unless prohibited by law:
 - (i) immediately inform HMT if at any time any investigation, proceeding or legal action is started against or involving the Borrower by any official body, government department or agency, or regulatory authority (including without limitation the Prudential Regulation Authority, the Financial Conduct Authority and the Serious Fraud Office) but excluding any tax authority such as HMRC; and
 - (ii) promptly provide HMT with any information regarding the foregoing that HMT may reasonably request from time to time.

- (b) [Insert any additional detail on how firm intends to meet this requirement]

11.6 Laws; Tax

- (a) comply with all laws and regulations to which it may be subject, save that trivial breaches are excluded from this paragraph (a);
- (b) pay and discharge all taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes; and
 - (iii) such payment can be lawfully withheld; and
- (c) promptly provide HMT with any information regarding the foregoing that HMT may reasonably request from time to time.

11.7 Notification of breaches

- (a) immediately notify HMT in writing if the Borrower becomes aware of any failure on its part to comply, or the Borrower believes there is a reasonable likelihood that the Borrower will fail to comply, with any of the provisions or undertakings in this letter, together with a reasonable level of detail, and a description of what (if any) steps the Borrower is taking or planning to take to remedy, or avoid, such failure; and
- (b) thereafter promptly to provide any information which HMT may at any time request from the Borrower in relation to the foregoing.

12. Loan stops

- (a) If at any time the Borrower:
 - (i) notifies the Lender that, or otherwise becomes aware that:
 - (1) any advance of cash under the EMFS Facility has not been used wholly for the Eligible Purpose; or
 - (2) the Borrower is, or has become, an Excluded Person;
 - (ii) becomes aware that HMT has notified the Lender that:
 - (1) any advance of cash under the EMFS Facility has not been used wholly for the Eligible Purpose;
 - (2) the Borrower is, or has become, an Excluded Person; or
 - (3) the Borrower is reasonably likely to become an Excluded Person;
 - (iii) becomes aware that the Borrower does not have, or has ceased to have, the Required Credit Rating;
 - (iv) becomes either:
 - (1) aware that the Lender has been notified by the Bank that; or
 - (2) HMT notifies the Borrower that,

the Bank has suspended or terminated the Borrower's access to the Scheme,

the Borrower shall not borrow any further loans or avail any other facilities under the EMFS Facility, and shall take such reasonable steps that are required to stop any such further loans or availing taking place.

- (b) The Borrower shall promptly notify the Lender (under and in the context of the EMFS Facility) if at any time it becomes aware of the occurrence of any of the circumstances contemplated by paragraphs (a)(i)(1), (a)(i)(2) and (a)(iii) above.
- (c) The Borrower shall promptly notify HMT if at any time:
 - (i) it becomes aware of the occurrence of any of the circumstances contemplated by paragraphs (a)(i)(1), (a)(i)(2) and (a)(iii) above;
 - (ii) it has notified the Lender as contemplated by paragraph (a)(i) above; or
 - (iii) it becomes aware that the Lender has been notified by the Bank as contemplated by paragraph (a)(iv)(1) above.
- (d) For the purpose of this paragraph 12:

"Excluded Person" means an entity which:

- (i) has state-owned entities, national governments, regional governments and/or municipalities holding directly or indirectly more than 25 per cent. of the issued securities of such entity and/or voting rights of such entity and/or exercising direct or indirect control over such entity;
- (ii) is within a corporate group whose business activities are predominantly subject to financial sector regulation; or
- (iii) is a subsidiary of an entity that is a bank, building society, insurance company or other financial sector entity regulated by the Bank of England or the Financial Conduct Authority.

"Required Credit Rating" means a current long-term issuer credit rating (or equivalent) of BB- (as determined by Standard & Poor's rating agency or Fitch's rating agency) or Ba3 (as determined by Moody's rating agency) or such other credit rating confirmation as may be agreed by the Bank, provided that where an entity has a split rating and one or more of its ratings is below BB- or Ba3 (as applicable) it shall not have a "Required Credit Rating".

- 13. The Borrower acknowledges that, if the Bank issues the EMFS Guarantee, HMT will have relied upon this letter.
- 14. The Borrower intends that this letter takes effect as a deed.
- 15. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 16. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this letter (including a dispute relating to the existence, validity or termination of this letter or any non-contractual obligation arising out of or in connection with this letter) (a "**Dispute**").
- 17. The Borrower agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly the Borrower will not argue to the contrary.

18. Notwithstanding paragraphs 16 and 17 above, HMT shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, HMT may take concurrent proceedings in any number of jurisdictions.

Executed as a deed by:
[**name of Borrower**]
acting by:

.....
Name: _____
Director

.....
Name: _____
Director/Secretary*
(*delete as applicable)