

EMFS Guarantee – Table of Updates 07/12/22

Deleted provisions are in ~~strikethrough~~

Additions are underlined

Clause	Published version on 17 October 2022	Updated version as at 7 December 2022
Agreement Supplement		Footnote 1: <u>The Agreement Supplement and the Guarantee could be amended to cater for signing by more than one lender, for instance in the case of a syndicate. This will be assessed on a case by case basis.</u>
Agreement Supplement Clause 2(B)	(B) [type and date of Eligible EMFS Financing],	(B) [type and date of Eligible EMFS Financing <u>and the existing facility to which it relates</u>]; and
Agreement Supplement Clause 4.3	The Lender hereby confirms that the Eligibility Criteria apply to the Eligible EMFS Financing and that it has made all due enquiry of the Borrower with respect to any information needed to be provided by the Borrower with respect to the Eligibility Criteria.	The Lender hereby confirms that the Eligibility Criteria apply to the Eligible EMFS Financing and that it has made all <u>Due Enquiry</u> of the Borrower with respect to any information needed to be provided by the Borrower with respect to the Eligibility Criteria.
Agreement Supplement Clause 6.1(B)	(B) the on-going commitment fee shall be determined by reference to the undrawn amount of the Covered EMFS Financing and shall be payable quarterly in arrears on 1 January, 1 March , 1 June and 1 September .	(B) the on-going commitment fee shall be determined by reference to the undrawn amount of the Covered EMFS Financing and shall be payable quarterly in arrears on 1 January, 1 <u>April</u> , 1 <u>July</u> and 1 <u>October</u> (or if such date is not a Business Day, the <u>immediately following Business Day</u>).
Agreement Supplement Clause 6.2	The Lender agrees to pay to the Guarantor an amount equal to the scheme interest rate set out in the most recent Market Notice which shall be payable quarterly in arrears on 1 January, 1 March , 1 June and 1 September whilst any amount is drawn under the Covered EMFS Financing.	The Lender agrees to pay to the Guarantor an amount equal to the scheme interest rate set out in the most recent Market Notice which shall be payable quarterly in arrears on 1 January, 1 <u>April</u> , 1 <u>July</u> and 1 <u>October</u> (or if such date is not a Business Day, the <u>immediately following Business Day</u>) whilst any amount is drawn under the Covered EMFS Financing.

<p>Agreement Supplement Clause 6.3</p>	<p>The Lender agrees to pay to the Guarantor a prepayment fee (if any) in accordance with the most recent Market Notice with such payment being payable within two Business Days of receipt from the Borrower.</p>	<p>The Lender agrees to pay to the Guarantor a <u>cancellation</u> fee (if any) in accordance with the most recent Market Notice with such <u>fee</u> being payable within two Business Days of receipt from the Borrower.</p>
<p>Agreement Supplement Clause 6.5</p>	<p>The commitment fee and the scheme interest rate shall accrue from day to day from (a) (with respect to the commitment fee), the Effective Date; and (b) (with respect to the scheme interest) while any amount is outstanding under the Covered EMFS Financing and, in each case, the amount of any such fee or interest is calculated on the basis of the actual number of days elapsed and a year of 365 days.</p>	<p>The commitment fee and the scheme interest rate shall accrue from day to day from (a) with respect to the commitment fee, the Effective Date; and (b) with respect to the scheme interest while any amount is outstanding under the Covered EMFS Financing and, in each case, the amount of any such fee or interest is calculated on the basis of the actual number of days elapsed and a year of 365 days.</p>
<p>EMFS Guarantee Clause 5.1(A)</p>	<p>the Borrower fails to make any payment of the Outstanding Guaranteed Balance to the Lender when due (provided that where a Payment Claim or Additional Payment Claim is being submitted following the exercise by the Lender of the termination option in Clause 12.3 (Termination by Lender), such Payment Claim or Additional Payment Claim must only relate to a failure to pay by the Borrower in the period ending on the date falling six months after the Effective Date);</p>	<p>the Borrower fails to make any payment of the Outstanding Guaranteed Balance to the Lender when due (provided that where a Payment Claim or Additional Payment Claim is being submitted following the exercise by the Lender of the termination option in Clause 12.3 (Termination by Lender), such Payment Claim or Additional Payment Claim must only relate to a failure to pay by the Borrower in the <u>period from the Effective Date to the date falling 30 days after the date of delivery by the Lender of the notice referred to in Clause 12.3</u>);</p>
<p>EMFS Guarantee Clause 5.3</p>		<p><u>Without prejudice to the generality of Clause 2 (Standard of care), the Lender shall not apply any sums paid to it by the Guarantor pursuant to the EMFS Guarantee as a result of a Payment Claim (or an Additional Payment Claim) against any amount due by the Borrower under the Covered EMFS Financing.</u></p>
<p>EMFS Guarantee Clause 6.4(D)</p>		<p>(D) <u>Following any assignment made pursuant to this Clause 6.4, the Lender shall promptly provide any assistance and/or take any step which the Guarantor (or HMT) may at any time and from time to time reasonably request in relation to the Covered EMFS Financing, the Borrower and/or any of the subject matter of the foregoing, including in relation to any enforcement or recoveries steps.</u></p>

EMFS Guarantee Clause 8.2(D)	(D) The Lender will supply to the Guarantor Related Parties such information, documents, reports and records about the EMFS Guarantee, the Covered EMFS Financing and the subject matter thereof, and the Borrower as that Guarantor Related Party may from time to time require and investigate (where appropriate) and respond to any enquires made by any Guarantor Related Party about the same (except where the Lender is prohibited from such disclosure by law (including by a court order)).	(D) <u>If requested at any time and from time to time by any Guarantor Related Party, the Lender shall promptly and (if a Payment Claim has been made) in any event within two Business Days of any such request:</u> (1) <u>supply to that Guarantor Related Party such information, documents, reports and records about the EMFS Guarantee, the Covered EMFS Financing and the subject matter thereof, the Borrower, any Payment Claim and/or any enforcement or recoveries strategy and/or action as that Guarantor Related Party may require;</u> (2) <u>investigate (where appropriate) any matter set out in or arising from the information provided in paragraph (1); and</u> (3) <u>respond to any enquires made by that Guarantor Related Party about any matter set out in or arising from the information provided in paragraph (1),</u> except, in each such case, where the Lender is prohibited from such disclosure by law (including by a court order).
EMFS Guarantee Clause 10.3(A)	(6) an event described in Clause 10.6(B) (<i>Loan stops</i>) occurs; (9) it becomes aware of any material change in the Borrower's credit risk; or (10) it becomes aware that the Borrower has ceased purchasing and/or selling electricity and/or gas intended for ultimate supply in the UK domestic market.	(6) an event described in Clause 10.6(A)(3) (<i>Loan stops</i>) occurs; (9) it becomes aware of any material change in the Borrower's credit risk; (10) it becomes aware that the Borrower has ceased purchasing and/or selling electricity and/or gas intended for ultimate supply in the UK domestic market; <u>or</u> (11) <u>it becomes aware that the Borrower is, or has become, or is reasonably likely to become, an Excluded Person.</u>
EMFS Guarantee Clause 10.6	10.6 Loan stops	10.6 Loan stops

	<p>If at any time the Lender:</p> <p>(A) is notified by the Borrower or HMT that any advance of cash under the Covered EMFS Financing has not been used wholly for the Eligible Purpose; or</p> <p>(B) becomes aware that the Borrower does not have, or has ceased to have, the Required Credit Rating,</p> <p>the Lender shall not advance any further funding under the Covered EMFS Financing (but ignoring for these purposes any rollover of an existing loan under a revolving credit facility or economically equivalent product) and if any such further funding is advanced it shall be disregarded for the purpose of the Outstanding Guaranteed Balance and shall not form any part of the Payment Claim or any Additional Payment Claim, save that this Clause 10.6 shall not apply if the Guarantor has given its consent to the further funding.</p>	<p>If at any time:</p> <p>(A) <u>the Lender:</u></p> <p>(1) <u>is notified by the Borrower or HMT that:</u></p> <p>(a) any advance of cash under the Covered EMFS Financing has not been used wholly for the Eligible Purpose; or</p> <p>(b) <u>the Borrower is, or has become, an Excluded Person;</u></p> <p>(2) <u>is notified by HMT that the Borrower is reasonably likely to become an Excluded Person; or</u></p> <p>(3) becomes aware that the Borrower does not have, or has ceased to have, the Required Credit Rating; <u>or</u></p> <p>(B) <u>the Lender is notified by the Guarantor that the Guarantor has suspended or terminated the Borrower's access to the Scheme,</u></p> <p>the Lender shall not advance any further funding under the Covered EMFS Financing (but ignoring for these purposes any rollover of an existing loan under a revolving credit facility or economically equivalent product) <u>following (i) the date of any such notification or (ii) in the case of paragraph (A)(3) above, the date on which the Lender becomes so aware</u> and if any such further funding is advanced <u>following any such date</u> it shall be disregarded for the purpose of the Outstanding Guaranteed Balance and shall not form any part of the Payment Claim or any Additional Payment Claim, save that <u>paragraph (A)(3) above</u> shall not apply if the Guarantor has given its consent to the further funding. <u>The Guarantor agrees</u></p>
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		<u>that the Outstanding Guaranteed Balance shall include any funding advanced on or before any such date.</u>
EMFS Guarantee Clause 12.3	Provided the Lender has delivered a written notice of termination to the Guarantor referring to this Clause 12.3 no later than 30 days before the date falling six months after the Effective Date, the EMFS Guarantee shall automatically terminate on the date falling six months after the Effective Date. Such a notice from the Lender shall be irrevocable (unless following a request by the Lender, the Guarantor agrees to allow the Lender to revoke the notice).	<u>If at any time the Lender delivers a written notice of termination to the Guarantor referring to this Clause 12.3, the EMFS Guarantee shall automatically terminate on the date falling 30 days after the date of such delivery.</u> Such a notice from the Lender shall be irrevocable (unless, following a request by the Lender, the Guarantor agrees to allow the Lender to revoke the notice).
EMFS Guarantee Schedule 1 Definitions "Application Process"	"Application Process" means the process set out in the EMFS Procedures pursuant to which a Borrower may apply to the Guarantor for a proposed Eligible EMFS Financing to be entered into with the Lender to receive the benefit of the EMFS Guarantee, as such process may be updated by any applicable Market Notice, any other Scheme Document or as set out on the Guarantor's website ¹ .	<u>"Application Process"</u> means the process set out in <u>any applicable Market Notice, any other Scheme Document or as set out on the Guarantor's website</u> ² pursuant to which a Borrower <u>and the Lender</u> may apply to the Guarantor for a proposed Eligible EMFS Financing to be entered into <u>between the Borrower and</u> the Lender to receive the benefit of the EMFS Guarantee, as such process may be updated by any applicable Market Notice, any other Scheme Document or as set out on the Guarantor's website ³ .
EMFS Guarantee Schedule 1 Definitions "Due Enquiry"	"Due Enquiry" means those enquiries, investigations and due diligence processes adopted by the Lender from time to time in assessing an Borrower and completing the Lender's Application Process, taking into account that aims and purposes of the Scheme and in accordance with Clause 2 (<i>Standard of Care</i>).	<u>"Due Enquiry"</u> means those enquiries, investigations and due diligence processes adopted by the Lender from time to time in assessing <u>the</u> Borrower and completing the Lender's Application Process, taking into account <u>the</u> aims and purposes of the Scheme and in accordance with Clause 2 (<i>Standard of Care</i>).
EMFS Guarantee Schedule 1 Definitions "Eligible Borrower"	"Eligible Borrower" means an entity: (A) holding one or more of an electricity generation licence under section 6(1)(a) of the Electricity Act 1989, an electricity supply licence under section 6(1)(d) of the Electricity Act 1989, a gas supply licence under section 7A(1) of the Gas Act 1986 or a gas shipper licence under section 7A(2) of the Gas Act 1986;	<u>"Eligible Borrower"</u> means an entity: (A) <u>which holds or has an Affiliate which holds</u> one or more of an electricity generation licence under section 6(1)(a) of the Electricity Act 1989, an electricity supply licence under section 6(1)(d) of the Electricity Act 1989, a gas supply licence under section 7A(1) of the Gas Act 1986, a gas shipper licence under section 7A(2) of the Gas Act 1986 <u>or a licence for electricity</u>

¹ <https://www.bankofengland.co.uk/markets/energy-markets-financing-scheme>

² <https://www.bankofengland.co.uk/markets/energy-markets-financing-scheme>

³ <https://www.bankofengland.co.uk/markets/energy-markets-financing-scheme>

	<p>(B) which satisfies the Materiality Threshold;</p> <p>(C) which has a Required Credit Rating; and</p> <p>(D) which is not an Excluded Person.</p>	<p><u>generation, electricity supply or gas supply issued by the Northern Ireland Authority for Utility Regulation;</u></p> <p>(B) <u>[which satisfies or has an Affiliate which satisfies the Materiality Threshold];</u>⁴</p> <p>(C) which has a Required Credit Rating; and</p> <p>(D) which is not an Excluded Person.</p>
EMFS Guarantee Schedule 1 Definitions "Eligible EMFS Financing"	" Eligible EMFS Financing " means a financing arrangement offered by the Lender to the Borrower which meets the Eligibility Criteria.	" Eligible EMFS Financing " means <u>an additional tranche of a specified existing</u> financing arrangement offered by the Lender to the Borrower which meets the Eligibility Criteria.
EMFS Guarantee Schedule 1 Definitions "Eligible Lender"	<p>"Eligible Lender" means:</p> <p>(A) a lending entity regulated by the Prudential Regulation Authority including a branch of an overseas lending entity where such branch is located in the United Kingdom and is regulated by the Prudential Regulation Authority; or</p> <p>(B) only where such entity is deemed eligible for the Scheme by the Guarantor and HMT:</p> <p>(1) a lending entity regulated in any jurisdiction other than the United Kingdom that is deemed eligible for the Scheme by the Bank and HMT; or</p> <p>(2) another non-bank or non-regulated lending entity if such entity is involved in a syndicated credit facility.</p>	<p>"Eligible Lender" means:</p> <p>(A) a <u>bank</u> regulated by the Prudential Regulation Authority including a branch of an overseas <u>bank</u> where such branch is located in the United Kingdom and is regulated by the Prudential Regulation Authority; or</p> <p>(B) only where such <u>bank</u> is deemed eligible for the Scheme by the Guarantor and HMT:</p> <p>(1) a <u>bank</u> regulated in any jurisdiction other than the United Kingdom; or</p> <p>(2) another non-bank or non-regulated lending entity <u>including</u> if such entity is involved in a syndicated credit facility.</p>
EMFS Guarantee Schedule 1 Definitions "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 OTC Hedging Arrangements, being, in each case, contracts entered into by the	" Eligible Purpose " means the funding of the Borrower's obligations to provide initial cash margin and variation cash margin pursuant to exchange-traded and <u>over-the-counter (OTC) Hedging Arrangements</u> , being, in each case, contracts entered into by the Borrower to hedge

⁴ To be deleted from EMFS Guarantees issued to Northern Irish borrowers.

	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.	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.
EMFS Guarantee Schedule 1 Definitions "Excluded Person"	<p>"Excluded Person" means an entity which:</p> <p>(A) has state-owned entities and/or national governments holding directly or indirectly more than 25 per cent. of the issued securities of such entity and/or exercising direct or indirect control over such entity;</p> <p>(B) is within a corporate group whose business activities are predominantly subject to financial sector regulation; or</p> <p>(C) 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.</p>	<p>Excluded Person means an entity which:</p> <p>(A) has state-owned entities, <u>national governments, regional governments and/or municipalities</u> holding directly or indirectly more than 25 per cent. of the issued securities of such entity and/or <u>voting rights of such entity and/or</u> exercising direct or indirect control over such entity;</p> <p>(B) is within a corporate group whose business activities are predominantly subject to financial sector regulation; or</p> <p>(C) 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.</p>
EMFS Guarantee Schedule 1 Definitions "General Eligibility Criteria"	<p>"General Eligibility Criteria" has the meaning given to it in Schedule 2 (<i>General Eligibility Criteria</i>), as the same may be supplemented or amended from time to time by the Guarantor provided that the Lender has received at least 30 calendar days' notice of such change with such notice given in accordance with Clause 17 (Notices).</p>	<p>"General Eligibility Criteria" has the meaning given to it in Schedule 2 (<i>General Eligibility Criteria</i>).</p>
EMFS Guarantee Schedule 1 Definitions "Lender's Application Process"		<p>"Lender's Application Process" means the <u>Lender's process of approving the entering into of a proposed Eligible EMFS Financing between the Borrower and the Lender.</u></p>
EMFS Guarantee Schedule 1 Definitions "Materiality Threshold"	<p>"Materiality Threshold" means, in respect of the entity, that it satisfies one or more of the following criteria:</p> <p>(A) it supplied gas or electricity to more than 750,000 domestic meter points in the UK, calculated on average</p>	<p>["Materiality Threshold" means, in respect of the entity, that it satisfies one or more of the following criteria:</p>

	<p>each month over the period May 2022 to July 2022 (inclusive);</p> <p>(B) it supplied more than 1,000,000 MWh of electricity to non-domestic customers in the UK, calculated on average each month over the period May 2022 to July 2022 (inclusive);</p> <p>(C) it supplied gas to more than 4,800 non-domestic supply points in the UK, calculated on average each month over the period May 2022 to July 2022 (inclusive);</p> <p>(D) it supplied gas to non-domestic customers in the UK with an aggregate gas supply point annual quantity of more than 2,000,000 MWh, calculated on average each month over the period May 2022 to July 2022 (inclusive);</p> <p>(E) in its capacity as a gas shipper, it had aggregate gas demand of more than 0.45 billion cubic metres for a 12 month period ending in the three months prior to the date of this Guarantee, calculated by reference to Xoserve Annual Quantities and direct NTS supply; or</p> <p>(F) it is an electricity generator with aggregate de-rated capacity of more than 500 MW in the UK, determined by reference to National Grid ESO's 2022 Electricity Capacity Report.</p>	<p>(A) it supplied gas or electricity to more than 750,000 domestic meter points in the UK, calculated on average each month over the period May 2022 to July 2022 (inclusive);</p> <p>(B) it supplied more than 1,000,000 MWh of electricity to non-domestic customers in the UK, calculated on average each month over the period May 2022 to July 2022 (inclusive);</p> <p>(C) it supplied gas to more than 4,800 non-domestic supply points in the UK, calculated on average each month over the period May 2022 to July 2022 (inclusive);</p> <p>(D) it supplied gas to non-domestic customers in the UK with an aggregate gas supply point annual quantity of more than 2,000,000 MWh, calculated on average each month over the period May 2022 to July 2022 (inclusive);</p> <p>(E) in its capacity as a gas shipper, it had aggregate gas demand <u>in the UK</u> of more than 0.45 billion cubic metres for a 12-month period ending in the three months prior to the date of this Guarantee, calculated by reference to Xoserve Annual Quantities and direct NTS supply; or</p> <p>(F) it is an electricity generator with de-rated capacity of more than 500 MW in the UK, determined by reference to National Grid ESO's Electricity Capacity Report <u>May 2022.</u>⁵</p>
<p>EMFS Guarantee Schedule 1 Definitions "Required Credit Rating"</p>	<p>"Required Credit Rating" means a 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 Guarantor.</p>	<p>"Required Credit Rating" means a <u>current</u> 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 Guarantor, <u>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"</u>.</p>

⁵ To be deleted from EMFS Guarantees issued to Northern Irish borrowers

<p>EMFS Guarantee Schedule 1 Definitions “Termination Date”</p>	<p>“Termination Date” means the earliest to occur of:</p> <p>(A) the date notified as being the date of termination under Clause 12.1 (<i>Cancellation of the EMFS Guarantee</i>);</p> <p>(B) where termination occurs pursuant to Clause 12.3 (<i>Termination by Lender</i>), the date falling twelve months after the Effective Date; and</p> <p>(C) the date falling six months after the Scheduled Final Repayment Date, unless such date is extended by the Guarantor and notified to the Lender in accordance with Clause 17 (<i>Notices</i>).</p>	<p>“Termination Date” means the earliest to occur of:</p> <p>(A) the date notified as being the date of termination under Clause 12.1 (<i>Cancellation of the EMFS Guarantee</i>);</p> <p>(B) where termination occurs pursuant to Clause 12.3 (<i>Termination by Lender</i>), the date falling <u>30 days</u> after the date of <u>delivery by the Lender of the notice referred to in Clause 12.3 (<i>Termination by Lender</i>)</u>; and</p> <p>(C) the date falling six months after the Scheduled Final Repayment Date, unless such date is extended by the Guarantor and notified to the Lender in accordance with Clause 17 (<i>Notices</i>).</p>
<p>EMFS Guarantee Schedule 2</p>	<p>SCHEDULE 2: GENERAL ELIGIBILITY CRITERIA</p>	<p>SCHEDULE 2: GENERAL ELIGIBILITY CRITERIA⁶</p>
<p>EMFS Guarantee Schedule 2 Paragraph 3(C) and Paragraph 3(D)</p>	<p>(C) The proposed Eligible EMFS Financing is in the form of a revolving credit facility, accordion tranche of an existing revolving credit facility, overdraft or economically equivalent product.</p> <p>(D) The Borrower's payment obligations under the proposed Eligible EMFS Financing will rank at least equally with all its other unsecured, unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally and where the proposed Eligible EMFS Financing is a tranche, facility or other addition or extension of another credit or loan facility, such payment obligations are expected to rank at least equally with the remainder of such another credit or loan facility (including sharing in any security or guarantee package).</p>	<p>(C) The proposed Eligible EMFS Financing is <u>an additional tranche of a specified existing financing arrangement offered by the Lender to the Borrower where such additional tranche is</u> in the form of a revolving credit facility, accordion tranche of an existing revolving credit facility, overdraft or economically equivalent product.</p> <p>(D) The Borrower's payment obligations under the proposed Eligible EMFS Financing will rank at least equally with all its other unsecured, unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally and where the proposed Eligible EMFS Financing is a tranche, facility or other addition or extension of another credit or loan facility, such payment obligations are expected to rank at least equally with the remainder of such</p>

⁶ [As at [relevant date]]

		<u>other credit or loan facility (including sharing in any security or guarantee package).</u>
EMFS Guarantee Schedule 2 Paragraph 7		7. <u>The Borrower shall notify the Lender as soon as reasonably practicable if that Borrower is, or has become, or is reasonably likely to become, an Excluded Person.</u>