



# Deemed Contract

Terms and Conditions

Pursuant to Schedule 6 to the Electricity Act 1989

## 1 Deemed Contract

Paragraph 3 of Schedule 6 to the Act provides for certain circumstances in which the owner or occupier of premises will be deemed to have contracted with Smartest for the supply of electricity to those premises. Paragraph 3 of Schedule 6 to the Act also provides for Smartest to make a scheme for determining the terms and conditions which are to be incorporated into the resulting deemed contracts. These are the terms and conditions that apply from 1<sup>st</sup> October 2016 pursuant to that scheme.

## 2 The Supply Contract

2.1 These Terms and Conditions shall apply to and be incorporated into the Supply Contract and shall take precedence over any inconsistent or conflicting terms or conditions implied by law, trade, custom, practice or course of dealing.

2.2 Smartest agrees to provide the Supply to the Customer, and the Customer agrees to pay for such Supply, on the terms of the Supply Contract.

## 3 National Terms of Connection

3.1 Your supplier (Smartest) is acting on behalf of your (the Customer's) network operator to make an agreement with you. The agreement is that you and your network operator both accept the National Terms of Connection (NTC) and agree to keep to its conditions. This will happen from the time that you enter into this contract and it affects your legal rights. The NTC is a legal agreement. It sets out rights and duties in relation to the connection at which your network operator delivers electricity to, or accepts electricity from, your home or business. If you want a copy of the NTC or have any questions about it, please write to: Energy Networks Association 6th Floor, Dean Bradley House  
Horseferry Road, London  
SW1P 2AF  
Phone: 0207 706 5137,  
or see the website at  
[www.connectionterms.co.uk](http://www.connectionterms.co.uk).

## 4 Information

4.1 The Customer shall provide to Smartest such Information as Smartest may reasonably request. For the avoidance of doubt, any

information that Smartest requests in order to comply with any legislation and/or regulatory requirement and/or request made by the Authority or by any other authority or regulatory body shall be deemed to be reasonably requested by Smartest under this clause 4.1. The Customer appoints Smartest as its agent for the purpose of obtaining such Information as Smartest may require to commence, maintain or continue the Supply.

4.2 The Customer shall provide to Smartest no less than 28 (twenty-eight) days written notice of any proposed or likely Change of Control. Subject to any confidentiality restrictions, the Customer shall promptly provide all further information and documentation that Smartest may reasonably request in relation to such Change of Control.

4.3 The customer shall notify Smartest of any electricity generating units installed at the Site from time to time.

## 5 Customer Warranties and Covenants

5.1 The Customer represents, undertakes and warrants that:

- (a) all Information provided to Smartest or its Agent by or on behalf of the Customer and any Information that Smartest has, to the Customer's knowledge, otherwise obtained is true and accurate and in particular that any Forecast Consumption Data provided by or on behalf of the Customer will allow Smartest to make an accurate estimate of the Customer's consumption for the Supply Period;
- (b) it has complied with the Industry Rules (insofar as applicable to it);
- (c) it is party to a Connection Agreement in respect of the Site;
- (d) the Site does not constitute domestic premises; and
- (e) the Site has an Appropriate Meter, which is compliant with the Industry Rules.

5.2 The Warranties shall be deemed to be repeated by the Customer on each day of the Supply Period, and the Customer shall monitor the continued accuracy of the Warranties and inform Smartest as soon as is reasonably practicable should any Warranty become (or

be likely to become) untrue, inaccurate or misleading. The Customer agrees with Smartest that it shall not, at any time, take electricity at any Supply Point exceeding the Maximum Supply Capacity. Should the Customer wish to agree a change to the Maximum Supply Capacity with the Distributor, the Customer shall provide at least 25 (twenty five) days prior notice of such change to Smartest. The Customer agrees that it shall (in accordance with clause 10.2) be responsible for any increase in the charges levied on Smartest by the Distributor that occurs as a result of such changes.

5.3 Subject only to clause 15 (Force Majeure) and any own generation on the Site, the Customer agrees to take its total requirement for electricity at the Site during the Supply Period from Smartest. Smartest will not reimburse the Customer retrospectively for any reduced capacity costs in the event of a reduction in capacity prior to any reduction in capacity properly notified to Smartest under clause 5.3.

5.4 The Customer shall immediately notify Smartest if they are, or subsequently become, a Micro-Business Customer.

## **6 Smartest's Obligations**

6.1 Subject to clause 6.2 and provided that the Customer complies with its obligations under the Supply Contract, Smartest shall supply electricity to the Supply Points during the Supply Period.

6.2 Smartest shall not be obliged to register a Supply Point where any of the relevant circumstances outlined in condition 14A of Smartest's Licence applies.

## **7 Appointment of Service Providers**

7.1 Subject to having given Smartest 25 (twenty five) Business Days' prior notice of its intention, the Customer may directly contract with Service Providers in relation to the Supply Points subject always to Smartest providing its prior consent. Smartest shall be entitled to appoint Service Providers of its choice unless and until the Customer exercises its rights under clause 7.1 and Smartest provides its consent pursuant clause 7.1.

7.2 If the Customer contracts with Service Providers in accordance with clause 7.1, the Customer will:

(a) where such Service Provider is the Meter Operator, ensure that Metering is always installed at the Site and operated and maintained in accordance with the Industry Rules and all applicable laws;

(b) the Meter Operator, ensure that metering is always installed at the site and operated and maintained in accordance with the industry rules and all applicable laws;

(c) ensure that such Service Providers act at all times in accordance with good industry practice, in accordance with all Industry Rules and in accordance with all applicable laws; and

(d) indemnify Smartest against all costs, claims, proceedings or demands Smartest incurs as a result of any fault or failure in the Meter or any act or omission of the Customer or any of the appointed Service Providers.

## **8 Contract Term**

8.1 The Supply Contract shall commence on the Commencement Date and, unless terminated in accordance with clause 17, shall expire on the End Date.

## **9 Sites and Supply**

9.1 The Customer may remove a Supply Point from the Supply Contract at any time by agreeing another supply contract with Smartest or with an electricity supplier other than Smartest.

9.2 The Customer shall give Smartest not less than 25 Business Days' notice where the Customer is to cease to own or occupy the Site (in which case the Customer shall inform Smartest of the new owner or occupier), or if electricity is no longer to be consumed at any Supply Point.

9.3 Where the Customer agrees another supply contract with another electricity supplier, the Customer will continue to be liable to Smartest for the Charges in relation to any Supply Point that it has given notice to remove

in respect of the period until Smartest ceases to be the Registrant.

9.4 The Supply shall be deemed to be delivered at each Supply Point and rights and risks in the Supply shall pass to the Customer on delivery and (without limiting the generality of the foregoing) in particular any losses suffered at or beyond any Supply Point shall be at the risk of and for the account of the Customer.

9.5 The Supply to the Site is delivered through infrastructure operated by third parties (such as the Distributor) and the Customer acknowledges that Smartest has no control and no obligation in relation to that infrastructure and Smartest does not guarantee that the third parties will deliver electricity to the Supply Points at all times nor that the electricity delivered will be free of brief variations in voltage or frequency. If the Customer needs a continuous supply of electricity the Customer should consider providing the Customer's own emergency back up supply.

## 10 Charges

10.1 In respect of the Supply during the Supply Period, the Customer shall pay Smartest the applicable Charges as detailed in the Invoice and payable in accordance with clause 12.3.

10.2 Smartest shall be entitled to recover additional costs or losses (not expressly included within the Charges) incurred or suffered by Smartest in relation to (or incidental to) the Supply. In any event (and without prejudice to the foregoing) Smartest shall be entitled to recover any costs or losses incurred (including any Economic Loss but not limited to) in respect of any of the following:

- (a) additional charges, including as published on Smartest's website under Deemed rates at any time.
- (b) if at any time during any Billing Period the Customer's actual consumption of electricity exceeds the Maximum Supply Capacity;
- (c) after the giving of a notice to terminate the Supply Contract or the Supply to the Site or any Supply Point, in respect of the period commencing on the date on which the notice takes effect and ending on

the date on which Smartest ceases to be the Registrant for the Site or such Supply Point(s);

- (d) should Smartest (acting reasonably) consider that the Information provided to it, or obtained by it, is misleading or no longer true or accurate;
  - (e) the imposition, or variation in the rate, of any tax, levy, duty, tariff or impost or of any cost related to statutory or licence obligations to which Smartest is subject including any variation to the Environmental Schemes or any mutualisation or supplier/offtaker of last resort schemes associated with the foregoing);
  - (f) any amounts payable by Smartest, or costs arising, as a result of any change in law (including changes in the interpretation of laws), or of any change in Industry Rules, or of any directions or requirements of the Secretary of State, or of any fundamental change in the structure of (or manner of calculating) third party charges (including those of the Distributor), or of any charge introduced by the Authority or pursuant to the Industry Rules;
  - (g) any amounts payable by Smartest to any Service Provider (whether appointed by Smartest or by the Customer), or to the Distributor;
  - (h) any losses or costs incurred by Smartest as a result of the Customer not paying any invoices by cleared funds within the payment period set out in the relevant invoice;
  - (i) where the Customer (has agreed to pay by direct debit), the Customer fails to pay by direct debit; and
  - (j) if the Meter at the Site has been damaged or interfered with or having to be changed or modified because it cannot provide the information necessary to record the consumption of electricity in accordance with the Industry Rules (including if a half hourly meter is required (when previously a non-half-hourly meter was sufficient) in accordance with the Industry Rules.
- 10.3 The Customer shall indemnify Smartest in respect of the Charges and any of the

additional costs or losses specified or otherwise referred to in clause 10.2.

10.4 Should Smartest seek to recover any additional costs in accordance with clause 10.2, it shall (to the extent practical) provide the Customer reasonable access to its workings.

10.5 Where relevant, the Customer shall send completed Supplier Certificates to Smartest's registered office (or such other address as Smartest notifies to the Customer), to be received at least 5 (five) Business Days prior to their stated start date. The Customer accepts that relief from Climate Change Levy cannot be backdated and Smartest accepts no liability for late receipt of Supplier Certificates.

10.6 Without prejudice to the specific requirements of clause 12.3, the Customer shall pay any VAT applicable to any amounts due under the Supply Contract.

## 11 Security Deposit

11.1 Smartest may from time to time make an appraisal of the Customer's Credit Rating and may from time to time update that appraisal and monitor and record information relating to the Customer's trade credit performance. As part of any such appraisal Smartest may make a search with a credit reference agency. The credit reference agency may keep a record of that search and may share information with other businesses. Such records may also be made available to credit reference agencies, who may share that information with other businesses in assessing applications for credit and fraud prevention

11.2 Should:

- (a) Smartest at any time during the period from the Commencement Date until the date on which Smartest ceases to be the Registrant (the Relevant Period) have the benefit of credit insurance cover in respect of the Customer and should at any subsequent time during the Relevant Period Smartest cease to have the benefit of such cover; or
- (b) Smartest not have the benefit of credit insurance cover in respect of the Customer as at the Commencement Date,

Smartest may require that the Customer provides Eligible Credit Support of an amount specified by Smartest provided that such amount is no greater than one quarter of the latest Annual Estimate of Costs (a Security Deposit). Smartest shall not be obliged to account to the Customer for any interest earned on any Security Deposit held by Smartest other than as may be agreed in respect of cash.

11.3 In the case of any cash paid by way of a Security Deposit Smartest shall following the End Date pay an equal amount to the Customer less any amount otherwise due from the Customer to Smartest. The Customer shall ensure that all title in any cash paid by way of a Security Deposit shall vest absolutely in Smartest (free of third party interests). No charge is intended to be created over any such cash unless otherwise agreed in writing.

## 12 Terms of Payment

12.1 Smartest shall issue an Invoice to the Customer in respect of each Billing Period. Invoices shall be issued by email or such alternative method as Smartest may elect.

12.2 Each Invoice shall be calculated by reference to Actual Data and Estimated Data only. Smartest shall use its reasonable endeavours to ensure that each Invoice is calculated by reference to Actual Data for as much of the relevant Billing Period as is reasonably possible. If Actual Data has not been provided in respect of the whole of the Billing Period, Smartest shall use Estimated Data in respect of the periods not supported by Actual Data. In calculating the Estimated Data Smartest shall, without limitation, take account of any Consumption Data provided to Smartest to the extent that Smartest, in its reasonable opinion, believes it to be accurate. Smartest shall also use Estimated Data where it considers (acting reasonably) that the Actual Data is inaccurate or incomplete. Any information or calculation in any Invoice that is not prepared wholly by reference to Actual Data shall be updated and amended in subsequent Invoices after the relevant Actual Data becomes available (including on reconciliation of any Actual Data pursuant to the Industry Rules). If any element of the Charges is either wrongly

omitted from, included or calculated in an Invoice, then Smartest will issue a credit note or a debit note (as appropriate) as soon as practicable followed by a revised Invoice.

12.3 Subject to clause 12.4, the Customer shall pay each Invoice (without set off, deduction or counter claim) in full within 14 (fourteen) days of the date of issuance of the Invoice. All payments to be made by the Customer shall be in sterling and paid to Smartest by direct debit. All amounts stated to be payable under the Supply Contract are exclusive of any VAT, Climate Change Levy or any other tax chargeable on them. The Customer shall pay to Smartest any VAT, Climate Change Levy or any other tax properly chargeable to it in respect of any supply made to it under the Supply Contract provided that it shall first have received from Smartest an Invoice for that supply.

12.4 If any item or part of any item on any Invoice is disputed by the Customer at all times acting in good faith (a Disputed Amount), the Customer shall pay the undisputed items and/or parts of items in accordance with clause 12.3, and clause 12.5 shall apply in respect of the Disputed Amount.

12.5 If the Customer raises a dispute in accordance with clause 12.4, it shall give Smartest notice of the Disputed Amount and its reasons for raising the dispute. The parties shall act in good faith to try to resolve the dispute within 5 (five) Business Days of the date of receipt of such notice. If the parties fail to agree a figure for the Disputed Amount, the matter shall be determined in accordance with clause 22.

12.6 Any Disputed Amount shall be paid by the Customer in accordance with clause 12.3 within 5 (five) Business Days of the dispute being resolved pursuant to clause 12.5 or the determination of the dispute pursuant to clause 21 or otherwise and interest shall accrue on the amount resolved to be payable in accordance with clause 12.7.

12.7 If the Customer fails to pay to Smartest any amount due under the Supply Contract, save for a Disputed Amount pending resolution of that dispute, Smartest shall be entitled to charge:-

(a) interest on such outstanding amount at the rate equal to the base lending rate of Barclays Bank plc applicable from time to time plus 3%, and

(b) an administrative charge of £40 per Invoice.

Such interest shall accrue on a daily basis from the due date to the date payment is made and shall be compounded monthly.

12.8 If the reference interest rate specified in clause 12.7 ceases temporarily or permanently to be published then the party owed the money may substitute a rate which it considers in good faith to be equivalent to that rate published by a London clearing bank.

### **13 Meters and Equipment**

13.1 In the event that either party disputes the accuracy of any Meter, the Customer shall promptly arrange for such Meter to be inspected and tested in accordance with the Industry Rules and any other relevant law. If the Meter is found to be operating within the relevant limits of accuracy, the cost of the inspection shall be borne by the party who disputed its accuracy. If not, Smartest (or, where the Customer has appointed or nominated the Meter Operator pursuant to clause 7.1 or 14.5, the Customer) shall bear the costs of the inspection and repair.

13.2 The Customer shall grant (or procure the grant of) Access Rights to Smartest, the Distributor or any Agent for inspecting, maintaining, repairing, replacing and reading the Meter, or isolating the Site or any Supply Point or any other purpose connected with the Supply Contract (and such access shall be safe and reasonable).

13.3 If either Smartest or its Agent attempts to exercise the Access Rights but is prevented from doing so, the Customer shall be liable for (and shall on demand pay) all costs associated with the attempt to exercise the Access Rights and/or resulting from the inability to exercise the Access Rights.

13.4 The Customer shall give Smartest no less than 25 (twenty-five) Business Days' prior written notice of any changes to any Meter or of any Service Provider appointed by the Customer.

13.5 The Customer shall not damage or interfere with the Meter. Without prejudice to the foregoing, the Customer shall notify Smartest and the Distributor as soon as possible if there has been damage to or interference with any Meter and/or if the Customer is aware (or should reasonably be aware) that the Meter is not accurately recording the Supply. The Customer shall provide Smartest with all information that Smartest reasonably requires (either in its own capacity or on behalf of the Distributor) to assess the cause, nature and effect of any such damage or interference. If the Customer wilfully damages or unlawfully interferes with any Meter, Smartest may immediately terminate the Supply Contract pursuant to clause 17.4(e), and the Customer shall indemnify Smartest for all costs reasonably incurred as a result of such damage or interference.

13.6 The Customer shall notify the Distributor as soon as possible if a loss of supply causes, or is likely to cause, an emergency or a situation in which people or property are likely to suffer damage.

13.7 The parties agree that the Meter need not be certified in accordance with schedule 7 to the Act.

13.8 Smartest is entitled to read and configure the Meter and to isolate the Site by means of remote communication if the Meter has the functionality that allows Smartest to do so.

13.9 In the event where Smartest is required to appoint a Meter Operator the Customer shall pay the full 1 year contract charge for such appointment in the first invoice.

#### **14 Non-Half-Hourly Meter Requirements**

14.1 This clause 14 shall only apply in respect of Supply Points for which the Appropriate Meter is a non-half-hourly meter.

14.2 Subject to clause 14.4, Smartest may arrange for the installation of Advanced Meters or Smart Meters procured by Smartest in respect of the Supply Points. Smartest shall use its reasonable endeavours to arrange for such installation in accordance with the programme for installation agreed between the Parties from time to time.

14.3 Clause 7.1 shall not apply in respect of the Supply Points, and Smartest shall contract with the Meter Operator in respect of the Supply Points (except where clause 14.5 applies).

14.4 Where there is a Smart Meter, or an Advanced Meter procured by the Customer or a third party, installed in respect of a Supply Point, and where Smartest consents (such consent not to be unreasonably withheld or delayed), then the provisions of clause 14.5 shall apply. Without limitation, Smartest shall be entitled to withhold such consent if it cannot agree reasonable arrangements for communication with the Meter.

14.5 Where this clause 14.5 applies in respect of a Supply Point in accordance with clause 14.3:

- (a) Smartest shall not install an Advanced Meter or Smart Meter procured by Smartest in respect of that Supply Point;
- (b) the Customer shall be responsible for ensuring that an Advanced Meter or a Smart Meter is always installed in respect of that Supply Point and for contracting with the Meter Operator in respect of that Supply Point (and clause 7.2 shall apply); and
- (c) the Customer shall indemnify Smartest against all additional costs and expenses that Smartest would have incurred had it procured an Advanced Meter and contracted with the Meter Operator in respect of that Supply Point (including any additional costs and expenses in relation to arrangements for communication with the Meter).

14.6 Until an Advanced Meter or a Smart Meter is installed in respect of a Supply Point in accordance with clause 14.2 or 14.4, the Customer shall provide Smartest with such meter readings as Smartest may reasonably request (including at the start and at the end of the Supply Period).

#### **15 Force Majeure**

15.1 Neither party shall be liable to the other for any delay or failure to fulfil its obligations under the Supply Contract due to the occurrence of an event of Force Majeure provided that:

- (a) the parties shall not be relieved by reason of Force Majeure from any obligation

to indemnify or make any payment under the Supply Contract, provided that the Customer will be under no obligation to make payments of any element of the Charges that directly relate to consumption of electricity in respect of any period of time during which no electricity is actually supplied as a result of Force Majeure; and

(b) the party claiming to be affected by Force Majeure shall take all reasonable measures to mitigate and/or remedy the effects of the Force Majeure as soon as possible.

(c) where an event of Force Majeure prevents Smartest importing electricity to Great Britain for any period, the Parties agree that Smartest shall (acting reasonably and proportionally) be entitled to increase the Charges to reflect the discounts and/or benefits that are inherent in the Charges and which are predicated upon Smartest being able to import electricity from outside Great Britain and thereby incur less costs in respect of the Environmental Schemes [other than as already provided for in the calculation of the Charges].

15.2 The party claiming to be affected by Force Majeure shall promptly notify the other party: (a) of the nature of the Force Majeure, the expected duration of the Force Majeure, and the measures it is taking to remedy and/or mitigate the effects of the Force Majeure; and (b) when the Force Majeure ceases to have effect.

15.3 If Smartest claims to be affected by an event of Force Majeure, and for the period during which Force Majeure prevents Smartest from providing the Supply to the Site, the Customer may, as a temporary relaxation of clause 5.4, obtain supplies of electricity to the Site from other sources.

## 16 Liability

16.1 Subject to clause 16.4, each party's only liability to the other party (whether for breach of contract, in tort or otherwise) under or in connection with the Supply Contract shall be for physical damage to property.

16.2 Subject to clause 16.4, the maximum liability of either party to the other party

(whether for breach of contract, in tort or otherwise) under or in connection with the Supply Contract shall not exceed, per incident or series of related incidents, £1 million.

16.3 Subject to clause 16.4 and save where otherwise expressly set out in the Supply Contract, neither party will be liable to the other party (whether for breach of contract, in tort or otherwise) under or in connection with the Supply Contract for:

(a) Economic Loss (save for any interest payable pursuant to clause 12.7 or 12.8);

(b) indirect or consequential loss or damage of any nature; or

(c) any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty, calculated by reference to profits, income, production or accruals or reduction of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.

16.4 Nothing in the Supply Contract shall exclude or limit the liability of either party to the other party:

(a) for death or personal injury resulting from negligence or for fraudulent misrepresentation;

(b) as regards any obligation owed by either party under the Industry Rules or any law (but only to the extent that any such obligation is owed by one party to the other party and the Industry Rules or law expressly prevents the relevant Party from limiting its liability for failure to perform such obligation);

(c) as regards any obligation to pay monies due under the Supply Contract; or

(d) in relation to any indemnity given under the Supply Contract.

16.5 The Customer shall indemnify Smartest and keep Smartest indemnified from and against all costs, claims, demands or expenses incurred by Smartest as a consequence of the failure by the Customer to comply with the Supply Contract or the Industry Rules or as a result of any act, omission or default of the Customer relating to



any agreement from time to time in place with any third party (including any agreement with a Service Provider).

16.6 Each party hereby acknowledges and agrees that the provisions of this clause 16 are fair and reasonable having regard to the circumstances as at the Commencement Date.

## 17 Suspension or Termination

17.1 The Customer may terminate the Supply Contract on written notice with immediate effect if:

- (a) Smartest, as the Defaulting Party, has failed to remedy, within 10 (ten) Business Days of receipt of the Remedy Notice and to the Customer's reasonable satisfaction, the breach specified in the Remedy Notice;
- (b) any sum payable by Smartest under the Supply Contract is not paid within 10 (ten) Business Days of its due date for payment;
- (c) Smartest is subject to an Insolvency Event; or
- (d) an event of Force Majeure subsists for a period exceeding 30 (thirty) days.

17.2 Smartest may arrange for the Site or for any or all of the Supply Points to be Isolated, and/or may terminate the Supply Contract on written notice with immediate effect, if:

- (a) the Customer, as the Defaulting Party, has failed to remedy, within 10 (ten) Business Days of receipt of the Remedy Notice and to Smartest's reasonable satisfaction, the breach specified in the Remedy Notice;
- (b) any sum payable by the Customer under the Supply Contract is not paid within 28 (twenty eight) Business Days of its due date for payment;
- (c) any Warranty proves to have been false, inaccurate or misleading at the time it was made or repeated;
- (d) the Customer is subject to an Insolvency Event;
- (e) the Customer wilfully damages, or unlawfully interferes with, any Meter;

(f) an event of Force Majeure subsists for a period exceeding 30 (thirty) days;

(g) any Licence or consent relevant to the Supply expires, is terminated or is revoked and is not replaced;

(h) where so required in accordance with clause 11.2, the Customer fails to provide or maintain any Security Deposit; or

17.3 Smartest or its Agent may arrange (and give notice except in case of emergency) for the Site or for any or all of the Supply Points to be Isolated if Smartest considers that it is necessary in order to:

- (a) avoid danger or because a failure to Isolate would or might involve Smartest being in breach of any Industry Rules;
- (b) avoid interference with supply to another person which Smartest reasonably believes may result from or be caused by the operation of the plant or apparatus at the Site; or
- (c) enable maintenance work to be carried out.

17.4 The requirement for Smartest to provide notice under clause 17.5 shall not apply where, in the opinion of Smartest, such Isolation is required to prevent damage or personal injury.

17.5 If Smartest Isolates any Supply Point pursuant to clause 17.4 or 17.5, the Customer shall be liable to reimburse Smartest the related costs, fees and expenses incurred by Smartest including, if applicable, reconnection of the Supply Point. Smartest will not reconnect the Supply Point until all monies (including interest charges) owed by the Customer to Smartest have been paid and/or the Customer has remedied any breach of the Supply Contract to Smartest's satisfaction.

17.6 Without prejudice to clause 17.9, after any termination pursuant to this clause 17, Smartest shall not be obliged to provide the Supply to the Site or the relevant Supply Point (as the case may be) but all obligations and warranties of the Customer and rights of Smartest hereunder shall continue to apply until Smartest ceases to be the Registrant for the Site or such Supply Point.

17.7 The expiry or termination of the Supply Contract or any termination of Supply to the Site or any Supply Point, each in accordance with the terms of the Supply Contract, shall not affect any rights or obligations of either party which may have accrued prior to such date. In addition, the rights and obligations of each party under clauses 10 (Charges), 12 (Terms of Payment), 16 (Liability), 20 (Confidentiality), and 22 (Dispute Resolution) shall survive such expiry or termination. In the case of clause 20 (Confidentiality), such rights and obligations shall survive for a period of 3 (three) years following expiry or termination.

## 18 Renewable Supply

18.1 Where the Energy Content of supply is "100% Renewable Standard", "100% Renewable Natural" or "100% Renewable Specific", then the supply will be made using Renewable Source Electricity which is either Renewable Standard, Renewable Natural or Renewable Specific. Save as set out in this clause 18.1, Smartest shall not be obliged to supply Renewable Source Electricity.

18.2 Where the Energy Content of supply is "100% Brown" the fuel mix of the supply shall be from one or more sources, which may include Renewable Source Electricity, chosen at Smartest's discretion. The Customer may make no representation or claim based upon any Renewable Source Electricity content that is contained within the Energy Content of the 100% Brown electricity.

## 19 Customer Transfer Process

19.1 Subject to clause 19.2, Smartest shall, at no cost to the Customer, comply with a Customer's request to enable an alternative supplier to Register a Site within 21 days of the Relevant Date unless:-

- (a) the Customer requests that the transfer be completed at a later date; or
- (b) the Customer notifies Smartest that the Customer does not wish the transfer to take place.

19.2 Smartest may enter an objection under the customer transfer process and prevent an alternative supplier from Registering a Site:

- (a) if the Customer is in breach of any of the Customer's obligations under the Supply Contract; or
- (b) if the Customer has not made any payment due under the Supply Contract; or
- (c) if an alternative supplier attempts to Register the Site in error;
- (d) if an alternative supplier attempts to Register one or more MPANs relating to the Site, but does not (where relevant) attempt to Register the other related MPANs relating to the Site; or
- (e) Smartest does not have all the information it requires in order to complete the transfer to another electricity supplier, despite having taken all reasonable steps to obtain the missing information from the Customer, and cannot readily obtain that information from another source; or
- (f) Smartest is prevented from completing the transfer to another electricity supplier due to any other circumstances which is outside the control of Smartest and which it has taken all reasonably practicable steps to resolve.

## 20 Confidentiality

20.1 Subject to clause 20.2, each party undertakes to treat as confidential and not to, at any time, divulge to any person (other than any of its respective officers or employees or the respective officers or employees of any company in the recipient party's Group who require the same to enable them to properly carry out their duties) any information relating to the other party or its business or its affairs which came into its possession or any of its employees, agents or contractors as a result of or in connection with the Supply Contract (Confidential Information).

20.2 The restrictions imposed by clause 20.1 shall not apply to the disclosure of any Confidential Information:

- (a) which is now or subsequently comes into the public domain otherwise than as a result of a breach of clause 20.1;
- (b) which is required by the laws or regulations of any country with jurisdiction

over the affairs of any company within the recipient party's Group; any order of a court of competent jurisdiction or by any competent judicial, governmental or regulatory body or any applicable regulatory organisation; or in accordance with the rules of any listing authority or recognised stock exchange on which the shares of any company in the recipient party's Group are listed or traded;

(c) to any consultants, banks, financiers or advisers to the disclosing party provided always that the disclosing party has first obtained enforceable undertakings binding the receiving parties to confidentiality in terms no less strict than the obligations imposed under the Supply contract;

(d) to the Authority or to the Secretary of State and their respective agents to enable the Authority and/or the Secretary of State to monitor developments in the energy market;

(e) insofar as it relates to the name and address of either party to the Supply Contract or the location of any Site or Supply Point;

(f) that is authorised for release by the written consent of the party to whom the information relates;

(g) disclosed to or by credit reference agencies in the manner described in clause 11.1; or

(h) which is necessary or desirable under any Industry Rule, provided that in respect of paragraphs (b), (d) and (h), the disclosing party shall use all reasonable endeavours to first inform the other party in writing before any such disclosure is made.

20.3 Where relevant, each party shall be permitted to publicise the fact that the Supply Contract is for Renewable Source Electricity so long as the other party is kept fully informed of any such disclosure.

20.4 The Customer shall not make (and shall procure that no person connected with it nor any of its directors, officers or employees shall make) any public announcement concerning the subject matter of the Supply Contract without the prior written approval of Smartest,

such approval not to be unreasonably withheld or delayed.

## **21 Changes to these Terms and Conditions**

Smartest may, from time to time and including if there is a change in law or a variation to the Industry Rules, amend these Terms and Conditions by publishing the amendments (or a copy of the revised terms and conditions) on Smartest's website ([www.smartestenergy.com](http://www.smartestenergy.com)).

## **22 Dispute Resolution**

22.1 Any dispute arising out of or in connection with the Supply Contract that remains unresolved between the parties for a period of 10 (ten) days may be referred by either party for consideration by a senior manager or a director of each party (Dispute Notice). Any Dispute Notice shall be a written notice to the other party containing a statement setting out the facts relevant to the dispute.

22.2 If a Dispute Notice is served the parties shall meet to resolve the dispute in good faith within 15 (fifteen) days of the date of the Dispute Notice.

22.3 Except for either party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings until 25 (twenty five) days after the date of the Dispute Notice.

## **23 Waiver**

No waiver by either party of any default by the other party shall operate or be construed as a waiver of any other or further default and no waiver by either party of any provision of the Supply Contract shall be binding unless made in writing.

## **24 Severability**

If any provision or any part of any provision of the Supply Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such invalidity, enforceability or illegality shall not prejudice or affect the remaining provisions of the Supply Contract which shall continue in full force and effect.

## **25 Notices**

Notices given under the Supply Contract shall be in writing and shall be given or sent by hand, facsimile transmission, email, courier or recorded postal delivery to the registered office of the respective party (or, in the case of notices to the Customer at Smartest's discretion, the Site). Such notice shall be effective as follows:

- (a) by hand at the time of delivery;
- (b) by facsimile transmission on completion of transmission, provided that a copy of the notice is also sent by first class mail recorded delivery on the same working day; or
- (c) by email upon delivery to the recipient's server; or
- (d) by courier at the time of delivery; or
- (e) by recorded postal delivery at the expiration of 2 Business Days after despatch.

Any notice received (or deemed to be received) on a day that is not a Business Day shall be deemed to have been received at 09:00 hours on the next following Business Day.

## **26 Entire Agreement**

The Supply Contract constitutes the entire agreement between the parties. Smartest and the Customer each hereby acknowledge and confirm that the Supply Contract has not been entered into in reliance on any other representation, warranty or other undertaking of any person (whether a party to the Supply Contract or not) other than as expressly set out in the Supply Contract. Nothing in this clause (or elsewhere in the Supply Contract) will apply so as to exclude the liability of either party for any fraudulent misrepresentation.

## **27 Assignment**

The Customer shall not assign or otherwise transfer any of its rights and/or obligations under the Supply Contract without the prior written consent of Smartest. Smartest may assign its rights and sub-contract or transfer any of its obligations under the Supply Contract without the consent of the Customer (and the Customer agrees to enter into any agreement reasonably required by Smartest in relation to any such assignment or transfer).

## **28 The Contracts (Rights of Third Parties) Act 1999**

28.1 No person who is not a party to the Supply Contract is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. The Connection Agreement shall not form part of the Supply Contract.

28.2 Smartest may from time to time engage with third party software providers to provide a platform for additional services that may be used by the Customer. The Customer's use of such other services and/or software shall be subject to separate terms and conditions between the Customer and the respective third party. This Supply Contract does not affect the Customer's legal relationship with that third party and Smartest is not liable or responsible for any services and/or software provided to the Customer by any third party. Smartest may decide to withdraw, cancel or amend any services provided by the third party provider at any time.

## **29 Data Protection**

29.1 Any personal data (as defined in the Data Protection Act 1998) obtained by Smartest as a result of performing the Supply Contract will be held in accordance with the Data Protection Act 1998 and owned by Smartest. The personal data will be used for the purpose of administering the Supply Contract and may be used by Smartest and members of its Group for the purpose of marketing other products and services which may be of interest to the Customer.

29.2 The Customer agrees and acknowledges that Smartest may:

- (a) give details of the Customer's account to fraud prevention agencies, who carry out checks to help prevent, identify and/or detect fraud and/or energy theft; and
- (b) in the event that Smartest suspects or confirms that the Customer may have committed fraud and/or energy theft, provide fraud prevention agencies with a record, which may:
  - (i) include sensitive information about alleged criminal offences; and
  - (ii) be shared with other energy companies.

## **30 Call Recording**

30.1 Smartest may record any telephone exchanges it has with the Customer.

### 31 Anti-Corruption

31.1 Each Party undertakes that it shall (and shall implement adequate processes and procedures to ensure that its suppliers and sub-contractors shall), in relation to the Supply Contract and its subject matter:

(a) not engage in any actions that are, or could reasonably be considered to be, offences under the Bribery Act 2010; and

(b) not offer or agree to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or not done, any act in relation to the Supply Contract (otherwise than as provided for in the Supply Contract).

### 32 Governing Law

The Supply Contract, and any non-contractual obligations arising out of or in connection with the Supply Contract, shall be construed in accordance with and governed by the laws of England. Any dispute arising out of or in connection with the Supply Contract shall be subject to the exclusive jurisdiction of the English courts to whose jurisdiction the parties irrevocably submit.

### 33 Definitions and Interpretation

33.1 In the Supply Contract:

Advanced Meter means a Meter that records electricity consumption data over multiple time periods (including half-hours) and that can be configured and read by Smartest remotely (but excluding Smart Meters)

**Access Rights** means the right for Smartest and its Agents to enter the Site (subject to the Customer's reasonable requirements as to health and safety except in case of emergency) in order to perform or exercise rights under the Supply Contract

**Act** means the Electricity Act 1989 and any legislation made under the Act

**Actual Data** means data provided to Smartest by the Data Collector of the actual amount of electricity consumed at the Site

**Agent** means any agent, representative, Service Provider or contractor appointed by Smartest in order for Smartest to perform or exercise rights under, or in relation to, the Supply Contract

**Annual Estimate** of Costs means Smartest's reasonable estimate, from time to time, of the aggregate amount payable to Smartest under the Supply Contract in a calendar year

**Appropriate Meter** means a half hourly meter or a non-half-hourly Meter as required in accordance with Industry Rules.

**Authority** means the Office of Gas and Electricity Markets Authority as defined in section 1(1) of the Utilities Act 2000

**Bank Guarantee** means a letter of guarantee addressed to Smartest in a form acceptable to Smartest and issued by a major commercial bank whose identity and financial standing is acceptable to Smartest in its sole discretion

**Billing Period** means a period of one Month provided that during the life of the Supply Contract the first Billing Period shall be the period from the Commencement Date to the last day of the Month in which the Commencement Date falls and the final Billing Period shall be the period from the first day of the Month in which termination or expiry is effective to the date on which termination or expiry is effective (for whatever reason) if such date of effective termination does not fall on the last day of a Month

**BSC** means the Balancing and Settlement Code or any other relevant agreement or code in replacement thereof or addition thereto governing the balancing and settlement of electricity in Great Britain

**Business Days** means the days on which banks are open for business in England (excluding Saturdays, Sundays and Bank holidays)

**Change of Control** means a change in the "Control" of the Customer within the meaning of section 1124 of the Corporation Tax Act 2010, or the sale or other disposal of any legal beneficial or equitable interest in all (or a substantial part of) the business or assets of the Customer other than to any member of the Customer's Group

**Charges** means the unit prices, standing charges and pass-through amounts applicable

to Smartest's deemed contracts, as published by Smartest at <http://www.smartestenergy.com/customer-service/business-electricity-customer-info/out-of-contract-rates/> for non-half-hourly Meters and <http://www.smartestenergy.com/customer-service/business-electricity-customer-info/out-of-contract-rates/> for half hourly Meters (as such rates, charges and amounts may be revised from time to time)

**Climate Change Levy** means the levy of that name imposed under the Finance Act 2000

**Commencement Date** means the date from which Smartest provides electricity to the Site pursuant to the Supply Contract

**Companies Acts** means the Companies Act 2006 as amended from time to time

**Connection Agreement** means the agreement made pursuant to clause 3.1, or any other connection agreement between the Customer and the Distributor

**Consumption Data** means data received by Smartest from the Customer based on historic Actual Data or data other than Actual Data

**Contracts for Differences** means the scheme of that name introduced pursuant to Chapter 2 of the Energy Act 2013 and all subordinate legislation and rules thereunder

**Credit Rating** means Smartest's and/or Smartest's Agent's assessment of the Customer's creditworthiness, calculated by reference to the latest available financial and corporate information relating to the Customer and/or its Group and any other information it or they think relevant

**Customer** means the person, firm or company that has been deemed to have contracted with Smartest for the supply of electricity pursuant to schedule 6 to the Act

**Data Aggregator** means the party appointed to aggregate data under the BSC who is qualified under the BSC

**Data Collector** means the party appointed to collect data under the BSC who is qualified under the BSC

**Distributor** means the owner or operator of the transmission or distribution system of a Licence

holder to which the Site is connected (directly or indirectly)

**Economic Loss** means loss of profits, loss of bargain, revenues, interest, business, goodwill or commercial, market or economic opportunity, whether direct or indirect and whether or not foreseeable

**Eligible Credit Support** means:

- (i) transferring cash to such account as Smartest may specify from time to time;
- (ii) the delivery of a Letter of Credit to Smartest;
- (iii) the delivery of a Bank Guarantee to Smartest;
- (iv) transferring other forms of security or collateral to Smartest in a form acceptable to Smartest;
- (v) issuing a parent company guarantee to Smartest in a form and from a company satisfactory to Smartest; or
- (vi) any combination of the above in a combination satisfactory to Smartest

**End Date** means, in respect of each Site, the earlier of:

- (a) the date on which a contract for the supply of electricity to the Site by Smartest (other than the Supply Contract) comes into effect;
- (b) the date on which a contract for the supply of electricity to the Site by an electricity supplier other than Smartest comes into effect and once that electricity supplier has become the Registrant in respect of the Site;
- (c) the date on which a Last Resort Supply Direction (as defined in Smartest's Licence) is given to an electricity supplier other than Smartest in respect of the Site;
- (d) the date on which the Customer ceases to be the owner or occupier of the Site and another person is deemed to have contracted with Smartest for the supply of electricity to the Site pursuant to paragraph 3 of Schedule 6 to the Act; and

(e) the date on which the Site is Isolated, being the date on which Smartest's obligation to supply electricity to the Customer will end under the Supply Contract

**Energy Content** means the Energy Content as defined in the Fuel Mix Declaration on Smartest's website:

<http://www.smartestenergy.com/about-us/fuel-mix/>

**Environmental Scheme** means the Renewable Obligation; the Climate Change Levy; the Feed-in Tariff and the Contracts for Difference

**Estimated Data** means Smartest's own estimate of the electricity consumed at the Site based (where provided) on readings provided by the Customer (to the extent such readings are within Smartest's reasonable bounds of estimation) and where they are not Smartest will inform the Customer that this is the case

**Feed-in Tariff** means the small-scale low carbon feed-in tariff under the Energy Act 2008.

**Force Majeure** means, in respect of a party, any circumstance or event beyond the reasonable control of that party (but not including strikes, lockouts and labour disputes in relation to that party)

**Forecast Consumption Data** means data projecting the future consumption of electricity at the Site

**Group** means, in respect of a company, any company which is from time to time a Subsidiary or a Holding Company of the company and any other Subsidiary of any such Holding Company

**Holding Company** has the meaning given to that expression in the Companies Act

**Industry Agreements** means the Use of System Agreements, the BSC, the Grid Code (as defined in Smartest's Licence), the Distribution Codes (as defined in Smartest's Licence) and the Master Registration Agreement (as defined in Smartest's Licence)

**Industry Rules** means the Act, the Licences, the Industry Agreements and any other legislation, agreement, licence or code to which Smartest or the Customer is or should be a party or is

subject to which affects its ability to perform its obligations under the Supply Contract

**Information** means information including but not limited to historical consumption data and Forecast Consumption Data

**Insolvency Event** includes the following events in respect of the relevant party:

(a) passing a resolution for the party's wind-up (other than for the purpose of and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution;

(b) the party having a petition for a winding-up order presented against it;

(c) any step is taken to appoint an administrative receiver in relation to the party;

(d) receiver, administrative receiver, manager or similar officer being appointed by any person in respect of all or any part of the party's property, assets or undertaking;

(e) the party making a proposal for a voluntary arrangement as defined in section 1 of the Insolvency Act 1986;

(f) the party being unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 in sub section 123(1)(a) thereof or any distress, execution or other process being levied upon the whole or a substantial part of the party's assets; or

(g) any event analogous to any of the above in any jurisdiction

**Invoice** means an HM Revenue & Customs compliant invoice showing the Charges in relation to the supply of electricity during the Billing Period and detailing any additional costs or amounts that Smartest may be entitled to pursuant to the Supply Contract

**Isolate** means taking steps such that electrical current is permanently prevented from flowing from the transmission or distribution system of the Distributor through to any structure switchgear equipment line or device at the Site as a result of disconnecting the Site

**Letter of Credit** means one or more irrevocable standby letters of credit denominated in sterling

and in a form acceptable to Smartest and issued by a major commercial bank with a rating of at least A by Standard & Poor's Ratings Group or A2 by Moody's Investors Services, Inc.

**Licence** means a licence under section 6 of the Act

**Maximum Supply Capacity** means the maximum capacity (in kVA) for each Supply Point (or, as applicable, the Supply Points collectively) notified to Smartest as having been agreed by the Customer and the Distributor

**Meter** means such meters and associated equipment as Smartest may reasonably require to be installed at the Site for the purpose of measuring the Supply and Metering shall be construed accordingly

**Meter Operator** means a party who procures, installs, calibrates and maintains the metering system at the Site pursuant to the BSC and who is qualified under the BSC

**Month** means a calendar month

**Registrant** means, in respect of a Supply Point or the Supply Points at the Site, the person registered as responsible for the import of electricity at such Supply Point or Supply Points under section K of the BSC (and Register and Registering shall be construed accordingly)

**Remedy Notice** has the meaning set out in clause 17.2

**Renewable Source Electricity** means guarantee of origin certificated electricity generated by the renewable sources required by the Authority for Smartest to report such supply as renewable for the purposes of annual fuel mix disclosure reporting, in accordance with the Electricity (Fuel Mix Disclosure) Regulations 2005

**Renewable Natural** means Renewable Source Electricity for which the renewable generation sources have been agreed as Wind, Hydro and Solar PV

**Renewable Obligation** means the obligation of that name established pursuant to section 32 (and subsequent related sections) of the Act

**Renewable Specific** means Renewable Source Electricity for which one or more of the renewable generation sources has been agreed

and Smartest will solely supply electricity from those generation sources

**Renewable Standard** means Renewable Source Electricity for which the renewable generation source will be supplied at Smartest's discretion

**Secretary of State** means the Secretary of State referred to in the Act

**Security Deposit** has the meaning set out in clause 11.2

**Service Provider** means a person or persons appointed as one or more of the following: Data Aggregator, Data Collector and Meter Operator

**Site** means the premises owned or occupied by the Customer in respect of which the Customer has been deemed to have contracted with Smartest for the supply of electricity pursuant to schedule 6 to the Act

**Smartest** means SmartestEnergy Limited (No.3994598) whose registered office is at Dashwood House, 69 Old Broad Street, London, EC2M 1QS

**Smart Meter** means a Meter that meets (or is intended to meet) the requirements of the 'Smart Meter Technical Specification' (as defined in Smartest's Licence)

**Subsidiary** means a subsidiary within the meaning of the Companies Act

**Supplier Certificates** means the certificate from HM Revenue & Customs representing the percentage of Supply eligible for relief from Climate Change Levy and stating Smartest as the supplier

**Supply** means the supply of electricity by Smartest to the Customer under the Supply Contract

**Supply Contract** means the deemed electricity supply contract between Smartest and the Customer into which these Terms and Conditions are incorporated and form part

**Supply Period** means the period from the Commencement Date to the End Date

**Supply Point** means the point or points at the Site at which the Supply is delivered to the Customer

**Terms and Conditions** means this document



**Use of System Agreement** means each agreement between Smartest and any Licence holder in respect of the use of the electrical transmission and/or distribution lines from time to time owned or operated by the Licence holder and through which the Customer receives the Supply directly or indirectly

**Warranty** means each of the representations, undertakings and warranties set out in clause 5.1.

33.2 In the Supply Contract:

- (a) references to a "person" includes reference to an individual, body corporate, or partnership (and vice versa), references to the singular include the plural (and vice versa), and references to a gender includes every gender;
- (b) references to statutory or regulatory provisions or Industry Rules include any amendments, variations, consolidations or replacements and include any subsidiary regulations, agreements or codes made thereunder;
- (c) the expressions "including" and "in particular" shall be construed without limitation;
- (d) unless otherwise stated, references to any clause are to those clauses of the Terms and Conditions;
- (e) the word "costs" shall include financing charges, and a reasonable rate of return on the capital represented by those costs;
- (f) words and expressions used shall where appropriate be construed:
  - (i) as if they were contained in an Act of Parliament to which the Interpretation Act 1978 applies;
  - (ii) as they are defined in the Act or any other Industry Rules; or
  - (iii) in accordance with their wider usage in the electricity industry generally; and
- (g) the headings are inserted for convenience only and are to be ignored for the purposes of construction or interpretation.

33.3 In respect of the Supply Contract, where the last day of any stated period is not a Business Day then the period shall be deemed to end on the next Business Day thereafter.