

## 1 Deemed Contract

- 1.1 Paragraph 8 of Schedule 2B to the Gas 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 gas to those premises. Smartest made a scheme pursuant to that paragraph on 01/09/2018. In accordance with that scheme, these are the terms and conditions which are to be incorporated into the resulting deemed contracts. These Terms and Conditions apply from 01/09/2018.

## 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, in accordance with the Supply Contract.
- 2.3 The Supply Contract takes effect from the time that the Customer is deemed to have contracted with Smartest, and continues until it is ended in accordance with Clause 14.

## 3 Conditions Precedent to the Supply

- 3.1 The following shall be conditions precedent to Smartest's obligation to Supply the Customer at the Supply Point (the "**Supply Pre-Conditions**"):
- (a) an agreed Meter Asset Manager has been appointed for the Supply Point in accordance with the Gas Industry Rules;
  - (b) Smartest being the Gas Registrant in respect of the Supply Point;
  - (c) an agreed Gas Meter which supports Daily Meter Reading is installed at the Supply Point; and
  - (d) the Site to which the Supply Point relates is connected to a gas network for which Smartest has Use of System Rights, and the connection is not Isolated.
- 3.2 Smartest shall be entitled in its sole discretion by notice in writing to the Customer to waive in whole or in part satisfaction of all or any of the Supply Pre-Conditions.
- 3.3 Smartest's obligation to Supply the Customer shall cease if any or all of the Supply Pre-Conditions cease to be satisfied in any respect.

## 4 Customer Supply Covenants

- 4.1 The Customer represents and undertakes as follows (each being a "**Warranty**"):

- (a) it has complied with the Gas Industry Rules (insofar as applicable to it);
  - (b) it is party to a Gas Connection Agreement if the Site needs a Gas Connection Agreement under the Gas Industry Rules;
  - (c) the Site does not constitute domestic premises (as defined under the Gas Supply Licence); and
  - (d) the Site has a Gas Meter which supports Daily Meter Reading and which is compliant with the Gas Industry Rules.
- 4.2 The Warranties shall be deemed to be repeated by the Customer on each day until the date on which Smartest ceases to be the Gas Registrant. 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.
- 4.3 The Customer is responsible for all the pipes, equipment, infrastructure and buildings at the Site and on the Customer's side of the Supply Point, and shall make sure that they are kept in good working order and in a safe condition.
- 4.4 The Customer shall immediately notify Smartest if the Customer is, or subsequently becomes, a Micro-Business Customer.

## **5 Supply**

- 5.1 The Supply shall be deemed to be delivered at each Supply Point and rights and risks in the gas shall pass to the Customer on delivery, and (without limiting the generality of the foregoing) any losses or shrinkage suffered at or beyond any Supply Point shall be at the risk of and for the account of the Customer.
- 5.2 The Supply to the Site is delivered through infrastructure operated by third parties (such as the Gas Transporter) 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 gas to the Supply Points at all times nor that the gas delivered will be free from variations in pressure or calorific value. If the Customer needs a continuous supply of gas, the Customer should maintain back-up supplies.
- 5.3 The Customer shall notify the Gas Transporter immediately 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. Emergency contact details for Gas Transporters can be found on their websites.
- 5.4 If Smartest, the Customer and/or the Gas Transporter is directed to restrict the supply of gas to a Site, then it is agreed that they should and may comply with that direction (and, in such circumstances, the Customer shall comply with instructions to stop using gas at the Site).

### **6 Information**

- 6.1 The Customer shall provide to Smartest such Information as Smartest may reasonably request.
- 6.2 The Customer hereby appoints Smartest as the Customer's agent for the purpose of obtaining such Information as Smartest may reasonably require in relation to the Supply.
- 6.3 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.

### **7 Gas Supply Charges**

- 7.1 The Customer shall pay for the Supply at the Deemed Rates.
- 7.2 The Customer shall also reimburse Smartest for any additional costs or losses incurred or suffered by Smartest in relation to additional services or activities over and above the standard Supply. In any event (and without prejudice to the foregoing) Smartest shall be entitled to recover any costs or losses (including any Economic Loss) incurred in respect of any of the following:
  - (a) 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; and/or
  - (b) if the Gas Meter at the Site is damaged or interfered with or has to be changed or modified because it does not comply with the Gas Industry Rules or does not support Daily Meter Reading.
- 7.3 The Deemed Rates are exclusive of any VAT, Climate Change Levy or any other tax chargeable in relation to the Supply. Subject to Clause 7.4, the Customer shall pay to Smartest any VAT, Climate Change Levy or any other tax properly chargeable in relation to the Supply.
- 7.4 Where the Supplies attract (or start or cease to attract) a discounted (or zero) rate for the Climate Change Levy (or any other tax), then the Customer shall notify Smartest immediately, and shall provide any evidence Smartest requires in relation to the same, including the relevant HMRC forms. Unless and until the Customer provides such evidence and forms, Smartest shall not apply the discounted (or zero) rate.

### **8 Security Deposit**

- 8.1 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.

- 8.2 Should Smartest, at any time, not have (or no longer have) the benefit of credit insurance cover in respect of the Customer, 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.
- 8.3 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.

## 9 Terms of Payment

- 9.1 Smartest shall issue an Invoice to the Customer in respect of each Billing Period. Invoices shall be issued by email or post or such alternative method as Smartest may elect.
- 9.2 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.
- 9.3 Subject to Clause 9.4, the Customer shall pay each Invoice (without set off, deduction or counter claim) in full within 14 (fourteen) days of the date of the Invoice. All payments to be made by the Customer shall be in sterling and paid to Smartest by direct debit.
- 9.4 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 9.3, and Clause 9.5 shall apply in respect of the Disputed Amount.
- 9.5 If the Customer raises a dispute in accordance with Clause 9.4, 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 19.

- 9.6 Any Disputed Amount that is agreed or determined to be payable by the Customer shall be paid within 5 (five) Business Days of the dispute being resolved together with interest in accordance with Clause 9.7 from the original due date.
- 9.7 If the Customer fails to pay to Smartest any amount due under the Supply Contract, Smartest shall be entitled to charge: (a) interest on such outstanding amount at an annual rate equal to the base lending rate of Barclays Bank plc applicable from time to time plus 3 percentage points; 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.
- 9.8 If the reference interest rate specified in Clause 9.7 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.
- 9.9 Where Smartest is obliged to make any payment to the Customer (under the Supply Contract or otherwise), Smartest may set-off such payment, upon notice to the Customer, against any amounts that are due and payable by the Customer to Smartest (under the Supply Contract or otherwise).

### **10 Gas Meters, Meter Asset Managers and Automated Meter Readings**

- 10.1 Where the Customer is the Gas Act Owner, this Clause 10.1 shall apply.
- (a) The Customer shall ensure that the Gas Meter remains installed at the Site, and that it complies with the requirements of Law and the Gas Industry Rules.
  - (b) The Customer shall contract with a Meter Asset Manager (under suitable terms) that is approved by Smartest for each Supply Point.
  - (c) The Customer shall:
    - (i) ensure that the Meter Asset Manager maintains the Gas Meter at each Supply Point, and acts at all times, in accordance with Good Industry Practice, the Gas Industry Rules and all applicable Laws; and
    - (ii) indemnify Smartest against all costs, claims, proceedings or demands Smartest incurs as a result of any fault or failure in the Gas Meter or any act or omission of the Customer or any of the appointed Meter Asset Managers.
  - (d) Without prejudice to Clause 10.3, in the event that either Party disputes the accuracy of any Gas Meter, the Customer shall promptly arrange for such Gas Meter to be inspected and tested in accordance with the Gas Industry Rules and any other relevant Law. If the Gas 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, the Customer shall bear the costs of the inspection and repair or replacement.

- (e) The Customer shall give Smartest no less than 25 (twenty-five) Business Days' prior written notice of any changes to any Gas Meter or of any Meter Asset Manager contracted by the Customer.

10.2 Where Smartest is the Gas Act Owner, this Clause 10.2 shall apply.

- (a) Smartest shall contract with a Meter Asset Manager for each Supply Point.
- (b) Smartest shall pass through to the Customer all costs associated with metering at each Supply Point including:
  - (i) direct costs associated with contracting the Meter Asset Manager; and
  - (ii) costs incurred as a result of removal or replacement of a meter.
- (c) Without prejudice to Clause 10.3, in the event that either Party disputes the accuracy of any Gas Meter, Smartest shall promptly arrange for such Gas Meter to be inspected and tested in accordance with the Gas Industry Rules and any other relevant Law. If the Gas 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 shall bear the costs of the inspection and repair or replacement.

10.3 The Customer shall:

- (a) not move, disconnect, wilfully damage or otherwise tamper with the Gas Meter or Automated Meter Reading Equipment or any part of it or procure or allow any third party to do so;
- (b) without prejudice to paragraph (a) above notify Smartest and the Gas Transporter as soon as possible if there has been damage to or interference with any Gas Meter and/or if the Customer is aware (or should reasonably be aware) that the Gas Meter is not accurately recording the Supply (in which case the Customer shall provide Smartest with all information that Smartest and/or the Gas Transporter reasonably requires to assess the cause, nature and effect of any such damage or interference);
- (c) ensure that the area in which the Gas Meter and Automated Meter Reading Equipment are installed has the environmental conditions necessary for their safe operation;
- (d) only connect devices to the Gas Meter or Automated Meter Reading Equipment to measure a pulse output following agreement by Smartest; and
- (e) ensure that the area in which Gas Meter and Automated Meter Reading Equipment are installed is kept safe and secure.

- 10.4 Smartest is entitled to read and configure the Gas Meter and to Isolate the Site by means of remote communication if the Gas Meter and associated Automated Meter Reading Equipment has the functionality that allows Smartest to do so.
- 10.5 Smartest shall calculate the Charges using the readings from the Gas Meter, unless Smartest has reason to believe that the Gas Meter has not accurately recorded the Supply (in which case Smartest may use a reasonable estimate, subject to reconciliation if actual data subsequently becomes available).

### **11 Access**

- 11.1 The Customer shall grant (or procure the grant of) Access Rights to Smartest, the Gas Transporter or any Service Provider for inspecting, maintaining, repairing, replacing and reading the Gas 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).
- 11.2 If either Smartest or its Service Provider 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.

### **12 Force Majeure**

- 12.1 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; 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.
- 12.2 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.

### **13 Liability**

- 13.1 Subject to Clause 13.4, each Party's only liability to the other Party (whether for breach of contract, negligence, in tort or otherwise) under or in connection with the Supply Contract shall be for physical damage to property.
- 13.2 Subject to Clause 13.4, the maximum liability of either Party to the other Party (whether for breach of contract, negligence, in tort or otherwise) under or in

connection with the Supply Contract shall not exceed, per incident or series of related incidents, £1million.

13.3 Subject to Clause 13.4 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, negligence, in tort or otherwise) under or in connection with the Supply Contract for:

- (a) Economic Loss;
- (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.

13.4 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 Gas Industry Rules or any Law to the extent that the relevant Party is expressly prevented by the Gas Industry Rules or by Law from limiting its liability for failure to perform such obligation;
- (c) as regards any obligation to pay the Charges (including any interest payable on late payments); or
- (d) in relation to any indemnity given under the Supply Contract.

13.5 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 Gas 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).

13.6 Each Party hereby acknowledges and agrees that the provisions of this Clause 13 are fair and reasonable having regard to the circumstances as at the date of the Supply Contract.

## 14 Termination

14.1 The Supply Contract shall automatically end on the earliest of the following dates:



- (a) the date on which a new contract (other than the Supply Contract) for the supply of gas to the Site by Smartest comes into effect;
  - (b) the date on which a contract for the supply of gas to the Site by a gas supplier other than Smartest comes into effect and once that gas supplier has become the Gas Registrant in respect of the Site;
  - (c) the date on which a Last Resort Supply Direction (as defined in the Gas Supply Licence) is given to a gas 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 gas to the Site pursuant to paragraph 8 of schedule 2B to the Gas Act; and
  - (e) the date on which Smartest confirms that the Site has been permanently isolated.
- 14.2 If the Customer wants to terminate the Supply Contract, the Customer may do so by procuring that one of the dates set out in Clause 14.1 occurs.
- 14.3 Smartest may terminate the Supply Contract on written notice with immediate effect, if:
- (a) the Customer has failed to remedy, within 10 (ten) Business Days of receipt of a notice requiring remedy and to Smartest's reasonable satisfaction, the breach specified in the notice;
  - (b) any sum payable by the Customer under the Supply Contract is not paid within five (5) 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 Gas Meter;
  - (f) an event of Force Majeure subsists for a period exceeding 30 (thirty) days; and/or
  - (g) where so required in accordance with Clause 8.2, the Customer fails to provide or maintain any Security Deposit.
- 14.4 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.

14.5 The termination of the Supply Contract or any termination of Supply to the Site or any Supply Point, each in accordance with the Supply Contract, shall not affect any rights or obligations of either Party which may have accrued prior to such date. Without limitation, the Customer shall remain liable for the Charges payable in respect of the Gas Registrant Period (including where due to corrections to, or reconciliations of estimated, data made after this Appendix ceased to apply). In addition, the rights and obligations of each Party under Clauses 7 (Gas Supply Charges), 9 (Terms of Payment), 13 (Liability), 15 (Isolating Supply Points), 17 (Confidentiality), 19 (Dispute Resolution), and 29 (Governing Law) shall survive such termination. In the case of Clause 17 (Confidentiality), such rights and obligations shall survive for a period of 3 (three) years following termination.

### **15 Isolating Supply Points**

15.1 Smartest may arrange (and give notice) for the Supply Point to be Isolated if:

- (a) one or more of the events listed in Clause 14.3 occurs;
- (b) the Supply Contract has been terminated;
- (c) the Customer does not make a payment when due under the Supply Contract or otherwise breaches the Supply Contract;
- (d) Smartest considers that it is necessary in order to avoid danger and/or damage to property and/or personal injury;
- (e) Smartest considers that it is necessary in order to comply with the Gas Industry Rules, or because a failure to Isolate would or might cause Smartest to breach the Gas Industry Rules or Law.

15.2 Smartest shall provide as much advance notice of any such Isolation as is reasonably possible in the circumstances.

15.3 If Smartest Isolates a Supply Point pursuant to Clause 15.1, 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.

### **16 Customer Transfer Process**

16.1 Subject to Clause 16.2, Smartest shall co-operate in relation to any request by the Customer to transfer a Site's supply of gas to an alternative supplier within 21 days of the request, unless the Customer requests that the transfer be completed at a later date, or any of relevant circumstances outlined in condition 14A of Smartest's Gas Supply Licence apply.

16.2 Smartest may enter an objection under the customer transfer process and prevent an alternative supplier from becoming the Gas Registrant for a Site if:

- (a) the Customer has not made a payment due under the Supply Contract; and/or
- (b) an alternative supplier attempts to become the Gas Registrant for the Site in error.

### 17 Confidentiality

17.1 Subject to Clause 17.2, each Party undertakes to treat as confidential and not divulge to any person any information relating to the other Party or its business or its affairs which came into its possession (or that of any of its employees, agents or contractors) as a result of or in connection with the Supply Contract ("**Confidential Information**").

17.2 The restrictions imposed by Clause 17.1 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 this Clause 17;
- (b) which is required by Law 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 of the recipient Party's 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;
- (d) to any consultants, banks, financiers or advisers to the recipient Party who require the same to enable them to properly carry out their duties;
- (e) 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;
- (f) 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;
- (g) that is authorised for release by the written consent of the Party to whom the information relates;
- (h) disclosed to or by credit reference agencies in the manner described in Clause 8.1; or
- (i) which is required, permitted or desirable under any Gas Industry Rule,

provided that the relevant Party shall be liable under this Clause 17 for any onward disclosure by the persons referred to in paragraphs (c) and (d) made in breach of this Clause 17.

- 17.3 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.

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

- 18.1 Smartest may, from time to time and including if there is a change in law or a variation to the Gas 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)).

### **19 Dispute Resolution**

- 19.1 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 (a "**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.
- 19.2 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.
- 19.3 Except for either Party's right to seek interlocutory relief in the courts, no Party may commence other legal proceedings in connection with the Supply Contract until 25 (twenty five) days after the date of the Dispute Notice.

### **20 Waiver**

- 20.1 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.

### **21 Severability**

- 21.1 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.

### **22 Notices**

- 22.1 Notices given under the Supply Contract shall be in writing and shall be given or sent by hand, 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 email upon delivery to the recipient's server;
- (c) by courier at the time of delivery; or
- (d) by recorded postal delivery at the expiration of 2 Business Days after despatch.

22.2 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.

### **23 Entire Agreement**

23.1 The Supply Contract constitutes the entire agreement between the Parties in respect of its subject matter. 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.

### **24 Assignment**

- 24.1 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.
- 24.2 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).

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

- 25.1 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.
- 25.2 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.

### **26 Data Protection**

- 26.1 Any personal data (as defined in the Data Protection Act 2018) obtained by Smartest as a result of performing the Supply Contract will be held in accordance with the

Data Protection Act 2018. Details of the purposes for which Smartest processes personal data can be found in Smartest's privacy notice on its website ([www.smartestenergy.com](http://www.smartestenergy.com)).

### 27 Call Recording

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

### 28 Anti-Corruption

28.1 Each Party undertakes that it shall (and shall implement adequate processes and procedures to ensure that its suppliers and subcontractors 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).

### 29 Governing Law

29.1 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.

### 30 Definitions and Interpretation

30.1 In the Supply Contract, unless the context otherwise requires:

**Access Rights** means the right for Smartest and its Service Providers 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.

**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.

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

**Automated Meter Reading Equipment** means such remote meter reading and communications equipment as Smartest reasonably requires from time to time.

**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 (or such shorter period as Smartest may notify to the Customer from time to time).

**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 Deemed Rates and any and all other amounts for which the Customer is liable under the Supply Contract from time to time.

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

**Credit Rating** means Smartest'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 Smartest thinks relevant.

**Customer** means the person, firm or company that is deemed to have contracted with Smartest for the supply of gas pursuant to schedule 2B to the Gas Act.

**Daily Meter Reading** shall be interpreted in accordance with the UNC.

**Deemed Rates** means the per unit rates and any relevant additional standing and other charges for the supply of gas under deemed contracts, as published from time to time by Smartest on its website ([www.smartestenergy.com](http://www.smartestenergy.com)).

**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: (a) transferring cash to such account as Smartest may specify from time to time; (b) the delivery of a Letter of Credit to Smartest; (c) the delivery of a Bank Guarantee to Smartest; (d) transferring other forms of security or collateral to Smartest in a form acceptable to Smartest; (e) issuing a parent company guarantee to Smartest in a form and from a company satisfactory to Smartest; or (f) any combination of these in a combination satisfactory to Smartest.

**End Date** means the date on which the Supply Contract terminate in accordance with Clause 14.

**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).

**Gas Act** means the Gas Act 1986.

**Gas Act Owner** means Smartest if Smartest owns or rents the Gas Meter at the Site, and otherwise the Customer.

**Gas Connection Agreement** means, for each Site, the Gas Transporter's agreement or consent to the continued connection of that Site to the Gas Transporter's gas network, including any applicable Network Exit Agreement under and as defined in the UNC.

**Gas Day** means each period from 05.00 hours on one day to immediately prior to 05.00 hours on the following day.

**Gas Industry Rules** means the Gas Act, the Gas Licences, and any agreements or documents with which holders of Gas Licences are obliged to comply, including the UNC and the SPAA.

**Gas Licence** means a licence under section 7 or 7A of the Gas Act.

**Gas Meter** means such meters and associated equipment required by the Gas Industry Rules, and/or as Smartest may reasonably require to be installed at the Site for the purpose of measuring the Supply.

**Gas Registrant** means, in respect of a Supply Point, the person registered as responsible for the supply of gas to such Supply Point under the Gas Industry Rules.

**Gas Supply Licence** means a licence under the Gas Act for the supply of gas.

**Gas Transporter** means, for each Site, the gas transporter holding a Gas Licence for the gas network to which the Site is (or is intended to be) connected.

**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 (as Subsidiary and Holding Company are defined in section 1159 of the Companies Act 2006).

**Information** means information relating to the Customer, the Site and/or the Supply Point, including historical gas consumption data and forecast gas consumption data.

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

- (a) passing a resolution for the Party's winding-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 a 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 gas is prevented from flowing from the gas network of the Gas Transporter to the Site.

**Law** means any law, regulation, ordinance, order, directive, notification, instruction, by-law, guideline, code or standard which is legally binding in the United Kingdom (or any part of it) from time to time.

**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.

**Meter Asset Manager** means a person approved as such under the Gas Industry Rules.

**Micro-Business Consumer** has the meaning given to that expression in Smartest's Gas Supply Licence (and, in summary, depends upon whether the Customer consumes less than 293,000kWh of gas a year; or i) has fewer than 10 employees (or their full-time equivalent) and ii) has a yearly turnover or yearly balance sheet total of not more than €2 million).

**Party** means either Smartest or the Customer, and "**Parties**" means both of them.

**Security Deposit** has the meaning set out in Clause 8.2.

**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 gas pursuant to the Gas Act.

**Smartest** means SmartestEnergy Limited, a company registered in England & Wales with company number 3994598.

**SPAA** means the Supply Point Administration Agreement, as defined in Smartest's Gas Supply Licence.

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

**Supply Contract** means the contract for the supply of gas deemed to have been made between Smartest and the Customer under the Gas Act into which these Terms and Conditions are incorporated.

**Supply Point** is to be interpreted in accordance with the UNC, and means the point or points at which the Supply is delivered to the Site.

**Supply Pre-Conditions** has the meaning given in Clause 3.1.

**Use of System Rights** means, for a network and from time to time, that Smartest (or its nominated gas shipper) has the right under the UNC or another network code to have gas conveyed through that network at that time.

**Terms and Conditions** means this document.

**Warranty** has the meaning given in Clause 4.1.

**UNC** means the Uniform Network Code, as defined in Smartest's Gas Supply Licence.

### 30.2 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 Gas 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: as if they were contained in an Act of Parliament to which the Interpretation Act 1978 applies; as they are defined in the Gas Act or any other Gas Industry Rules; or 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.

30.3 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.