

Terms & Conditions



1 Conditions Precedent To The Supply

1.1 It shall be a condition precedent to Smartest's Supply to the Customer that:

- (a) Service Providers have been appointed for each Supply Point in accordance with Industry Rules;
- (b) Smartest becomes validly appointed as, or is, the Registrant in respect of each Supply Point;
- (c) where the Proposal Document indicates direct debit as the payment method, the Customer provides Smartest with a validly completed and effective direct debit mandate form in respect of the Charges;
- (d) where the payment method is a form other than direct debit, the Customer has provided Smartest with such information as it may reasonably require;
- (e) a Meter that supports the charging structure of the Supply Contract is validly installed at the Site; and
- (f) the Site is connected to the distribution system of a Licensed distributor (or another distributor with which Smartest has agreed third party access arrangements), and the connection is energised.

1.2 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 Conditions Precedent.

1.3 Smartest's obligation to Supply shall cease in relation to a Site or Supply Point, or at Smartest's option, all Sites and Supply Points, if any of the Conditions Precedent are not satisfied or cease to be satisfied in any respect.

2 The Supply Contract

2.1 These Master Terms and Conditions shall, together with the duly executed Proposal Document, apply to and be incorporated into the Supply Contract. The Supply Contract shall take precedence over any inconsistent or conflicting specification or other document supplied by the Customer, or implied by law, trade, custom, practice or course of dealing. As between the documents that comprise the Supply Contract, the following order of precedence shall apply: the main

body of the Proposal Document, then any appendices forming part of the Proposal Document, then these Master Terms and Conditions.

2.2 The Proposal Document constitutes a binding offer by the Customer to purchase the Supply. No offer made by the Customer shall be deemed to have been accepted by Smartest other than by a written acknowledgement issued by Smartest in accordance with the Protocol.

2.3 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 (the Supply 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, 52 Horseferry Road, London SW1P 2AF: phone 0207 706 5137, or see the website at www.connectionterms.co.uk.

4 Information

4.1 The Customer shall provide to Smartest such Information as Smartest may reasonably request, including so as to enable Smartest to calculate and if necessary update the Annual Estimate of Costs. On request Smartest shall provide the Customer with a written copy of the Annual Estimate of Costs.

4.2 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.



4.3 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.

4.4 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 By entering into the Supply Contract, 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 the 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 meter is compliant with the Industry Rules.

5.2 The Warranties shall be deemed to be repeated by the Customer on each day of the period between the Effective Date and the date on which Smartest ceases to be the Registrant 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.

5.3 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 change.

5.4 Subject only to clause 15 (Force Majeure) and any generating units at the Site of which Smartest is given notice, the Customer agrees to take its total requirement for electricity at the Site during the Registrant Period from Smartest.

5.5 The Customer shall immediately notify Smartest if they are, or subsequently become, a Micro-Business Customer as defined under the terms of this Supply Contract.

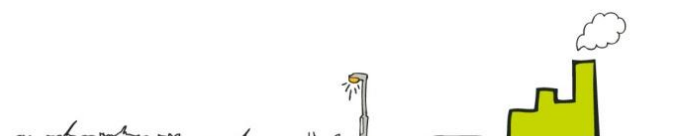
6 Registration

6.1 Subject to compliance by the Customer with its obligations under the Supply Contract, Smartest shall use its reasonable endeavours to Register each Supply Point in Smartest's name with effect from the Intended Commencement Date, and the Customer shall provide such assistance as is reasonably required by Smartest to enable Smartest to so Register each Supply Point.

6.2 Subject to clause 6.3, Smartest undertakes to Register each Supply Point in Smartest's name by the later of (a) the Intended Commencement Date or (b) 21 days after the Effective Date (or, if later, the date the Supply Point became subject to the Supply Contract).

6.3 Smartest shall not be obliged to Register a Supply Point in accordance with clause 6.2 where any of relevant circumstances outlined in condition 14A of Smartest's Licence apply.

6.4 If Smartest has not been able to Register any Supply Point in Smartest's name within 40 (forty) Business Days after the Intended Commencement Date for that Supply Point, Smartest reserves the right to terminate the Supply Contract in respect of the Supply Points in question in accordance with clause 17.4(m).



7 Appointment of Service Providers

- (a) Subject to having given Smartest 25 (twenty-five) Business Days' prior notice of its intention, the Customer may at any time: directly contract with Service Providers in relation to the Supply Points; or
- (b) nominate Service Providers with whom Smartest is to contract in relation to the Supply Points; subject always to Smartest providing its consent to contract with such Service Provider.

7.2 Unless and until the Customer exercises its rights:

- (a) under clause 7.1 (a); and/or,
- (b) under clause 7.1(b) and Smartest provides its consent pursuant to clause 7.1(b)

Smartest shall be entitled to contract with Service Providers of its choice.

7.3 If the Customer contracts with or nominates Service Providers that Smartest consents to contract with 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) 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
- (c) 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 Effective Date and, unless terminated in accordance with clause 17 or clause 21.1, shall expire on the date that Smartest ceases to be the Registrant for the last

remaining Supply Point.

9 Sites and Supply

9.1 The Customer may not:

- (a) add a Site or Supply Point to the Supply Contract without having first given Smartest at least 25 (twenty-five) Business Days' prior written notice and without first having obtained the prior written consent of Smartest (which consent may be withheld at Smartest's discretion);
- (b) remove a Supply Point from the Supply Contract (whether as a result of transferring the supply to an electricity supplier other than Smartest, requiring the permanent Isolation of the Supply Point, selling or vacating the Site, or otherwise) without having first given Smartest at least 25 (twenty-five) Business Days' prior written notice and without:
 - (i) in the case of transferring the supply to an electricity supplier other than Smartest, first having obtained the prior written consent of Smartest (which consent may be withheld at Smartest's discretion); or
 - (ii) in the case of sale or vacation, including in such notice details of the new owner or occupier for the Site; or
- (c) on-supply electricity supplied to the Customer by Smartest to a third party without Smartest's prior written consent (such consent not to be unreasonably withheld or delayed).

9.2 Where Smartest consents to the addition or removal of a Site or Supply Point pursuant to clause 9.1(a) or 9.1(b), Smartest and the Customer shall each execute such document as Smartest may reasonably stipulate in order to document such addition or removal (including, in the case of an addition, the Intended Commencement Date for that Site or Supply Point). Where Smartest consents to the addition of a Site or Supply Point pursuant to clause 9.1(a), such Site or Supply Point shall be subject to clauses 1 and 6.

9.3 Where the Customer fails to give 25 (twenty-five) Business Days' prior written notice in accordance with clause 9.1(b) (and/or fails to comply with the



requirements of clause 9.1(b)(i) or (ii)), the Customer shall continue to be liable for the Charges in respect of the electricity supplied to the Supply Points in question until such notice has been given (in compliance with clause 9.1(b)(i) or (ii) as applicable).

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) 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 From the Commencement Date until the End Date, the Charges shall comprise the Energy Rate and the Additional Charges. If and for so long as Smartest remains the Registrant in respect of any Supply Point after the End Date, the Charges shall comprise the Deemed Contract Rate.

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 (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, without limitation, any Economic Loss) in respect of any of the following:

(a) the Customer's actual consumption of electricity for any Site exceeding the Maximum Supply Capacity for such Site;

(b) after the giving of a notice to terminate the Supply Contract or the Supply to the Site or any Supply Point, the period commencing on the date on which the notice takes effect and ending at the end of the Registrant Period for the relevant Site or Supply Point(s);

(c) should Smartest (acting reasonably) consider that the Information provided to it, or obtained by it, is misleading or no longer true or accurate;

(d) the imposition, or variation in the rate, of any tax, levy, duty, tariff or impost (including without limitation, any tax, levy, duty, tariff, cost or impost as a result of the Energy Act 2013 and associated subordinated legislation and the Climate Change Levy) or of any cost related to obligations to which Smartest is subject (including the other Environmental Schemes);

(e) 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;

(f) any amounts payable by Smartest to any Service Provider (whether appointed by Smartest or by the Customer) or to the Distributor;

(g) 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;

(h) where the Customer has agreed to pay by direct debit, the Customer failing to pay by direct debit;

(i) in addition to Smartest's rights as set out in clause 6.4 (and provided that Smartest has complied with its obligations in clause 6.4), the costs and losses incurred or suffered by Smartest in respect of any period between the Intended Commencement Date and Smartest becoming the Registrant for the Supply Point in question (the Registration Delay Period), including



Smartest was unable to Supply prior to the End Date;

- the cost of cancelling any related energy trade for electricity that Smartest was unable to Supply during the Registration Delay Period and/or the loss of income in respect of the Charges that would otherwise have become due for the electricity that Smartest was unable to Supply during the Registration Delay Period;
- (j) the costs and losses incurred or suffered by Smartest as a result of any Warranty proving to have been false, inaccurate or misleading at the time it was made or repeated (including as a result of any inaccuracy in the Forecast Consumption Data, or where there is an appendix providing a definition for Reference Volume as part of these Master Terms and Conditions, the actual Supply (grossed-up to reflect electrical losses on the transmission and distribution systems) deviating from the Reference Volume (as defined in such appendix), in which case Smartest's costs may include the cost of cancelling any related energy trade for electricity that Smartest was unable to Supply, the cost of entering into new energy trades for electricity that Smartest did not expect to Supply, and the cost of any imbalance charges under the Industry Rules, and Smartest's losses may include loss of income in respect of the Charges that would otherwise have become due for the electricity that Smartest was unable to Supply);
- (k) the costs and losses incurred or suffered by Smartest as a result of the Supply Contract (whether in respect of some or all of the Supply Points) being terminated by Smartest in accordance with clause 17.1 or 17.4 prior to the End Date, including the cost of cancelling any related energy trade for electricity that Smartest was unable to Supply prior to the End Date and/or the loss of income in respect of the Charges that would otherwise have become due for the electricity that Smartest was unable to Supply prior to the End Date and any losses considered under Clause 10.2(o);
- (l) the costs and losses incurred or suffered by Smartest as a result of a Supply Point being removed from the Supply Contract (as described in clause 9.1(b)) prior to the End Date, including the cost of cancelling any related energy trade for electricity that Smartest was unable to Supply prior to the End Date and/or the loss of income in respect of the Charges that would otherwise have become due for the electricity that
- (m) the Meter at the Site being 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);
- (n) any cost, expense, damage or loss incurred or suffered by Smartest as a result of or in connection with any act or omission of any third party (including but not limited to any Service Provider, broker, introducer, consultant, agent or other intermediary) acting on behalf of, or otherwise engaged by, the Customer in relation to the Supply Contract; and
- (o) any costs, expense, or loss incurred or suffered by Smartest associated with pre-payment of any amounts to a broker, introducer, consultant, agent or other intermediary, in accordance with Clause 10.5, as a result of termination or amendment of this Supply Contract.
- 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. Should Smartest seek to recover any additional costs or losses in accordance with clause 10.12, Smartest shall (where requested, and to the extent practical) provide the Customer with reasonable evidence of Smartest's workings.
- 10.4 Without prejudice to clause 10.2(o)10.2(n), Smartest reserves the right to include within the Energy Rate any amounts payable by Smartest to any broker (or other introducer, consultant or agent) acting on behalf of, or otherwise engaged by, the Customer in relation to the Supply Contract.
- 10.5 The Customer acknowledges that Smartest may, on request of an intermediary, pay any associated costs or commissions, in respect of the Supply Contract in advance of a period of Supply that such associated costs or commissions are applicable to, to that intermediary and the Customer further acknowledges



that the Customer shall remain solely liable for any amounts paid to such intermediaries in accordance with Clauses 10.2(n) and 10.2(o). The Customer confirms and agrees that such advance payments do not in any way breach the requirements of clause 31 (Anti-Corruption).

10.6 Those Charges that are Pass Through Charges shall initially be invoiced by Smartest on the basis of Smartest's reasonable estimate of the likely cost to Smartest of the matter to which that charge relates. As and when Smartest knows the actual cost to Smartest (or is better able to accurately estimate the cost to Smartest) of the matter to which a Pass Through Charge relates, Smartest shall reconcile the relevant amounts and include a credit or debit as appropriate in the next Invoice it produces (or shall produce an Invoice for such purpose).

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 Where Smartest (at any time during the period from the Effective Date until the date on which Smartest ceases to be the Registrant (the 'Relevant Period')) has the benefit of credit insurance cover in respect of the Customer, and where at any subsequent time during the Relevant Period Smartest ceases to have the benefit of such cover, then Smartest may request that the Customer provides (in which case the Customer shall provide) Eligible Credit Support of an amount specified by Smartest from time to time; 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.

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 or wrongly included 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 The Customer shall pay each Invoice (without set off, deduction or counter claim) in full within 14 (fourteen) days after receipt of the Invoice (or such other payment period as may be set out in the Proposal Document). All payments to be made by the Customer shall be in sterling and paid to Smartest by direct debit (or such other payment method as may be set out in the Proposal Document).

12.4 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. Subject to clause 12.5, 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.
- 12.5 Where relevant, the Customer shall send completed CCL Exempt 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 CCL Exempt Certificates.
- 12.6 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 12.7 shall apply in respect of the Disputed Amount.
- 12.7 If the Customer raises a dispute in accordance with clause 12.6, 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.
- 12.8 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 12.7 or the determination of the dispute pursuant to clause 22 or otherwise, and interest shall accrue on the amount resolved to be payable in accordance with clause 12.9.
- 12.9 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 i) 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 ii) 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.
- 12.10 If the reference interest rate specified in clause 12.9 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.
- 12.11 Smartest shall be entitled (by notice to the Customer) to set-off any amount due from Smartest to the Customer under the Supply Contract or any other agreement between Smartest and the Customer against any sum owing by the Customer to Smartest under the Supply Contract or any other such agreement.

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 for 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 contracted 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.

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.

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 shall arrange for the installation of Advanced 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 (and, in any event, within 6 months after the relevant Intended Commencement Date).

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 accordance with clause 14.3:

(a) Smartest shall not install an Advanced 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 7.3 shall apply); and

(c) the Customer shall indemnify Smartest against all additional costs and expenses incurred by Smartest as compared to the 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 Registrant 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.

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 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, the lower of: (a) an amount equal to six months of the Annual Estimate of Costs; and (b) £1million.

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 12.9);
- (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 the Charges; 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, but for the avoidance of doubt not limited to, 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 Effective Date.



17 Suspension or Termination

17.1 If either Party (the Defaulting Party) is in material breach of the Supply Contract and such material breach is not capable of being remedied then without prejudice to any other rights or remedies that either Party may have, the Party that is not in default (the Non-Defaulting Party) may terminate the Supply Contract by giving the Defaulting Party notice to that effect and specifying the termination date (the Termination Notice), such termination date to be not less than 2 (two) Business Days after the date of the Termination Notice.

17.2 If either Party (the Defaulting Party) is in material breach of the Supply Contract and such material breach is capable of being remedied then without prejudice to any other rights or remedies that either Party may have, the Party that is not in default (the Non-Defaulting Party) may give the Defaulting Party notice requiring that such breach be remedied (the Remedy Notice).

17.3 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; or
- (c) Smartest is subject to an Insolvency Event.

17.4 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 (in respect of only the affected Supply Points or all of the Supply Points) 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 10 (ten) 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) if any of the Conditions Precedent that were previously satisfied in respect of one or more Supply Points cease to be satisfied in respect of such Supply Point(s);
- (f) the Customer wilfully damages, or unlawfully interferes with, any Meter;
- (g) an event of Force Majeure subsists for a period exceeding 30 (thirty) days;
- (h) any Licence or consent relevant to the Supply expires, is terminated or is revoked and is not replaced;
- (i) where so required in accordance with clause 11.2, the Customer fails to provide or maintain any Security Deposit and such failure is not remedied within 5 (five) Business Days of the Customer being given notice of such failure;
- (j) the Customer transfers a Site or Supply Point to an electricity supplier other than in accordance with clause 9;
- (k) the Customer requires the permanent Isolation of the Supply Points;
- (l) the Customer sells or otherwise vacates the Site without providing Smartest with details of the new owner or occupier for the Site in accordance with clause 9;
- (m) Smartest is entitled to do so pursuant to clause 6.4; or
- (n) where applicable, an Advanced Meter or Smart Meter has not been installed in respect of the Supply Point in accordance with clause 14.2 or 14.4 within 6 months after the Intended Commencement Date (except where due to breach of the Supply Contract by Smartest)..

17.5 The Supply Contract shall be automatically terminated



in respect of any Site if a Last Resort Supply Direction (as defined in Smartest's Licence) is given to an electricity supplier other than Smartest in respect of such Site, the date of termination being the date on which the Last Resort Supply Direction was given.

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, 12, 16, 20, 22 and 32 shall survive such expiry or termination. In the case of clause 20 such rights and obligations shall survive for a period of 3 (three) years following expiry or termination.

17.6 Smartest or its Agent may arrange (and give notice) 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.

17.7 The requirement for Smartest to provide notice under clause 17.6 shall not apply where, in the opinion of Smartest, such Isolation is required to prevent damage or personal injury.

17.8 If Smartest Isolates any Supply Point pursuant to clause 17.4 or clause 17.6, 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.

17.9 Without prejudice to clause 17.10, after any termination of Supply to the Site or any Supply Point 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 the expiry of the Registrant Period.

17.10 The expiry or termination of the Supply Contract or any

18 Good Quality CHP & Renewable Supply

18.1 Smartest shall not be obliged to supply Good Quality CHP Energy or Renewable Energy save to the extent otherwise agreed in writing with the Customer.

18.2 Notwithstanding clause 18.1, Smartest may at its discretion supply a proportion (being any absolute volume or percentage) of the Customer's requirements with either Good Quality CHP Energy or Renewable Energy. To the extent that Smartest's supplies to the Customer are Good Quality CHP Energy or Renewable Energy, Smartest shall continue to include in the Charges (and the Customer shall continue to pay) an amount in respect of the Climate Change Levy that is no more than the amount that would otherwise have been due on such supplies.

18.3 Smartest makes the declarations in clauses 18.4 and 18.5 pursuant to paragraphs 19(1)B and 20A(3) of Schedule 6 of the Finance Act 2000 which require such declarations to be made in order that Smartest's supply to the Customer of any Renewable Energy or Good Quality CHP Energy is exempt from the Climate Change Levy. Such declarations impose no obligations on the Customer.

18.4 The amount of Renewable Energy supplied by Smartest in each Averaging Period shall not exceed the difference between:

- (a) the total amount of Renewable Energy acquired or generated by Smartest during that Averaging Period; and
- (b) so much of that amount as is allocated by Smartest otherwise than to supplies of Renewable Energy made



by Smartest in that Averaging Period.

18.5 The amount of Good Quality CHP Energy supplied by Smartest in each Averaging Period shall not exceed the difference between:

- (a) the total amount of Good Quality CHP Energy acquired or generated by Smartest during that Averaging Period; and
- (b) so much of that amount as is allocated by Smartest otherwise than to supplies of Good Quality CHP Energy made by Smartest in that Averaging Period.

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 the Customer arranges to transfer to an alternative supplier before the scheduled End Date;
- (b) if the Customer has not made a payment due under the Supply Contract;
- (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 same Site;
- (e) Smartest does not have all of 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 circumstance 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 of the contents of the Supply Contract or 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 persons 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 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) above, 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 Energy or Good Quality CHP Energy 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 Change in Law

21.1 Subject to clauses 21.2 and 21.3 (and without prejudice to clause 10.2(e)), if there is a change in law (including changes in the interpretation of laws) or change to the Industry Rules, which makes it unlawful for a Party to perform its obligations under the Supply Contract (or unlawful to do so without an authorisation which that Party does not hold), the Party so affected may notify

the other Party that it wishes to review the Supply Contract and the Parties shall meet and seek to agree any consequential amendments. If the Parties are unable to agree on such consequential amendments within 30 (thirty) days of the date of notice served under this clause, the Party that requested to review may terminate the Supply Contract by giving 30 (thirty) days' notice in writing to the other Party.

21.2 Without prejudice to clause 21.1 above, if any change is made to the Industry Rules, which in Smartest's reasonable opinion requires non-material changes to be made to the Supply Contract, then Smartest shall give the Customer written notice of the changes Smartest proposes to make. Any changes proposed in this matter shall be deemed to be accepted by the Customer 21 (twenty one) days from the date of the notice unless the Customer notifies Smartest that it wishes to dispute any proposed change and in which case clause 22 shall apply. Such change cannot give rise to a right to terminate under clause 21.1.

21.3 Smartest may issue a revised Supply Contract to the Customer to the extent reasonably required to take account of changes to the Industry Rules that affect Smartest's relationship with Distributors (whether such change is material or non-material) and the Customer will be deemed to accept such revision on receipt of the same. Such revision cannot give rise to a right to terminate under clause 21.1.

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

23.1 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.

24 Severability

24.1 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.

25 Notices

25.1 Notices given under the Supply Contract shall be in writing and shall be given or sent by hand, facsimile transmission or courier 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 courier forty eight (48) hours after despatch.

26 Entire Agreement

These Master Terms and Conditions and the duly executed Proposal Document constitute the entire agreement between the Parties in relation to 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 or not a Party) other than as expressly set out in the Supply Contract. Each Party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind this Agreement which it might otherwise have had in relation to them. 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

27.1 Subject to clause 27.2, neither Party may assign or otherwise transfer any of its rights and/or obligations under the Supply Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

27.2 Either Party may sub-contract its obligations under the Supply Contract. Where a Party subcontracts any of its obligations under the Supply Contract, that Party shall remain responsible for the performance of such obligations (and the acts or omissions of the subcontractor in relation to such performance shall be treated as that Party's acts or omissions).

28 The Contracts (Rights of Third Parties) Act 1999

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.

29 Data Protection

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.

30 Call Recording

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

31 Anti-Corruption

31.1 Each Party undertake 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 and Jurisdiction

32.1 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.

33 Definitions and Interpretation

33.1 In the Supply Contract:

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

Additional Charges means those additional charges as specified in the duly executed Proposal Document and as may be amended from time to time in accordance with 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)

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

Annual Estimate of Costs means the estimate of annual Charges prepared by Smartest prior to the Effective Date, as updated by Smartest from time to time to reflect changes or inaccuracies in the Information

Appropriate Meter means a non-half-hourly meter or a 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

Averaging Period has the meaning given to that term in paragraph 20 of Schedule 6 of the Finance 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)

CCL Exempt 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

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 Energy Rate or the Deemed Contract Rate together with the Additional Charges (as applicable in accordance with clause 10.1)

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

Commencement Date means the earliest date from which Smartest provides electricity to a Supply Point under the Supply Contract

Companies Act means the Companies Act 2006

Conditions Precedent means those conditions set out in clause 1.1

Confidential Information has the meaning given to that phrase in clause 20

Connection Agreement means the agreement made pursuant to clause 3, 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 Difference means the contracts for difference proposed to be introduced pursuant to the Energy Act 2013

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 placing an order with Smartest for electricity pursuant to the Supply Contract as identified in the duly executed Proposal Document

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

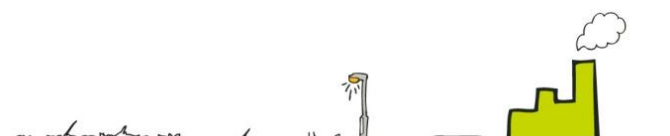
Data Collector means the party appointed to collect data under the BSC and who is qualified under the BSC

Deemed Contract Rate means the per unit rates for the supply of electricity applicable to Smartest's deemed contracts, as published from time to time by Smartest (including as may be published at <http://www.smartestenergy.com/Business-electricity/Customer-Service/Deemed-Contract-Rates.aspx>), as such rates may be revised from time to time

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

Effective Date means the date on which the Proposal



Document has been accepted by Smartest in accordance with clauses 2.1 and 2.2 and the Protocol

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
- (a) End Date means the date specified as such in Part 1 of the duly executed Proposal Document

Energy Rate means the price to be charged per unit for the supply of electricity as specified in Part 2 of the duly executed Proposal Document and as may be amended from time to time in accordance with these Master Terms and Conditions

Environmental Schemes means the Renewables Obligation, Climate Change Levy, the Feed in Tariff and the Contracts for Difference

Environmental Charges means the Charges in respect of one or more of the Environmental Schemes

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

Good Quality CHP Energy means electricity produced in a combined heat and power station that is exempt from the Climate Change Levy in accordance with paragraph 20A of Schedule 6 of the Finance Act 2000

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) a 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

Intended Commencement Date means the date specified as being the "Commencement Date" in Part 1 of the duly executed Proposal Document (or, in the case of Sites added in accordance with clause 9, the date established in accordance with that clause)

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 prevented from flowing from the transmission or distribution system of the Distributor through to any structure switchgear equipment line or device at 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 (and Licensed shall be construed accordingly)

Master Terms and Conditions means this document

Maximum Supply Capacity means the maximum capacity in kVA for each Site as notified by the Customer to Smartest prior to the Supply to such Site or as subsequently 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

Micro-Business Consumer has the meaning given to that expression in Smartest's Licence (and, in summary, depends upon whether the Customer consumes less than 100,000 kWh of electricity 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)

Month means a calendar month

Party means one of Smartest or the Customer

Pass Through Charges means any Charges (or any parts of the Charges) that are identified as such in the Proposal Document

Proposal Document means the document containing the information required by these Master Terms and Conditions, which may include pricing and/or other appendices attached thereto. The Proposal Document will, when signed by the Customer and received by Smartest constitutes a binding offer by the Customer to purchase the Supply and when accepted by Smartest, each in accordance with the Protocol, shall (together with these Master Terms and Conditions) form the Supply Contract

Protocol shall mean the procedure as set out in Part 1 of the Proposal Document being the procedure that is to be followed by the Parties for the Supply Contract to



become binding

Registrant means, in respect of a Supply Point or 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)

Registrant Period means the period starting on the Commencement Date and expiring on the date on which Smartest ceases to be the Registrant for any Supply Point

Relevant Date means the day after the day on which the Customer enters into a supply contract with a new electricity supplier

Remedy Notice has the meaning set out in clause 17.2

Renewable Energy means electricity generated from renewable electricity sources that is exempt from the Climate Change Levy in accordance with paragraph 19 of Schedule 6 of the Finance Act 2000

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

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

Security Deposit has the meaning set out in clause 11.1

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 to which a Supply is made or is to be made (as set out in the duly executed Proposal Document and as may be amended in accordance with clause 9) and any reference to **Site** shall be to any or all (as appropriate) of the Sites to which the provisions of the Supply Contract relate from time to time

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 Metering Technical Specification' (as defined in Smartest's Licence)

Standard Energy means electricity that is not Renewable Energy or Good Quality CHP Energy

Subsidiary means a subsidiary within the meaning of the Companies Act

Supply means the supply of electricity (whether Standard Energy, Renewable Energy and/or Good Quality CHP Energy) by Smartest to the Customer under the Supply Contract

Supply Contract means these Master Terms and Conditions and the duly executed Proposal Document

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

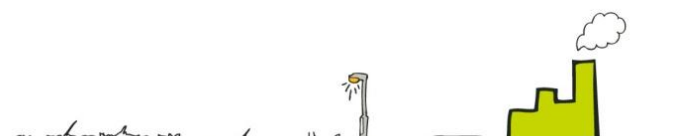
Supply Point means the point or points at the Site at which the Supply is delivered to the Customer

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 Master 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:
- (g) as if they were contained in an Act of Parliament to which the Interpretation Act 1978 applies;
- (h) as they are defined in the Act or any other Industry Rules; or
- (i) in accordance with their wider usage in the electricity industry generally; and
- (j) the headings are inserted for convenience only and are to be ignored for the purposes of construction or interpretation.

33.3 In relation to the Proposal Document the expression "duly executed" shall mean the Proposal Document having been submitted by the Customer to Smartest and accepted by Smartest, in each case in accordance with the Protocol.

33.4 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.

