

Terms and Conditions

Business Electricity & Gas Customers



SmartestEnergy Business Limited a company registered in England and Wales with company number 06468946, having its registered office at Premium House, The Esplanade, Worthing, West Sussex, BN11 2BJ.

Terms and Conditions for the supply of Services to Business customers.

1. Interpretation

The following definitions and rules of interpretation apply in these Terms and Conditions.

1.1 Definitions:

Additional Invoice: has the meaning given to it in clause 10.3.

Advance Payment: means the payment required to be made by the customer in advance of the Target Commencement Date of an amount to be as confirmed to the Customer in the Welcome Pack, Application Form, Recorded Verbal Agreement, or as varied by this Agreement, or as agreed between the parties.

Advanced Meter: means a metering device capable of recording and wirelessly transmitting consumption data on a half-hourly basis that is not a Smart Meter.

Agent: means the broker or agent who acts on behalf of SmartestEnergy Business or who introduces the Customer to SmartestEnergy Business.

Agreement Review Date: means the review date for a Fixed Term Agreement as set out in the Application Form, the Recorded Verbal Agreement or as agreed between the parties.

Agreement: has the meaning set out in clause 2.1.

Agreement Commencement Date: has the meaning set out in clause 2.2.

Allocation Policy: means the policy of allocating payments received from the Customer sequentially against Invoices, starting with the Invoice with the earliest date.

Application Form: means a paper form setting out additional terms to the Agreement, as agreed between the parties.

Ancillary Charges: means the fees incurred for additional services provided by SmartestEnergy Business in accordance with this Agreement as set out in the Ancillary Charges Schedule.

Ancillary Charges Schedule: means the ancillary charges schedule found at: www.smartestenergy.com/en_gb/business/information-for-business-customers as updated from time to time at SmartestEnergy Business's sole discretion.

Appropriate Tariff: means the Fixed Price Tariff or the Variable Tariff as confirmed to the Customer in the Application Form, Recorded Verbal Agreement or as varied by this Agreement, or as agreed between the parties.

Averaging Period: has the meaning given to it in the Finance Act 2000, schedule 6, paragraph 20B.

Business Day: means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Catch Up Payment: has the meaning set out in clause 10.7 (b).

Charges: means the fees for the Services calculated based on Meter Readings or Estimates and as applied to the Appropriate Tariff.

Charges Invoice: has the meaning set out in clause 10.1.

Climate Change Levy: means the tax established pursuant to schedule 6 of the Finance Act 2000.

Connection Point: means, in respect of each Property, for electricity the point(s) at which the electricity flows between the Network and the Equipment and for gas, the point(s) at which the gas flows between the Gas Transporter and the Equipment.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Critical Times: means Monday to Friday between 12pm and 7pm.

Customer: means the person or firm who uses Services from SmartestEnergy Business.

Customer Default: has the meaning set out in clause 4.

Data Controller: Smartest is the Data Controller (as defined in the Data Protection Laws) of Personal Data collected from the Customer.

Data Protection Laws: means the Data Protection Act 2018; the General Data Protection Regulation ((EU) 2016/679) and any other equivalent Law regarding the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

Data Subject: means an individual who is the subject of Personal Data.

Deemed Contract: means a contract between SmartestEnergy Business and the Customer as described in clause 2.4.

Direct Debit: means a payment of an agreed amount collected from a bank account by a licensed BACS services user.

Energy: means the gas and/or electricity as set out in the Application Form or the Recorded Verbal Agreement.

Equipment: means the equipment required by the Customer (including the Connection Points, pipes and wires) to enable the Network to supply the Energy to the Property.

Estimates: means estimates of Customer's consumption of the Services, based on the Customer's consumption history or as reasonably calculated by SmartestEnergy Business.

Extension Offer: means the extension offer as set out in clause 18.1.

Extended Fixed Term: means the extended fixed term as set out in clause 18.2.

Fair Use Policy: means using no more than 50% of the electricity used, over an averaging period of 3 months, during Critical Times.

Final Invoice: has the meaning given to it in clause 16.1 (a).

Fixed Price Tariff: means the tariff applicable where the Customer enters into Fixed Term Agreement as set out in the Application Form, the Recorded Verbal Agreement or as agreed between the parties and as amended by a Price Review where applicable.

Fixed Term: means the fixed term in relation to the Fixed Term Agreement as set out on the Application Form or the Recorded Verbal Agreement.

Fixed Term Agreement: means an agreement for the Services for a Fixed Term (which could be either a fixed price agreement or a price review agreement) as set out in the Application Form or the Recorded Verbal Agreement.

Fixed Term End Date: means the date the Fixed Term Agreement is to end (as amended by any Extended Fixed Term).

Gas Transporter: means the company that is licenced by OFGEM to pipe gas to the Property.

Group: in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

Incoming Supplier: means the supplier that is to supply the Energy to the Property and become the Responsible Supplier, upon SmartestEnergy Business ceasing to be the Responsible Supplier to the Property.

Industry Codes: means the codes of practice that apply in the energy industry.

Invoice: means a Charges Invoice or Additional Invoice.

Landlord: means the legal owner of the Property.

Landlord Consent: has the meaning set out in clause 15.1 (a).

Meter: means the meter installed at the Property to measure the Customer's consumption of Energy used through the Services (including but not limited to Advanced Meter and Smart Meter).

Meter Reading(s): means meter readings obtained by SmartestEnergy Business from the Meter, which have been validated according to Industry Codes.

Micro Business Customer: means a non-domestic consumer who meets one or more of the following criteria:

(a) employs fewer than 10 employees (or their full time equivalent) and has an annual turnover or balance sheet no greater than €2 million; or

(b) uses no more than 100,000 kWh of electricity per year; or

(c) uses no more than 293,000 kWh of gas per year.

As defined by Ofgem and as updated from time to time by Ofgem.

Network: means the electricity or gas (as applicable) distribution network, which supplies the Energy to the Property.

Network Operator: means in respect of each Property the owner or operator of the Network in relation to electricity.

Normal Business Hours: means 9am until 5pm on a Business Day.

NTC: shall have the meaning set out in clause 6.2.

Out of Contract Services: means services which impose additional terms and which apply a different Appropriate Tariff.

OFGEM: means the Office of Gas and Electricity Markets which regulates the gas and electricity markets in Great Britain.

Overdue: means in relation to Charges Invoices: sums which have been invoiced, and either (i) SmartestEnergy Business has sought to collect payment for but has been unable to collect such payment due to the acts or omissions of the Customer, or (ii) that invoice remains unpaid for 30 days following the date of the invoice, and in relation to Additional Invoices: means the Additional Invoice has not been paid immediately upon receipt of such Additional Invoice.

Pass-Through Costs: means charges SmartestEnergy Business is required to pay which relate to the supply of Energy and which are outside the control of SmartestEnergy Business, including but not limited to charges in connection with

- (i) any taxes, levies or duties imposed on SmartestEnergy Business in relation to the supply of Energy;

- (ii) meters (including the aggregation and collection of meter data);
- (iii) the transmission and/or distribution of Energy, (including losses on transmission and/or distribution systems);
- (iv) the electrical capacity of the Customer's connection to the Network; and
- (v) the Customer's use of electricity where such use exceeds the capacity or volume allocated by the Network Operator.

Payment Plan: means a payment plan whereby the Customer pays regular payments for the Services as agreed by the parties.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which SmartestEnergy Business is providing Services under the Agreement.

Pre-Payment Installation Charges: means the reasonable charges incurred by SmartestEnergy Business and payable by the Customer in setting up the Pre-Payment Services.

Pre-Payment Services: means the Services which are provided subject to the Customer paying in advance of consumption of Energy.

Price Review: means the price review process set out in clause 19 which is applicable to Fixed Term Agreements.

Price Review Notice: shall have the meaning set out in clause 19.1.

processing and process: have the meaning set out section 1(1) of the Data Protection Act 1998.

Property: means the property or properties to which the Services are being supplied, which is within the Great Britain and as set out in the Application Form and/or the Recorded Verbal Agreement.

Recorded Verbal Agreement: means the verbal agreement for the Services, which shall include the Verbal Recorded Script and the Verbal Confirmation.

Renewable Source Electricity: shall have the meaning set out in schedule 6 of the Finance Act 2000.

Responsible Supplier: means the supplier registered in accordance with Industry Codes as responsible for the supply of Energy to the Connection Points at the Property.

Rolling Agreement means an agreement for the Services which is not for a Fixed Term and continues unless terminated in accordance with the provisions in this Agreement.

Security Deposit: means a sum determined in SmartestEnergy Business's absolute discretion, held by SmartestEnergy Business as stakeholder as security for any sums owed by the Customer from time to time under the Agreement.

Smart Meter: means a metering device that conforms to any version of the Smart Metering Equipment Technical Specification as defined by the Smart Energy Code designated by the Department for Energy and Climate Change on 23rd September 2013.

SmartestEnergy Business: means SmartestEnergy Business Limited, a company registered in England and Wales with company number 06468946, having its registered office at Premium House, The Esplanade, Worthing, West Sussex, BN11 2BJ.

SmartestEnergy Business Materials: has the meaning set out in clause 5.2 (n).

Services: means maintaining a connection from the Property to the Network and supplying Energy to the Property for the Customer.

Services Start Date: means the date on which SmartestEnergy Business becomes the Responsible Supplier and begins to provide the Services to the Customer at the Property.

Target Commencement Date: means the estimated date for the commencement of the Services, as set out in the Welcome Pack.

Term: has the meaning set out in clause 2.9.

Terms and Conditions: means these terms and conditions as amended from time to time in accordance with this Agreement.

Variable Tariff: means the variable tariff applicable (as updated from time to time at SmartestEnergy Business's sole discretion) where the Charges are calculated on a variable tariff, and applicable:

- (i) where set out in the Application Form or the Recorded Verbal Agreement as updated from time to time; or
- (ii) upon expiry of a Fixed Term Agreement when SmartestEnergy Business continues to be the Responsible Supplier; or
- (iii) pursuant to the terms of this Agreement; or
- (iv) where agreed between the parties.

VAT: shall have the meaning in clause 8.2.

Verbal Confirmation: the verbal offer by the Customer requesting SmartestEnergy Business to provide the Services.

Verbal Recorded Script: the information provided by SmartestEnergy Business to the Customer setting out the details of the Services and the operation of the Terms and Conditions.

Vulnerable Person: a person whom for reasons of age, health, disability or severe financial insecurity, who is unable to safeguard their personal welfare or the personal welfare of other members of their household.

Welcome Pack: means the documentation sent to the Customer on the Agreement Commencement Date confirming the Agreement that SmartestEnergy Business is to provide the Services to the Customer.

1.2. Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to writing or written includes fax and email.
- (d) In the event of a conflict between the provisions contained in these Terms and Conditions, the Application Form or as agreed in the Verbal Confirmation, unless the parties expressly agree otherwise in writing, the following order of precedence shall apply:
 - (i) Terms and Conditions;
 - (ii) Application Form;
 - (iii) Verbal Confirmation.

2. Basis of Agreement

- 2.1 These Terms and Conditions and where applicable the Application Form and/or the Recorded Verbal Agreement constitute the Agreement between SmartestEnergy Business and the Customer for the supply of Services (Agreement).
- 2.2 The signed Application Form and/or Verbal Confirmation constitutes an offer by the Customer to purchase Services in accordance with these Terms and Conditions, and SmartestEnergy Business in its absolute discretion can determine whether to accept such offer.
- 2.3 The Application Form and/or Verbal Confirmation shall only be deemed to be accepted when SmartestEnergy Business issues written acceptance of the Application Form and/or Verbal Confirmation (which shall be provided in the Welcome Pack) at which point and on which date the Agreement shall come into existence, or if the Agreement is a Deemed Contract the Agreement shall commence where SmartestEnergy Business is the Responsible Supplier to the Property and the Customer becomes responsible for the Services in accordance with law (Agreement Commencement Date).
- 2.4 Where the Customer did not enter into the Agreement in accordance with clauses 2.2 – 2.3, the Customer will be treated as a Customer and as if these Terms and Conditions have been accepted, where:
 - (a) the Customer becomes the owner/occupier of the Property;
 - (b) the Customer becomes responsible for the Property;
 - (c) the Customer is the Landlord of the Property and there are no tenants at the Property. (Deemed Contract)
- 2.5 For the purposes of these Terms and Conditions, where there is a Deemed Contract created in accordance with clause 2.4, clauses 9.1 (a), 15.4 (a) – (d), 15.6, 16.1 (e) 18 and 19 shall not apply but in all other instances references to the 'Agreement' shall include Deemed Contracts, unless expressly specified otherwise.
- 2.6 Any verbal description, samples, drawings, descriptive matter or advertising issued by SmartestEnergy Business or its Agent, and any descriptions or illustrations contained in SmartestEnergy Business's catalogues or brochures or provided, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.
- 2.7 These Terms and Conditions together with the Application Form and/or the Recorded Verbal Agreement (if applicable), apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.8 Any quotation given by SmartestEnergy Business shall not constitute an offer, is not binding and can be withdrawn at any point.
- 2.9 The Agreement shall commence on the Agreement Commencement Date and shall continue as follows:
 - (a) where the Application Form and/or Recorded Verbal Agreement states the Agreement to be for a Fixed Term, for that Fixed Term (and for any subsequent period where SmartestEnergy Business continues to be the Responsible Supplier) unless terminated in accordance with the provisions contained within these Terms and Conditions; or
 - (b) where the Application Form and/or the Recorded Verbal Agreement states the Agreement to be a Rolling Agreement, the Agreement shall continue unless terminated in accordance with the provisions contained within these Terms and Conditions;
 - (c) Where there is a Deemed Contract, until terminated in accordance with this Agreement. (Term)

3. Supply of Services

- 3.1 SmartestEnergy Business shall supply the Services to the Customer at the Property.
- 3.2 Where SmartestEnergy Business is supplying electricity to the Customer, the Services will be delivered to each Connection Point by the Network Operator on behalf of SmartestEnergy Business. As such SmartestEnergy Business cannot guarantee the delivery of the Services. The Network Operator is responsible for maintaining the Network throughout the Term and the connection of the Property to the Network. The Network Operator may disconnect the supply of the Services in accordance with its legal rights to do so, and SmartestEnergy Business will not be responsible for any loss the Customer suffers as a result of this.
- 3.3 Where SmartestEnergy Business is supplying gas to the Customer, the Services will be delivered to each Connection Point by the Gas Transporter on behalf of SmartestEnergy Business. As such SmartestEnergy Business cannot guarantee the delivery of the Services. The Gas Transporter is responsible for maintaining the Network throughout the Term and the connection of the Property to the Network. The Gas Transporter may disconnect the supply of the Services in accordance with its legal rights to do so, and SmartestEnergy Business will not be responsible for any loss the Customer suffers as a result of this.
- 3.4 Responsibility for and ownership of the Energy will transfer to the Customer at the Connection Point. The Customer will be responsible for all losses which are incurred by the Customer after this point (including losses which have arisen as a result of damage or theft).
- 3.5 The supply of the Services shall commence on the Services Start Date and shall continue unless otherwise terminated in accordance with this Agreement.
- 3.6 SmartestEnergy Business shall use all reasonable endeavours to meet any performance dates specified in Application Form and/or the Recorded Verbal Agreement or as agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services and SmartestEnergy Business shall have no liability whatsoever for any loss the Customer suffers as a result of SmartestEnergy Business's failure to meet performance dates.
- 3.7 SmartestEnergy Business warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.8 SmartestEnergy Business reserves the right to undertake a credit check in relation to the creditworthiness of the Customer throughout the duration of this Agreement.

4. Customer Default

- 4.1 If SmartestEnergy Business's performance of any of its obligations under the Agreement (whether prior to the Services Start Date or after) is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) without limiting or affecting any other right or remedy available to it, SmartestEnergy Business shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays SmartestEnergy Business's performance of any of its obligations;
 - (b) SmartestEnergy Business shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from SmartestEnergy Business's failure or delay to perform any of its obligations as set out in this clause 4.1; and
 - (c) the Customer shall reimburse SmartestEnergy Business on written demand for any costs or losses sustained or incurred by SmartestEnergy Business arising directly or indirectly from the Customer Default.

5. Customer's Obligations and Warranties

- 5.1 The Customer warrants that:
- (a) it, and the authorised representative who enters into this Agreement have the authority to enter into the Agreement;
 - (b) it is the owner or occupier of the Property (or will be on the Services Start Date) and has the necessary authority to change the supplier of the Services at the Property;
 - (c) the Property will be and will remain for the duration of the Agreement, connected to the Network to enable the provision of the Services at the Services Start Date;
 - (d) where the Services relate to gas, the Property will be connected to gas mains to enable the provision of the Services at the Services Start Date;
 - (e) the Property is wholly or mainly used for non-domestic purposes and that there are no Vulnerable Persons resident at the Property;

- (f) there will be no other supplier providing the Services to the Property at the Services Start Date and throughout the supply of Services; and
- (g) it will permit safe and unrestricted access to the Property, Meter and Equipment in accordance with the terms of this Agreement, and acknowledges that where such access is not permitted, SmartestEnergy Business reserves the right to obtain a legal warrant to gain such access to the Property and/or require the Customer to make alterations to the Property to ensure safe and unrestricted access to the Property, Meter and Equipment is granted (the cost of either shall be paid by the Customer).

5.2 The Customer shall:

- (a) co-operate with SmartestEnergy Business in all matters relating to the Services (including compliance with laws, regulations and Industry Codes);
- (b) provide SmartestEnergy Business, its employees, Agents, consultants and subcontractors, with access to the Property and other facilities as reasonably required by SmartestEnergy Business;
- (c) permit SmartestEnergy Business or its Agents or representatives to take Meter readings as and when required;
- (d) provide SmartestEnergy Business with such information and materials as SmartestEnergy Business may reasonably require to supply the Services, and ensure that such information is complete and accurate and up to date in all material respects, and not misleading;
- (e) where the Services relate to electricity, enter into the NTC with the Network Operator to ensure that the Customer is connected to the Network at the Property;
- (f) prepare the Property for the supply of the Services;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) comply with all applicable laws, including but not limited to the Bribery Act 2010, the Modern Slavery Act 2015 and health and safety laws;
- (i) pay all Charges in accordance with the Agreement;
- (j) accept that the supply of Services may be disconnected in accordance with these Terms and Conditions;
- (k) accept that SmartestEnergy Business is the only supplier of the Services to the Property, and not enter into a contract with any third party for the supply of Services to the Property during the Term;
- (l) notify:
 - (i) SmartestEnergy Business prior to making any changes to the Property that are likely to alter the Customer's use of the Services (whether this be volume of use or time of use or changes to the supply of Energy);
 - (ii) SmartestEnergy Business in the event that the Property becomes, or is anticipated to become, used for domestic purposes or if there is, or may be, a Vulnerable Person resident at the Property;
 - (iii) SmartestEnergy Business, where SmartestEnergy Business is supplying electricity before the installation of any generating equipment at the Property and/or before the voltage at which the electricity is supplied is changed;
 - (iv) SmartestEnergy Business within 5 Business Days of SmartestEnergy Business ceasing to be the Responsible Supplier of a Meter Reading; and
 - (v) the appropriate third party (such as the emergency services) where the Customer is aware of anything relating to the Services which may cause danger, require urgent attention or may affect the security, availability or quality of the Services.
 - (vi) SmartestEnergy Business if the customer is, or subsequently becomes a Micro Business Customer.
- (m) maintain the Meter and Equipment in compliance with laws and regulations and Industry Codes;
- (n) keep all materials, equipment, documents and other property of SmartestEnergy Business (SmartestEnergy Business Materials) at the Customer's premises in safe custody at its own risk, maintain SmartestEnergy Business Materials in good condition until returned to SmartestEnergy Business, and not dispose of or use SmartestEnergy Business Materials other than in accordance with SmartestEnergy Business's written instructions or authorisation;
- (o) ensure that the Property remains connected to the Network at the relevant Connection Point, and to maintain and comply with all necessary agreements and consents for such connection;
- (p) allow SmartestEnergy Business (where it is required) to install an Advanced Meter or a Smart Meter at a mutually convenient time, and within 3 months of Services Start Date. If installation of the Advanced Meter or Smart Meter is outside Normal Business Hours, then SmartestEnergy Business reserves the right to charge an additional fee for such installation;
- (q) not interfere with the Meter and Equipment and will ensure it is not damaged;

(r) permit SmartestEnergy Business and/or any third party authorised by SmartestEnergy Business entry to the Property at all reasonable times in accordance with clause 7.1 of these Terms and Conditions.

5.3 Where the Customer does not comply with the obligations set out in clause 5.2 above, SmartestEnergy Business shall not be responsible for any loss suffered by the Customer. The Customer also agrees to indemnify SmartestEnergy Business for any loss it suffers as a result of the Customer's non-compliance with the provisions set out in clause 5.2 above.

6. National Terms of Connection

6.1 Where the Services relate to the supply of electricity, the provisions in this clause 6 shall apply.

6.2 By entering into this Agreement for the provision of the Services, the Customer is also entering into the National Terms of Connection (NTC) with the Network Operator (as updated from time to time). The NTC is a legal agreement which sets out the rights and duties of the Network Operator and the Customer in connection with where the Network Operator delivers the Services to. The NTC can be found here www.connectionterms.co.uk or alternatively, the Customer can write to Energy Networks Association 6th floor Dean Bradley House 52 Horseferry Road London SW1P 2AF.

7. Meters, Meter Readings and Entering the Property

7.1 The Customer shall ensure SmartestEnergy Business, its representatives, Agents, subcontractors and the Gas Transporter and the Network Operator are permitted safe, full and free access to the Property, the Meter and the Equipment at all reasonable times for the purpose of reading the Meter, inspecting, installing, maintaining, replacing, testing, disconnecting or removing the Meter and/or the Equipment in connection with the obligations under this Agreement.

7.2 Where the access required in accordance with clause 7.1 is restricted, the Customer will be required (at their own expense) to ensure that any restrictions are removed and safe, full and free access to the Property, Meter and Equipment is granted. SmartestEnergy Business also reserves the right to charge the Customer an administration charge as set out in the Ancillary Charges Schedule for failure to permit SmartestEnergy Business, its representatives, Agents subcontractors or any third party authorised by SmartestEnergy Business access to the Property or for failing to permit SmartestEnergy Business to install a new Meter to the Property (whether this be as a result of failing to answer calls or otherwise).

7.3 Where SmartestEnergy Business or its representatives, Agents or sub-contractors fail to arrive at the Property on an agreed date to install, monitor, remove or replace a Meter or any Equipment, the maximum liability to the Customer will be limited to £30.

7.4 Where SmartestEnergy Business installs, removes or replaces a Meter and/or Equipment, and as a result of the Customer's acts or omissions SmartestEnergy Business suffers a loss or incurs additional expenses, SmartestEnergy Business reserves the right to require the Customer to reimburse SmartestEnergy Business for any losses or expenses that SmartestEnergy Business incur (including abortive visit charges).

7.5 Where the Equipment and/or Meter is to be removed, SmartestEnergy Business shall provide the Customer with notice of such intention in accordance with its obligations under law.

7.6 The Meter installed will be the Property of SmartestEnergy Business or a third party. The Customer will not own the Meter and cannot object to the transfer of the Meter or its replacement.

7.7 Where the Customer fails to provide an accurate Meter reading and SmartestEnergy Business is unable to obtain a Meter reading, SmartestEnergy Business will estimate the Energy used by the Customer. Estimates will be subject to reconciliation where accurate information is made available

7.8 Where the Customer reasonably believes that the Meter is producing inaccurate readings or is not functioning correctly, SmartestEnergy Business will arrange for the Meter to be inspected. Where the Meter's accuracy is found to be within the limits prescribed in Industry Codes, or where the Meter is considered in SmartestEnergy Business's sole discretion to be functioning correctly, the Customer will reimburse SmartestEnergy Business for the costs incurred for testing the Meter. If the accuracy is found to be outside the limits prescribed in Industry Codes, or where the Meter is considered in SmartestEnergy Business's sole discretion to not be functioning correctly, SmartestEnergy Business will bear the costs of repair and ensure that the necessary adjustments are made to the Meter readings.

7.9 SmartestEnergy Business or its representatives, Agents or subcontractors, may take readings of the Meter at the Property where required. The Customer may also provide readings of the Meter, which SmartestEnergy Business will use, providing they are consistent with the information SmartestEnergy Business has in relation to the Customer and validated according to Industry Codes.

7.10 The Customer consents to SmartestEnergy Business obtaining, storing and using consumption data from the Meter. SmartestEnergy Business will only use this information for the purpose of settlement, forecasting, identifying energy efficiency savings and products, and monitoring potential energy theft.

- 7.11 Where the Meter has the required capabilities, SmartestEnergy Business reserves the right to record the Customer's usage of the Services (where the Services relate to the supply of electricity) on a 30 minute basis throughout the duration of the Agreement.

8. Charges

- 8.1 In consideration of the provision of the Services, the Customer shall pay the Charges.
- 8.2 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT) and Climate Change Levy. Where any taxable supply for VAT purposes is made under the Agreement by SmartestEnergy Business to the Customer, or where the Climate Change Levy applies, the Customer shall, on receipt of a valid VAT invoice from SmartestEnergy Business, pay to SmartestEnergy Business such additional amounts in respect of VAT or Climate Change Levy as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

9. Changes to the Agreement

- 9.1 SmartestEnergy Business reserves the right to increase the Charges on notice:
- (a) where the Agreement is a Fixed Term Agreement which is subject to a Price Review, in accordance with that Price Review; or
 - (b) where the information which has been provided in relation to the Customer's usage of the Services is inaccurate; or
 - (c) where the type of Meter is incompatible with the Appropriate Tariff;
 - (d) where the Services relate to electricity, if the Customer uses less than 1,200 kWh of electricity per month in accordance with the Services; or
 - (e) where the Services relate to gas, if the Customer uses less than 4397 kWh of gas per month; or
 - (f) to reflect any change in the Pass-Through Costs; or
 - (g) where there is a change or event beyond the reasonable control of SmartestEnergy Business which has an impact on SmartestEnergy Business's business costs (including but not limited to the wholesale cost of Energy, meter operation and reading costs, transmission and Network costs, usage or capacity related charges from the Network Operator or changes in tax and duties and shall be determined at SmartestEnergy Business's sole discretion); or
 - (h) where the Customer's consumption is not in line with the Fair Use Policy
- 9.2 SmartestEnergy Business reserves the right to increase the Charges by providing 30 days' notice:
- (a) where the cost of providing the Services exceeds the Charges; or
 - (b) where it is not commercially viable (which shall be determined at SmartestEnergy Business's sole discretion) for SmartestEnergy Business to provide the Services; or
 - (c) the Property becomes or is anticipated to become used for domestic purposes or there is or may be a Vulnerable Person resident at the Property.
- 9.3 Where SmartestEnergy Business increases the Charges in accordance with clause 9.2, the Customer has the right, for a period of 30 days after the notice of the change, to transfer without penalty the Services to an Incoming Supplier by providing 30 days' notice. Where such notice is provided the increase to the Charges will not take effect. Where such right is not exercised, it will be presumed that the Customer has accepted the increase in the Charges and the change to the Charges will take effect.
- 9.4 Where a Variable Tariff applies, SmartestEnergy Business reserves the right to amend the Variable Tariff on 30 days' notice.
- 9.5 SmartestEnergy Business reserves the right to amend any provision of this Agreement if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not reduce the nature or quality of the Services, and SmartestEnergy Business shall notify the Customer in any such event. SmartestEnergy Business reserves the right to vary provisions of the Agreement (but not the Charges (other than as set out in clause 9.1 and 9.2) or the Term) at any time, by providing notice to the Customer in writing of not less than 30 days prior to the commencement on the new terms. The Customer has the right where the Agreement is a Deemed Contract to terminate the Agreement in accordance with clause 15.4 (e). Where the Agreement is not a Deemed Contract the Customer has the right for a period of 30 days after the notice of the change, to terminate the Agreement by providing 30 days' notice. Where such right is not exercised, it will be presumed that the Customer has accepted the variations to this Agreement and such variations will take effect.

10. Payment

Invoicing

- 10.1 SmartestEnergy Business will send to the Customer an invoice in respect of the Charges and/or any Ancillary Charges, (Charges Invoice). The Charges Invoice will set out a breakdown of the Charges and where applicable any Ancillary Charges payable.
- 10.2 SmartestEnergy Business will send the Charges Invoice electronically. The Customer is required to maintain an email address for this purpose and notify SmartestEnergy Business of any changes to such email address. Should the Customer require the Charges Invoice (or any other Invoice or statement in relation to the Customer's account) to be sent in paper copy an Ancillary Charge will apply.
- 10.3 Where a Customer purchases additional services in accordance with this Agreement which are not included on the Ancillary Charges Schedule, SmartestEnergy Business may charge for such services by submitting an additional invoice (Additional Invoice).

Payment

- 10.4 Unless otherwise agreed, the Customer shall pay all Charges and Ancillary Charges via Direct Debit, and the Customer agrees that any payment it makes will be subject to the Allocation Policy. Unless otherwise agreed, the Customer shall be required prior to the Services Start Date to set up a Direct Debit in favour of SmartestEnergy Business in relation to the payment of the Charges and, where applicable, any Ancillary Charges.
- 10.5 Where an Advanced Payment is required then:
- (a) The Customer must pay the Advance Payment and SmartestEnergy Business shall collect the Advance Payment 30 days prior to the Target Commencement date.
 - (b) If the Advance Payment has not been received 14 (fourteen) calendar days prior to the Target Commencement Date:
 - (i) without limiting or affecting any other right or remedy available to it, SmartestEnergy Business (at its sole discretion) shall have the right to discontinue its application to be the Responsible Supplier for the Customer and, provided that SmartestEnergy Business is not the Responsible Supplier on the Target Commencement Date, the Agreement will automatically terminate.
 - (ii) SmartestEnergy Business shall have no further obligation to the Customer and shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly as a result of the Agreement terminating on the basis of this clause 10.5.
- 10.6 Where there is a Payment Plan in place, SmartestEnergy Business will collect payments as agreed between the parties.
- 10.7 Where there is no Payment Plan in place, SmartestEnergy Business will collect payments of Charges and Ancillary Charges on a date selected by SmartestEnergy Business. SmartestEnergy Business will give the Customer a minimum of 7 days' notice of such collections.
- 10.8 Where a Payment Plan applies, SmartestEnergy Business (acting reasonably) reserves the right to:
- (a) amend the sum collected under the Payment Plan to reflect the usage, by providing at least seven days' notice; or
 - (b) request an additional payment, payment of which is due upon receipt of such request (Catch Up Payment).
- 10.9 An Additional Invoice is payable immediately from the receipt of the Additional Invoice.
- 10.10 The Customer may not withhold payment of the Charges, Ancillary Charges or Catch Up Payment, because they are based on Estimates or because the Customer has appointed a third-party agent to provide bill processing or validation services.

Non-Payment

- 10.11 Where the Customer cancels its Direct Debit instruction, or a Direct Debit payment is returned unpaid, or no Direct Debit is in place SmartestEnergy Business reserves the right to charge an administration fee and/or collect payment by other means.
- 10.12 Where an Invoice becomes Overdue, SmartestEnergy Business reserves the right to:
- (a) accept payment of any outstanding Invoice by other means;
 - (b) charge an administration fee for processing the payment;
 - (c) require the Customer to pay interest on the Overdue sum from the due date until payment of the Overdue sum, whether before or after judgment. Interest under this clause 10.12(c) will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%;
 - (d) pass information in relation to the Customer (which may include Personal Data) to a credit reference agency and/or debt collection agency;
 - (e) remove any special offers, rates or discounts that apply to the Services (and this may result in a change in the Customer's Appropriate Tariff);
 - (f) transfer the Customer to the Pre-Payment Service;

- (g) recover reasonable expenses incurred in recovering payment of the outstanding Invoices, including costs associated with disconnection or replacement of a Meter, and any other third party costs SmartestEnergy Business incurs, including costs from a third party debt recovery agency, legal costs and expenses;
 - (h) change the Appropriate Tariff to a Variable Tariff;
 - (i) disconnect, cut-off, de-energise, restrict or suspend (either remotely or by accessing the Property), the supply of Services;
 - (j) require the Customer to pay the Charges in advance based on an Estimate;
 - (k) terminate the Agreement.
- 10.13 If following receipt of an Invoice or Catch Up Payment request the Customer (acting reasonably and in good faith) provides SmartestEnergy Business with notice that there is a dispute (for the avoidance of doubt, the Invoice being based on an Estimate will not be considered to be grounds for a reasonable dispute) in relation to the Invoice or the Catch Up Payment request the Customer shall where the dispute relates to part of an Invoice or Catch Up Payment Request, pay the undisputed part of the Invoice or Catch Up Payment (together with any other undisputed outstanding Invoices or Catch Up Payments) in accordance with these Terms and Conditions.
- 10.14 Subject to clause 10.15 all amounts due by the Customer under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10.15 SmartestEnergy Business reserves the right to set off any credit due to the Customer under this Agreement against any amounts the Customer owes to SmartestEnergy Business under this Agreement (or in any other account the Customer has with SmartestEnergy Business).
- Security Deposits
- 10.16 SmartestEnergy Business reserves the right to ask the Customer to pay a Security Deposit at any point during this Agreement, where:
- (a) SmartestEnergy Business has concerns regarding the Customer's ability to pay the Charges (including but not limited to where the Customer has a poor credit history, fails a credit check, or has provided no credit history due to a Deemed Contract);
 - (b) the Customer fails to adhere to the payment provisions in this Agreement;
 - (c) the Customer does not permit SmartestEnergy Business to collect daily usage data from the Meter;
 - (d) the Customer cancels its Direct Debit or Direct Debits are returned unpaid.
- 10.17 Where a Security Deposit is requested by SmartestEnergy Business, the Customer shall pay the Security Deposit to SmartestEnergy Business within 5 Business Days from the date of request.
- 10.18 The Security Deposit will be repaid to the Customer (less any unpaid Charges) within a reasonable time after the termination of this Agreement.
- 10.19 SmartestEnergy Business shall be entitled to draw on funds held as a Security Deposit at any time for any outstanding debt. Where SmartestEnergy Business draws on a Security Deposit, it reserves the right to ask the Customer for additional sums to replenish the Security Deposit.

Backbilling

- 10.20 Where the Customer is a Micro Business Consumer and SmartestEnergy Business issues an invoice, or otherwise seeks to recover (including via a Prepayment Meter) Charges from the Customer (hereafter a 'charge recovery action'), SmartestEnergy Business will only do so in respect of:
- (a) units of Energy which could reasonably be considered to have been consumed within the 12 months preceding the date the charge recovery action was taken; and
 - (b) where applicable, amounts in respect of a Standing Charge or any other type of supply charge accrued within the 12 months preceding the date the charge recovery action was taken.
- 10.21 Paragraph 10.20 does not apply in the following circumstances:
- (a) SmartestEnergy Business has taken a charge recovery action which complied with paragraph 10.20 and, due to non-payment, is continuing to take steps to obtain payment for the same Charges; or
 - (b) SmartestEnergy Business has been unable to take a charge recovery action for the correct amount of electricity consumed due to obstructive or manifestly unreasonable behaviour of the Customer; or
 - (c) the Customer failed to notify SmartestEnergy Business when it became, or ceased to be, (as applicable) the occupier of the Property; or
 - (d) the Customer failed to provide a Meter Reading within 14 (fourteen) calendar days of request.

11. Climate Change Levy

- 11.1 This clause 11 only applies to the supply of electricity.

11.2 Where the electricity supplied to the Property is Renewable Source Electricity, SmartestEnergy Business will charge the Customer an additional amount equal to the value of the Climate Charge Levy that would have applied if the electricity had not been Renewable Source Electricity. In the Averaging Period, the amount of exempt renewable supplies made by SmartestEnergy Business will not exceed the difference between (a) the total amount of Renewable Source Electricity that during that period is either acquired or generated by SmartestEnergy Business, and (b) so much that the total amount is allocated by SmartestEnergy Business other than to exempt renewable supplies.

12. Data

12.1 The Parties agree and acknowledge that:

(a) During the term of the Agreement, Personal Data (as defined in the Data Protection Laws) may be disclosed by a Party (the "Data Disclosing Party") to the other Party (the "Data Receiving Party") in connection with the Data Receiving Party and/or its Affiliate exercising its rights and/or performing its obligations under the Agreement (in particular in order to ensure a communication). The Data Receiving Party undertakes that it will process such Personal Data in accordance with the Data Protection Laws.

(b) The Personal Data disclosed under the Agreement may include but is not limited to a particular name and surname, name of an employer, employment position and work contact details.

(c) The Data Receiving Party shall apply adequate technical and organizational measures to ensure protection of the Personal Data, appropriate to the risks to the rights and freedoms of natural persons and the nature of the Personal Data and preventing unnecessary collection of the Personal Data according to the Data Protection Laws.

(d) The Data Disclosing Party will notify the data subjects whose Personal Data has been transmitted to the Data Receiving Party of processing of their Personal Data by the Data Receiving Party and of the Data Receiving Party's rights determined in clause 30.1(a)

12.2 Smartest is the Data Controller (as defined in the Data Protection Laws) of Personal Data collected from the Customer.

12.3 The Customer agrees and acknowledges that Smartest may:

(a) give details of the Customer's account to fraud prevention agencies (including but not limited to TRAS (the Theft Risk Assurance Service) and AUGE (Allocation of Unidentified Gas Expert)), who carry out checks to help prevent, identify and/or detect fraud and/or energy theft; and

(b) in the event that SmartestEnergy Business suspects or confirms that the Customer may have been victim of or committed fraud and/or energy theft, provide fraud prevention agencies with a record, which may:

(i) include sensitive information about alleged criminal offences; and

(ii) be shared with other energy companies.

12.4 The Customer agrees that SmartestEnergy Business can ask the Customer's previous supplier for information to assist SmartestEnergy Business providing the Services.

12.5 Each Party shall be entitled to record telephone conversations held in connection with the Agreement and to use the same as evidence and warrants that it has established the necessary lawful basis for such recording, as specified in the Party's Privacy Policy (SmartestEnergy Business's Privacy Policy is set out at www.smartestenergy.com/en_gb/privacy).

13. Limitation of Liability

13.1 Nothing in the Agreement shall limit or exclude SmartestEnergy Business's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, Agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law; or
 - (d) any other liability which cannot be excluded by law.
- 13.2 Subject to clause 13.1, SmartestEnergy Business shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:
- (a) loss of profits;
 - (b) loss of sales or business (including business opportunity);
 - (c) loss of agreements or Agreements;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) any indirect or consequential loss.
- 13.3 Subject to clause 13.1 and 13.2, SmartestEnergy Business's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to 100% of the total Charges paid by the Customer and received in cleared funds by SmartestEnergy Business in the 12 month period prior to the date the liability arose.
- 13.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 13.5 SmartestEnergy Business shall not be responsible for any loss or damage due to the Customer (or a third party not approved by SmartestEnergy Business) tampering with the Meter and/or Equipment. The Customer shall indemnify SmartestEnergy Business for any loss it suffers as result of the Customer (or a third party not approved by SmartestEnergy Business) tampering with the Meter and/or Equipment.
- 13.6 SmartestEnergy Business shall not be responsible for any loss or damage the Customer suffers as a result of an act or omission (including but not limited to interrupted, delayed or reduced supply) by the Network Operator or the Gas Transporter.
- 13.7 SmartestEnergy Business shall not be responsible for any for any loss or damage the Customer suffers as a result of an act or omission (including but not limited to interrupted, delayed or reduce supply) caused by events outside the control of SmartestEnergy Business (including but not limited to power outages).
- 13.8 The Customer shall indemnify SmartestEnergy Business for any loss or damage it suffers as a result of the Customer's failure to adhere to the terms of this Agreement.
- 13.9 This clause 13 shall survive termination of the Agreement.

14. Suspension of Services

- 14.1 Without affecting any other right or remedy available to it, SmartestEnergy Business may disconnect, cut-off, de-energise, restrict, suspend or permanently cease (either remotely or by accessing the Property), the supply of Services under the Agreement or any other agreement between the Customer and SmartestEnergy Business if:
- (a) the Customer fails to pay any amount due under the Agreement on the due date for payment;
 - (b) the Customer becomes subject to any of the events listed in clause 15.3 (l) to clause 15.3 (n), or SmartestEnergy Business reasonably believes that the Customer is about to become subject to any of them;
 - (c) the Customer fails to adhere to the payment terms set out in clause 10;
 - (d) the Customer fails to pay the Security Deposit (or any replenishment of the Security Deposit);
 - (e) the terms of this Agreement are breached by the Customer;
 - (f) the Equipment and/or Meter have been disconnected;
 - (g) SmartestEnergy Business is required by law or regulation to cease providing the Services;
 - (h) SmartestEnergy Business believes that the Energy intended to be supplied has been stolen or redirected;
 - (i) SmartestEnergy Business believes there has been an interference with the Network or Meter;
 - (j) OFGEM, the Gas Transporter or the Network Operator requests that SmartestEnergy Business ceases providing the Services;
 - (k) there is a risk of danger to the public or damage to property where the supply of the Services continues;
 - (l) SmartestEnergy Business has terminated the Agreement but continues to be the Responsible Supplier.
- 14.2 Where the Services are to be disconnected, restricted or suspended in accordance with clause 14.1:
- (a) SmartestEnergy Business shall not be held responsible for any loss the Customer suffers as a result of such disconnection, restriction or suspension, and the obligations on the Customer as set out in this Agreement continue to apply; and

- (b) the Customer shall permit SmartestEnergy Business or its Agent, sub-contractor, representative or any third party duly authorised to act on behalf of SmartestEnergy Business, free and uninterrupted access to the Property, the Meter and all Equipment upon reasonable notice to disconnect (and where appropriate re-connect) the supply of Services. Where the Property, Meter and Equipment are not accessible, the Customer agrees to pay all necessary costs to ensure that the Property, Meter and Equipment are accessible.

14.3 Where the access required as set out in clause 14.2 (b) is not permitted, SmartestEnergy Business reserves the right to exercise its right under clause 5 (1) (g).

14.4 The Customer shall be responsible for all costs associated with the re-connection and commencement of the Services following a disconnection or suspension of the Services.

15. Termination

15.1 Without affecting any other right or remedy available to it, SmartestEnergy Business shall be entitled to terminate this Agreement (and where terminating the Agreement in accordance with clauses 15.1 (a) or 15.1 (b), charge a reasonable cancellation fee), by providing notice in writing at any time prior to the Services Start Date where:

- (a) the Customer is an occupier of the Property, and the Customer has not provided a suitable consent from the Landlord (Landlord Consent), agreeing to SmartestEnergy Business becoming a supplier of the Services to the Property;
- (b) the previous supplier objects to SmartestEnergy Business's registration as the supply of Energy and SmartestEnergy Business is unable to provide the Services;
- (c) the Customer fails any credit check undertaken by SmartestEnergy Business;
- (d) there is a change beyond the control of SmartestEnergy Business which has an impact of SmartestEnergy Business's business costs (including but not limited to the wholesale cost of Energy, the Pass-Through Costs, meter operation and reading costs, transmission and Network costs, usage or capacity related charges from the Network Operator or gas supplier or changes in tax and duties);
- (e) it is not commercially viable (which shall be determined in at SmartestEnergy Business's sole discretion) for SmartestEnergy Business to provide the Services; or
- (f) SmartestEnergy Business is no longer able to provide the Services due to a change of law, regulation or industry practice.
- (g) the Customer:
 - (i) is convicted of any criminal offence; or
 - (ii) is in breach of any government sanction; or
 - (i) has any government sanction(s) imposed on it for any reason.

15.2 Without affecting any other right or remedy available, and subject to the Customer paying a reasonable termination fee, the Customer shall be entitled to terminate this Agreement by providing notice in writing at least 30 days before the Target Commencement Date.

15.3 Without affecting any other right or remedy available, from the Services Start Date, SmartestEnergy Business shall be entitled to terminate this Agreement upon providing notice in writing where:

- (a) an Invoice becomes Overdue;
- (b) the Customer fails to adhere to the payment terms set out in clause 10;
- (c) the Customer fails to pay the Security Deposit (or any replenishment of the Security Deposit);
- (d) there is a change of control of the Customer;
- (e) the Customer ceases to be the owner or occupier of the Property;
- (f) a third party (not authorised by SmartestEnergy Business) supplies the Services to the Property;
- (g) SmartestEnergy Business has ceased supply of the Services in accordance with clause 14;
- (h) it becomes unlawful for SmartestEnergy Business to comply with any material provision of the Agreement;
- (i) the Customer is an occupier of the Property and the Landlord Consent is withdrawn;
- (j) the Customer fails to adhere to the provisions of either clause 7.1 and/or clause 7.2;
- (k) SmartestEnergy Business supplies gas and the Property requires daily meter readings.
- (l) the Customer takes any step or action in connection with it entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by contract of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (m) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- (n) the Customer's financial position deteriorates to such an extent that in SmartestEnergy Business's opinion the Customer capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 15.4 Without affecting any other right or remedy available, from the Services Start Date, the Customer shall be entitled to terminate this Agreement:
- (a) where the Agreement is a Fixed Term Agreement, during the Fixed Term Agreement (or any Extended Term) by providing at least 30 days' notice in writing ending no earlier than the Fixed Term End Date;
 - (b) where the Agreement is a Fixed Term Agreement, and is subject to a Price Review, in accordance with clause 19.5.
 - (c) where the Agreement is a Rolling Agreement, by providing 30 days' notice in writing;
 - (d) where SmartestEnergy Business changes the Charges in accordance with clause 9.2, by providing 30 days' notice in writing;
 - (e) where the Agreement is a Deemed Contract, for any reason by providing notice in writing.
- 15.5 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party commits a breach of any term of the Agreement and (if such a breach is remediable, and for the avoidance of doubt breaches of the Agreement set out in clause 15.3 shall not be considered remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so.
- 15.6 Where the Customer seeks to put in place an Incoming Supplier, SmartestEnergy Business reserves the right to request to block the transfer of the Services to an Incoming Supplier where:
- (a) the Agreement is a Fixed Term Agreement and the Fixed Term has not expired; or
 - (b) the Customer has failed to pay SmartestEnergy Business sums which are not subject to a reasonable dispute (where the parties are acting in good faith) and are outstanding under this Agreement (including Charges or any sum incurred under this Agreement but not yet invoiced); or
 - (c) the Customer has failed to comply with the notice requirements set out in the termination provisions within this Agreement.
- 15.7 Where the Customer leaves the Property or terminates this Agreement by providing the notice set out in this Agreement, the Agreement will continue to apply until the earlier of
- (a) the date on which SmartestEnergy Business ceases to be the Responsible Supplier, or
 - (b) the date SmartestEnergy Business enters into a new agreement with a third party in relation to the Supply of Energy at the Property.

16. Consequences of Termination

- 16.1 Where the Agreement is terminated and SmartestEnergy Business cease to be the Responsible Supplier:
- (a) subject to SmartestEnergy Business receiving an undisputed final meter reading in relation to the Property (whether this is from a Meter or the Incoming Supplier and may be an Estimate), SmartestEnergy Business shall prepare a final statement together with a final Invoice (Final Invoice) in relation to the Services at the Property;
 - (b) the Customer shall immediately pay to SmartestEnergy Business all of SmartestEnergy Business's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, SmartestEnergy Business shall submit a Final Invoice in accordance with clause 16.1 (a), which shall be payable by the Customer immediately on receipt;
 - (c) where the Customer's account is in credit (and the Customer does not have other Services with SmartestEnergy Business), SmartestEnergy Business shall repay to the Customer any credit (which remains after any set-off against any payment owed by the Customer in accordance with clause 10.14) on the Customer's account where a final and validated meter reading (as validated in accordance with Industry Codes and as approved by SmartestEnergy Business) and valid UK bank account details have been provided to SmartestEnergy Business;
 - (d) where required by SmartestEnergy Business, SmartestEnergy Business may enter the Customer's premises and take possession of the Equipment, Meter and or SmartestEnergy Business Materials. Until they have been returned to SmartestEnergy Business, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement;
 - (e) the Customer shall compensate SmartestEnergy Business for all loss suffered as a result of early termination of the Agreement and the enforcement by SmartestEnergy Business of its rights.
- 16.2 Where the Agreement is terminated (for whatever reason), the Customer shall ensure that another supplier of the Services, becomes the Responsible Supplier of the Property with effect from the termination date.
- 16.3 Where the Customer terminates the Agreement, the Agreement will only end once SmartestEnergy Business ceases to be the Responsible Supplier. Where SmartestEnergy Business continues to be the Responsible Supplier to the Property after the termination date, and no new owner or occupier of the Property has accepted responsibility for the Services, this Agreement will continue and SmartestEnergy Business reserves the right to:

- (a) Invoice the Customer for all Charges incurred at the Property; and/or
 - (b) transfer the Services to Out of Contract Services; or
 - (c) where SmartestEnergy Business continues to be the Responsible Supplier for a period of 30 days or more from the date of termination, treat the termination notice as lapsed, and continue the Agreement unless terminated in accordance with these Terms and Conditions; or
 - (d) suspend the Services in accordance with clause 14.1 (I).
- 16.4 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 16.5 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

17. Pre-Payment

- 17.1 Where the Services do not relate to Pre-Payment Services, SmartestEnergy Business reserves the right to vary the Services so that they are Pre-Payment Services, when:
- (a) the Customer fails a credit check undertaken by, or on behalf of SmartestEnergy Business; or
 - (b) the Customer fails to adhere to payment terms in clause 10; or
 - (c) SmartestEnergy Business acting reasonably, believes that the Customer has tampered the Meter; or
 - (d) SmartestEnergy Business, acting reasonably, has grounds to believe that the Customer represents a credit risk; or
 - (e) the Customer provides its consent.
- 17.2 Where the Services are Pre-Payment Services the Customer shall:
- (a) agree to the Variable Tariff that applies to Pre-Payment Services;
 - (b) agree to pay the Pre-Payment Installation Charges;
 - (c) purchase sufficient credit to use the Pre-Payment Services;
 - (d) acknowledge and agree that:
 - (i) the Pre-Payment Services will not be available until all outstanding debt (including emergency credit purchased) has been repaid (or a repayment plan has been agreed and complied with) and the Customer ensures at least 7 days of credit has been purchased;
 - (ii) the Pre-Payment Services may be disconnected (immediately and without notice) where the pre-paid credit has been exhausted;
 - (iii) reconnection to the Services will not be immediate and SmartestEnergy Business is not responsible for any losses the Customer suffers as a result of the Services being disconnected;
 - (iv) if reconnection of the Pre-Payment Services requires a visit from an engineer, due to an action of the Customer, the Customer shall be responsible for the cost of the engineer's visit; and
 - (v) the Charges payable by the Customer may be higher, because a cheaper tariff may not be available on the Pre-Payment Services and/or because payments are not paid by Direct Debit.
- 17.3 The Customer shall be responsible for any card, key or token provided to the Customer to use the Pre-Payment Services. Where the card, key or token is lost or damaged, the Customer may have to pay the reasonable costs of replacement.
- 17.4 SmartestEnergy Business shall not be responsible for any loss the Customer suffers as a result of the Services becoming Pre-Payment Services.
- 17.5 Where clause 17.1 applies the Customer may be required to pay a Security Deposit and/or the reasonable costs in changing the Meter at the Property.

18. Fixed Term Agreement Renewal

- 18.1 Where the Agreement is a Fixed Term Agreement, the Customer may be invited by SmartestEnergy Business, prior to the expiration of the Fixed Term, to extend the Fixed Term for an additional term (Extension Offer).
- 18.2 Where the Extension Offer is agreed between the parties, either expressly or by default, the Agreement will automatically continue from the Fixed Term End Date until the expiration of the term set out in the Extension Offer, as if it was an extended fixed term (Extended Fixed Term).
- 18.3 The same process set out in clause 18.2 shall apply at the end of any Extended Fixed Term, where an Extension Offer has been made by SmartestEnergy Business on the basis that the Extended Fixed Term is substituted for the Fixed Term End Date.

- 18.4 Where the Agreement is a Fixed Term Agreement and SmartestEnergy Business continues to be the Responsible Supplier, and no Extension Offer has been accepted, the Fixed Term Agreement will automatically transfer into a Rolling Agreement, upon the expiration of the Fixed Term.
- 18.5 Where a Fixed Term Agreement becomes a Rolling Agreement, the Appropriate Tariff will change to a Variable Tariff.

19. Price Review

- 19.1 Where the Agreement is a Fixed Term Agreement which includes a Price Review option as set out in the Application Form and/or the Recorded Verbal Agreement, SmartestEnergy Business may write to the Customer prior to the Agreement Review Date and will provide details of the price to be adopted following a Price Review (Price Review Notice).
- 19.2 The Customer shall have the right, within 30 days from receipt of the Price Review Notice, to provide SmartestEnergy Business with written evidence in a form as reasonably requested by SmartestEnergy Business of a lower rate being offered by one alternative supplier for services that are identical to the Services.
- 19.3 Within 14 days from the date evidence is provided in accordance with clause 19.2, SmartestEnergy Business shall inform the Customer whether it can match the price provided by the alternative supplier.
- 19.4 Where SmartestEnergy Business can match the price provided by the alternative supplier in accordance with clause 19.2, that price will be adopted until the earlier of either the expiration of the Fixed Term Agreement or a subsequent Price Review.
- 19.5 Where SmartestEnergy Business cannot match the price provided by the alternative supplier in accordance with clause 19.2, the Customer shall have the right to terminate the Agreement, by providing at least 30 days' notice, with such notice expiring no later than the last day of the Fixed Term and providing the Customer uses the services of the alternative supplier named.

20. General

- 20.1 **Force majeure.** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 20.2 **Assignment and other dealings.**
- (a) SmartestEnergy Business may at any time assign, mortgage, charge, subcontract delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.
 - (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of SmartestEnergy Business.
- 20.3 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients of the other party, except as permitted by clause 20.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, agents, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, agents, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 20.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 20.4 **Entire agreement.**
- (a) The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.

- 20.5 **Variation.** Except as set out in these Terms and Conditions (and in particular as set out in clause 9), no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.6 **Waiver.** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.7 **Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- 20.8 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the address set out in the Application Form or the Recorded Verbal Agreement (unless otherwise agreed between the parties);
 - (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
 - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 20.9 **Third party rights.**
- (a) Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
 - (b) The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.
- 20.10 **Changes in law.**
- (a) If any of the provisions of any Industry Code, law or regulation are amended or varied or cease to apply, the Customer will, at the request of SmartestEnergy Business, agree to amend the Agreement to accommodate any such amendment, variation or cessation in such manner as reasonably requested by SmartestEnergy Business.
- 20.11 **Governing law.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 20.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.
- 21 **Tax Evasion Prevention**
- 21.1 For the purposes of this clause 21, "CFA 2017" means the Criminal Finances Act 2017 and any other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to preventing the facilitation of tax evasion. The expressions 'Prevention Procedures', and 'Associated' will be construed in accordance with the CFA 2017.
- 21.2 'Party Associated Persons' means all or any of (i) persons Associated with a Party ("Party's Associates"); and (ii) persons Associated with any of the Party's Associates in each case, involved in the performing obligations in connection with the Agreement.
- 21.3 Neither Party will and will procure that no Party Associated Persons will by any act or omission commit, or cause, facilitate or contribute to the commission of an offence under the CFA 2017, in connection with the Agreement.
- 21.4 Each Party will and will procure that all the Party Associated Persons have in place such prevention procedures to prevent any breach of this clause 21 and each Party will provide the other Party on request with copies of these policies (and prompt notice of any material changes to the same from time to time).
- 21.5 Each Party warrants and represents that it has not, and that no Party Associated Person has:
- (a) been investigated in connection with, or charged with having committed or facilitated the commission of any offence under the CFA 2017;

- (b) received any court orders, warrants or oral or written notices from a government prosecuting authority concerning any actual or alleged violation by it of the CFA 2017.
- 21.6 Each Party will immediately notify the other Party as soon as it becomes aware of any allegation, investigation, evidence or report relating to a breach or possible breach of any of the requirements in this clause 21.
- 21.7 Breach of this clause 21 shall be a material breach of the Agreement that is not capable of being remedied and shall entitle each Party to terminate the Agreement in accordance with clause 15.