

SOURCEPOSITION TERMS AND CONDITIONS

THE CONTRACT IS MADE BETWEEN:

- (1) SmartestEnergy Limited, a company incorporated in England (registered number 3994598) whose registered office is at Dashwood House, 69 Old Broad Street, London EC2M 1QS (Smartest); and
- (2) the legal entity set out in the Order Confirmation (the Customer).

BACKGROUND

The Customer wishes to receive and Smartest wishes to provide Products and Services in accordance with the terms and conditions set out in this Contract.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. **DEFINITIONS**

1.1 In this Contract, the following definitions shall apply:

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

“Affiliate” means in relation to a body corporate, any subsidiary, subsidiary undertaking or holding company of such body corporate, and any subsidiary or subsidiary undertaking of any such holding company for the time being.

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

“Business Hours” means the period from 9.00 am to 5:00 pm local UK time, on any Business Day.

“Cancellation Date” means the date the Customer provides notice to Smartest that it wishes to cancel the Contract.

“Commencement Date” means the date specified in the Order Confirmation that Smartest sends to the Delivery Email Address of the Customer.

“Contract” means the Order Confirmation, Privacy Policy, together with this document which sets out the terms and conditions on which Smartest provides the Products and Services listed in Annexes 2 and 3.

“Customer” means the legal entity which is set out in the Order Confirmation.

“Delivery Period” means the period of 10 Business Days.

“Delivery Email Address” means the email address provided by the Customer during the order process and to which Smartest will confirm acceptance of the Customer's offer and to which SourcePosition Reports, trigger alerts and notices under the Contract will be sent to.

“End of Day Prices” means the prices quoted on the Relevant Markets on or around 6pm GMT.

“Energy Interval” means a volume of baseload electricity (unless otherwise agreed by Smartest being not less than 0.2 MW, and in multiples above 0.2 MW of 0.1 MW) in respect of a period of time; provided that the maximum volume of Energy Intervals for each Energy Month shall be equal to the Reference Volume for that Energy Month.

“Energy Month” means a calendar month commencing at 00.00 on the first Energy Day in that calendar month.

“Energy Day” means a period of (subject to daylight saving) 24 hours commencing at 00.00 hours.

“Expiry Date” means the expiry date or early termination date of the Customer's Supply Contract or Flexible PPA Contract (as the case may be).

“Force Majeure Event” has the meaning given in clause 15.1.

“Group” means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

“FCA” means the Financial Conduct Authority.

“Flexible PPA Contract” means the power purchase agreement entered into between the Customer and Smartest for the sale and purchase of electricity and benefits associated with that electricity (as amended from time to time).

“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.

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Locked Prices” means the set offer price (to buy power) for an Energy Interval in accordance with Paragraph 5 of the Appendix to the Customer's Supply Contract or Paragraph 5 of the Appendix to the Customer's Flexible PPA Contract (as the case may be).

"Market Data" means information and/or data about energy, commodities and financial instruments, indices and/or other information and data originating from a third party service provider and made available from time to time as part of any product or service offered by such third party service provider. For the avoidance of doubt this does not include indices from any exchanges included in such third party service provider's data services.

"Order Confirmation" has the meaning described in clause 6.4.

"Privacy Policy" is the privacy policy of Smartest as displayed on its website from time to time.

"Products" means the products described in Annex 2 of this document.

"Reference Volume" means, in respect of each Energy Month, the volume established as such in accordance with Paragraph 11 of the Appendix to the Customer's Supply Contract or Paragraph 10 of the Appendix to the Customer's Flexible PPA Contract (as the case may be).

"Relevant Market" means UK baseload power market prices as provided by Smartest's third party service providers.

"RAO" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

"Secretary of State" means the Secretary of State referred to in the Electricity Act 1989 and any legislation made under that act.

"Services" means the Services described in Annex 3 of this document.

"Software" means the online software applications provided by Smartest and its third party service providers as part of the Products and Services.

"SourcePosition Portal" means the online portal described in Annex 2 of this document; for the avoidance of doubt, such portal does not allow users to send trading investment instructions or to enter into trades.

"SourcePosition Reports" means the reports described in Annex 2 of this document.

“Supply Contract” means the electricity supply contract entered into between the Customer and Smartest as amended from time to time.

“Unlocked Prices” means the agreed bid price (to sell power) for an Energy Interval in accordance with Paragraph 6 of the Appendix to the Customer's Supply Contract or Paragraph 6 of the Appendix to the Customer's Flexible PPA Contract (as the case may be).

“Virus” means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

“What-If Hedge” means the hypothetical hedge against Locked Prices and/or Unlocked Prices in connection with a Flexible PPA Contract and/or a Supply Contract (as the case may be) between the Customer and Smartest (and not a third party) and relating to the physical delivery of the power contracted for under it. For the avoidance of doubt, this term does not refer to dummy derivatives transactions; between the Customer and Smartest or any third party.

2. INTERPRETATION

- 2.1 The headings in this Contract are for convenience only. They do not form part of this Contract or affect its interpretation.
- 2.2 References in this Contract to “you” means to the Customer; and the words “your” and “yours” will be construed accordingly.
- 2.3 References in this Contract to “parties” means Smartest and the Customer and “party” means either of them.
- 2.4 A reference to a statute or statutory provision includes any subordinate legislation and is a reference to it as amended, supplemented, re-enacted (with or without modification) from time to time.

- 2.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.6 References in this Contract to "forward price" are references to fixed prices under the Supply Contract and/or Flexi PPA Contract for the purchase and sale of electricity.
- 2.7 References in this Contract to "forward transactions and hedging" are references to transaction types in the Supply Contract and/or Flexible PPA Contract.
- 2.8 References in this Contract to "hedge" or "hedging" are solely in connection with the management of electricity purchased or sold through the Supply Contract and/or the Flexible PPA Contract (as the case may be) between the Customer and Smartest, concerning physical delivery of power.

3. NO INVESTMENT OR SPECULATION

- 3.1 The Customer represents and undertakes that it is the Customer's intention to use the Products and Services for information purposes only (**Intended Purpose**) and that it is not the Customer's intention to use such Products and/or Services for any speculative or investment purposes.
- 3.2 The Customer agrees and acknowledges that:
- (a) the Products and Services specified in Annexes 2 and 3 are solely for the Intended Purpose and are not designed for trading or investing on any market;
 - (b) the Products and Services are not intended to (and do not) amount to advice on which the Customer or any third party may rely; and, accordingly, the Customer shall obtain professional or specialist advice before taking or refraining from any action in connection to the Products and/or Services; and
 - (c) nothing in this Contract grants the Customer membership of, or the right to trade on, any market operated by Smartest's third party service providers, or entitles the Customer to receive access to any other electronic communications network or service.
- 3.3 The Customer agrees, acknowledges and warrants that:
- (a) it shall not rely on the Products and/or Services for any purpose other than the Intended Purpose;
 - (b) it shall not permit any third party to rely on any Products and/or Services whatsoever;
 - (c) it shall neither use nor permit any third party to use any such Products and/or Services for trading or investment purposes;

- (d) Smartest shall not be liable to the Customer (and/or to any third party) if any of the Products and/or Services provided are used for a purpose other than the Intended Purpose or if reliance on and/or improper use of the Products and/or services causes any loss, damage and/or expense of whatsoever nature;
- (e) Smartest shall not be liable for and makes no representation, warranty or guarantee, whether express or implied, for the accuracy and/or completeness of any of the Products and/or Services; and
- (f) the Customer shall have sole responsibility for: the legality, reliability, integrity, accuracy and quality of its transaction data that Smartest will share with its third party service providers so that Smartest can provide the Services and Products to the Customer.

4. INDEMNITY

- 4.1 The Customer shall defend, indemnify and hold harmless Smartest against any claims, actions, loss, damage, costs (including without limitation court costs and reasonable legal fees), expenses, proceedings or liability (including any fine imposed by a regulator) suffered or incurred by Smartest arising from:
 - (a) the Customer's use of the Products and/or Services; and
 - (b) the Customer's representation and undertaking contained in clause 3.1 proving to be incorrect or misleading in any respect when made, repeated or deemed to be repeated.

5. CONDITIONS PRECEDENT AND SUBSEQUENT

- 5.1 It shall be a condition precedent and condition subsequent to Smartest's provision of the Products and Services (and the Customer represents that) the Customer is already party to and continues to be a party to a Supply Contract or a Flexible PPA Contract with Smartest that has not otherwise expired or been terminated in accordance with its terms.

6. CONTRACT FORMATION

- 6.1 The Customer agrees and acknowledges that by clicking "I accept these terms and conditions" it is making a legally binding offer to Smartest for the purchase of the Products and/or Services (Order).
- 6.2 Once the Customer places an Order, it will receive an e-mail from Smartest at the Delivery Email Address (as provided by the Customer during the order process) acknowledging that Smartest has received the Order (**Order Acknowledgement**).
- 6.3 The parties agree and acknowledge that the Order Acknowledgement does not

constitute acceptance of the Order by Smartest.

- 6.4 In the event that Smartest accepts the Customer's Order, Smartest shall, within the Delivery Period, email the Customer at the Delivery Email Address with its agreement to deliver the Products and/or supply the Services to the Customer (Order Confirmation). The Contract between the parties will be formed when Smartest emails the Order Confirmation to the Customer.
- 6.5 If Smartest is unable to provide the Customer with a Product or deliver a Service (for reasons including but not limited to the Product no longer being available or Smartest's third party service provider being unable to provide a Service to Smartest or its Customers), Smartest will not process the Customer's Order. In the event that the Customer has already paid for the Products and Services, Smartest will refund the Customer the full amount.
- 6.6 In the event that Smartest has accepted the Customer's Order but subsequently becomes unable to deliver some or all of the Products and/or Services, Smartest will contact the Customer immediately.
- 6.7 Without prejudice to the rights of each party under clause 21 and clause 15, in the event that only some of the Products and/or Services become unavailable, the Customer reserves the right to continue the contract as if the Products and/or Services that cannot be delivered no longer form part of the Customer's Order. For the avoidance of doubt, if the Customer exercises this option, the Customer shall continue to be liable for payment for the Products and/or Services they have received since the Commencement Date.
- 6.8 If applicable, Smartest will provide a rebate calculated by Smartest for any Products and/or Services that the Customer has already paid for but which cannot be delivered. No interest will be payable to the Customer under this clause.

7. CONTRACT PERIOD

- 7.1 Subject to clauses 15 and 21 and without prejudice to clause 11.1, this Contract shall take effect on the Commencement Date of this Contract and shall expire automatically on the Expiry Date of the Customer's Supply Contract or Flexible PPA Contract (as the case may be) with Smartest, unless it is otherwise terminated in accordance with the provisions of this Contract.

8. BASIS OF CONTRACT

- 8.1 This Contract applies in respect of the subject matter of this agreement to the exclusion of any other terms that the Customer may seek to impose or incorporate, or

which are implied by trade, custom, practice or course of dealing (to the maximum extent permitted by law).

- 8.2 Any samples, drawing, descriptive matter or advertising issued by Smartest by any means and any illustrations, presentation, or descriptions of the Services contained in any of Smartest's websites or promotional material are issued for the sole purpose of giving an approximate idea of the Services and Products described in them. They shall not form part of the Contract or have any contractual force. For the avoidance of doubt, the Customer acknowledges that this is not a sale by sample.
- 8.3 The parties acknowledge that the remedies under common law will not apply to this Contract.

9. CUSTOMER OBLIGATIONS

The Customer shall:

- 9.1 pay all amounts when due under the Contract;
- 9.2 inform Smartest as soon as reasonably possible if it does not receive a Product and/or Service when due and assist Smartest in all reasonable ways to resolve any issues preventing Smartest or its third party service providers from delivering the Products;
- 9.3 use all reasonable endeavours not to access, store, distribute or transmit any Viruses;
- 9.4 not access, store, distribute any material during the course of its use of the Products and Services that:
- (a) unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or;
 - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;
- 9.5 not attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means;
- 9.6 not attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to

- human-perceivable form all or any part of the Software;
- 9.7 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or Products and, in the event of any such unauthorised access or use, promptly notify Smartest;
 - 9.8 ensure that it is entitled to transfer the relevant personal data to Smartest so that Smartest may lawfully instruct and allows its third party service providers to use, process and transfer the personal data in accordance with this Contract;
 - 9.9 ensure that it is entitled to transfer the relevant transaction data to Smartest so that Smartest may lawfully instruct and allows its third party service providers to use, process and transfer the transaction data in accordance with this Contract;
 - 9.10 not use any Market Data for any unlawful purpose whatsoever;
 - 9.11 not disseminate or transfer to a third party any part of the Market Data;
 - 9.12 not (except to the extent expressly permitted under this Contract) use the Products and/or Services to provide services to third parties;
 - 9.13 not attempt to obtain, or assist third parties in obtaining, access to the Products and/or Services without the written consent of Smartest;
 - 9.14 provide Smartest with all necessary co-operation in relation to this Contract and necessary access to such information as may be required by Smartest in order to provide the Products and/or Services, including transaction data and personal data, security access information and configuration services;
 - 9.15 comply with all applicable laws and regulations with respect to its activities under this Contract.
 - 9.16 carry out its obligations set out in this Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Smartest may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 9.17 obtain and maintain all necessary licences, consent and permissions necessary for Smartest, its contracts and agents to perform their obligations under this Contract, including without limitation the Services and Products.
 - 9.18 ensure that its network and systems comply with the relevant specifications provided by Smartest from time to time;
 - 9.19 not assist with providing or facilitating unauthorised access to the Products and/or Services;

- 9.20 not redistribute or permit any redistribution of any Market Data or derived data;
- 9.21 not use or permit to use the Market Data in a manner that may bring Smartest or Smartest's third party service providers into disrepute;
- 9.22 not use the Market Data in a manner that breaches any applicable laws and regulations (including those laws and regulations in force as at the date the Customer entered the Contract, as those laws and regulations may be amended from time to time, and all laws and regulations that come into force subsequently);
- 9.23 at the request of Smartest, take all reasonable steps, including co-operation in litigation (other than any claim over which Smartest assumes control) both during and after the termination or expiry of this Contract (for any reason), as may be necessary for the protection or enforcement of the Intellectual Property Rights of Smartest or its third party service providers. For the avoidance of doubt this clause 9.23 shall survive the termination or expiry of this Contract; and
- 9.24 not build or offer a Service and/or Product which competes with the Service or Product in this Contract;

and Smartest reserves the right, without liability or prejudice to its other rights to the Customer, to terminate the Contract or to disable the Customer's access to any Products or Services as a result of the Customer's breach of the provisions of this clause 9.

10. SMARTEST'S OBLIGATIONS

- 10.1 Smartest will provide the agreed Products and/or Services in accordance with the Order Confirmation.
- 10.2 Smartest will use its reasonable endeavours to grant access to the SourcePosition Portal during 24 hours a day, seven days a week, subject to:
- (a) planned maintenance carried out by Smartest or its third party service providers during Maintenance Hours;
 - (b) unscheduled maintenance carried out by Smartest or its third party service providers performed outside Business Hours, provided that Smartest will give the Customer notice in advance; and
 - (c) emergency maintenance carried out during Business Hours, provided that Smartest shall use reasonable endeavours to give the Customer notice in advance.
- 10.3 Smartest does not represent, undertake or warrant that the Customer's use of the Products or Services will be uninterrupted and/ or that the Products and Services will

meet the Customer's requirements; and under no circumstances does Smartest accept any responsibility for any such interruption or fitness for purpose;

- 10.4 Smartest will not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.
- 10.5 Smartest shall not be liable for any delay in the delivery of any Products and/or Services that is caused by a Force Majeure Event or the Customer's acts or omission which contribute or cause such delay.

11. OUR RIGHTS TO VARY THE CONTRACT

- 11.1 The parties agree that Smartest may unilaterally amend this Contract (from time to time) with immediate effect by providing notice to the Customer, such variation shall be deemed amended as at the effective date of such notice without the need for further formality.
- 11.2 In the event that Smartest exercises its right under clause 11.1, the Customer may within 30 Business Days of such amendment, provide Smartest with notice (in accordance with clause 24 of this Contract) that the Customer wishes to terminate the Contract.
- 11.3 Upon receipt of notice in accordance with clause 11.2, Smartest shall confirm termination of this Contract with immediate effect (Cancellation Date) and the Customer shall pay Smartest for any Products and/or Services (received up until the Cancellation Date or the last day of receipt of a Product and/or Service, whichever is the later). For the avoidance of doubt, Smartest will only arrange a refund for Products and Services that the Customer has paid for and has not received.
- 11.4 Smartest reserves the right (without any liability whatsoever) to prohibit any Customer from viewing the Market Data indefinitely, on the request of any of Smartest's third party service providers.
- 11.5 Smartest may from time to time:
- (a) upon notifying the Customer with immediate effect discontinue the provision of any Market Data, either completely or in a particular manner; and
 - (b) otherwise modify any Market Data or the means of its transmission.

12. DELIVERY OF THE PRODUCTS

- 12.1 Smartest shall deliver the SourcePosition Reports to the Delivery Email Address provided by the Customer or such other email address as the parties may agree to in

writing.

- 12.2 Delivery of the SourcePosition Reports shall be completed once Smartest sends the SourcePosition Reports from its email address to the Delivery Email Address of the Customer.
- 12.3 Delivery of the SourcePosition Portal shall be completed once Smartest sends the SourcePosition log-in details from its email address to the Delivery Email Address of the Customer.
- 12.4 Any dates and/or times for delivery of any Products including SourcePosition Reports and the SourcePosition Portal (including live trigger alerts) and Services are approximate and not of the essence.
- 12.5 Subject to clause 17, if Smartest fails to deliver any Products and/or Services, its liability shall be limited to the reasonable costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the least expensive market available, less the price of the Products and Services.
- 12.6 In the event that Smartest fails to deliver any Products and/or Services that the Customer was receiving at no charge, Smartest shall have no liability for any loss and/or damage that the Customer may incur as a direct or indirect result of any such failure.
- 12.7 Smartest shall not knowingly transmit any Viruses to the Customer and shall use reasonable endeavours not to distribute or transmit any Viruses to the Customer in the provision of the Products.

13. WARRANTIES AND REPRESENTATIONS

- 13.1 Smartest warrants and represents that:
 - (a) as at the Commencement Date, all information, statements and representations contained in the description of the Products and the Services within Annex 2 and Annex 3 are true, accurate and not materially misleading; and
 - (b) as far as it is aware, no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up of Smartest or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of Smartest's assets or revenue.
- 13.2 The Customer warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract;
- (b) is a duly incorporated company validly existing under the law of its jurisdiction of incorporation;
- (c) has the power to own its assets and carry on its business as it is being conducted; and
- (d) is not subject to an Insolvency Event; and
- (e) the entry into this Contract will not contravene or conflict with:
 - (i) the Customer's constitutional documents; and
 - (ii) any law or regulation or judicial or official order, applicable to the Customer.

14. CUSTOMER ACKNOWLEDGEMENTS

The Customer acknowledges and agrees that:

- 14.1 this Contract (including the: Order Confirmation, Privacy Policy along with this document) constitutes the entire agreement on the subject matter of the Contract between the Customer and Smartest and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter;
- 14.2 it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Smartest and/or its third party service providers that is not set out in this Contract;
- 14.3 it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract;
- 14.4 the rights, Products and Services provided in this Contract are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer;
- 14.5 in the event of any loss or damage to the Customer's transaction data as a result of Smartest or Smartest's third party service providers negligence or breach of this Contract, the Customer's sole and exclusive remedy shall be for Smartest's third party service providers to use reasonable endeavours to restore the lost or damaged transaction data from the latest back-up of such transaction data maintained by Smartest's third party service provider in accordance with the third party service provider's archiving procedure;

- 14.6 this Contract does not include the right to grant licences or sub-licences;
- 14.7 neither Smartest or any of its third party service providers represent or endorse the accuracy, completeness or reliability of the Market Data, accepts no Liability whatsoever for any loss or damage caused by reliance on the Market Data;
- 14.8 the Customer is solely responsible for: (i) procuring and maintaining its network connections and telecommunications links from its systems to the SourcePosition Portal, and (ii) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
- 14.9 Smartest shall not be liable to the Customer for any delay in performing or failure to perform its obligations under the contract to the extent that such delay or failure is a result of planned maintenance;
- 14.10 that a breach by the Customer of any of the terms of this Contract may result in irreparable and continuing damage to Smartest for which there may or will be no adequate remedy at law, and that in the event of such breach, Smartest shall be entitled to apply for injunctive relief and/or a decree for specific performance and such other and further relief as may be appropriate;
- 14.11 Smartest shall not in any circumstances be liable for any loss or damage arising from: (i) unauthorised access to any Market Data, or (ii) receipt or use of any Market Data or (iii) for any redistribution of any Market Data, that contravenes this Contract;
- 14.12 Smartest does not represent or warrant that the supply of the Market Data will be without interruptions.
- 14.13 other than as expressly provided in this Contract, Smartest shall not be liable for any delay, inaccuracy, error or omission of any kind in any Market Data for any resulting loss or damage suffered by the Customer or any other person;
- 14.14 that the Products and Services may be subject to limitations, delays and other problems inherent in the use of such communication facilities; and
- 14.15 it hereby consents to the use of its transaction data.

15. **FORCE MAJEURE**

- 15.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Smartest including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Smartest or any other third party service provider to Smartest), failure of a utility service or transport network, website, transport network, act of God, war, riot, civil commotion, malicious damage,

compliance with any law, court or governmental order, rule, regulation or direction, accident, accident, fire, flood, storm, unplanned maintenance and/or breakdown of/ fault in plant, machinery, computer equipment, software, databases and/or servers. Any failure or delay by Smartest in performing its obligations under the Contract which results from any act or omission (which includes a revocation of consent and/or non-provision of consent from Smartest's third party service providers), failure or delay by an agent, contractor, sub-contractor, third party or supplier shall be regarded as due to Force Majeure Event.

15.2 Neither party shall be liable to the other party for any delay in performing or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure Event.

However, if such Force Majeure Event prevents either party from performing its material obligations under the Contract for a period in excess of 6 months, either party may terminate the Contract with immediate effect by notice in writing to the other party.

15.3 If either party becomes aware of a Force Majeure Event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in clause 15.1 it shall as soon as reasonably practicable inform the other party of the period during which it is estimated that such a failure or delay shall continue.

16. PRICE OF PRODUCTS AND SERVICES AND PAYMENT

16.1 The prices of the Products and Services will be provided to the Customer by Smartest and confirmed within the Order Confirmation.

16.2 If there is an error in the Price quoted, Smartest will notify the Customer as soon as reasonably practicable and allow the Customer to terminate its Contract and to resubmit a new Order (should the Customer wish to do so). The Customer will only be liable to pay for the Products and Services it has so far received; such liability being at the correct price that Smartest shall communicate to the Customer. The Customer shall have no rights of set-off.

16.3 In absence of error in accordance with clause 16.1, the price of the Products and Services will be fixed with the Customer for the duration of the Contract.

16.4 The price of the Products and Service excludes valuable added tax (VAT) chargeable (where applicable) at the applicable current rate chargeable in the UK for the time

being. However, if the rate of VAT changes between the date of the Customer's Order and the date of delivery, Smartest will adjust the VAT that the Customer pays, unless the Customer has already paid for the Products and/or Services (as applicable) in full before the change in VAT takes effect.

16.5 The price for the Services does not include transportation to the service delivery venues, and Customer shall pay its own transportation costs.

16.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction, or withholding except as required by law. Smartest may, without prejudice of limitation to any of its other rights and remedies, set off any amount owing to it by the Customer against any amount payable by Smartest to the Customer.

16.7 Smartest shall invoice the Customer for Products and Services monthly in arrears after completion of delivery.

16.8 The Customer shall pay each invoice submitted by Smartest in accordance with clause 16.7:

- (a) within 28 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Smartest, and

time for payment shall be of the essence of the Contract.

16.9 Smartest may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Products and/or Services and Smartest shall be under no obligation to provide any or all of the Products and/or Services while the invoices(s) concerned remain unpaid.

16.10 All amounts and fees due shall be payable in pounds sterling.

17. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

17.1 If Smartest's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Smartest shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

17.2 Nothing in this Contract limits or excludes any party's liability for:

- (a) death or personal injury caused by negligence;

- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (d) defective products under the Consumer Protection Act 1987.

17.3 Subject to clause 17.2 Smartest will under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) any loss of profits, sales, business, or revenue;
- (b) loss or corruption of data, information or software;
- (c) loss of business opportunity;
- (d) loss of anticipated savings;
- (e) loss of goodwill;
- (f) corruption of data or information;
- (g) pure economic loss; or
- (h) any indirect or consequential loss.

17.4 Subject to clause 17.2 and without prejudice to clause 12.5 and clause 12.6, Smartest's maximum liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £2,000.

17.5 Except as expressly stated in this Contract, Smartest does not make any representation, warranties or undertakings in relation to the Products and Services. Any representation, condition or warranty which might be implied or incorporated into this Contract by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, Smartest shall not be responsible for ensuring that the Products are suitable for the Customer's purposes.

17.6 The Customer assumes sole responsibility for results obtained from the use of the Products and Services by the Customer, and for conclusions drawn from such use. Smartest shall have no liability for any damage caused by errors or omissions in any Product and/or Service.

17.7 Without prejudice to clause 13, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law excluded from this Contract.

17.8 The Products and Services are in accordance with Annex 2 and Annex 3.

18. LATE PAYMENT

18.1 If the Customer fails to make any payment due to Smartest under this Contract by the due date of payment, then, without limiting any of Smartest's other remedies, the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Barclay's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount.

19. INTELLECTUAL PROPERTY

19.1 The Customer shall indemnify Smartest against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses suffered or incurred by Smartest in connection with any claim made against Smartest for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Customer's use of the Products (which includes the Market Data) and/or Services or caused by the Customer's act or omission. This clause 19.1 shall survive termination of the Contract.

19.2 Nothing in this Contract, and nothing done under this Contract, shall result in the transfer of any right, title or interest in or to any Intellectual Property Rights from Smartest, or Smartest's third party service providers or their respective Groups to the Customer or any Affiliate or any other person.

19.3 In the defence or settlement of any claim, Smartest may procure the right for the Customer to continue using the Products and/or Services, replace or modify the Products and/or Services so that they become non-infringing or, if such remedies are not reasonably available terminate this Contract on notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

19.4 The Customer acknowledges and agrees that Smartest and/or its licensors own the intellectual property rights in the Software. Except as expressly stated herein, this Contract does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software.

19.5 In no event shall Smartest, its employees, agents, third party service providers and sub-

contractors be liable to the Customer in respect of any alleged infringement that is based on:

- (a) a modification of the Software, Products or Services by the Customer; or
- (b) the Customer's use of the Software, Products or Services in a manner contrary to the instructions given to the Customer by Smartest; or
- (c) the Customer's use of the Software, Services or Products after notice of the alleged or actual infringement from Smartest or any appropriate authority; or
- (d) any breach by the Customer of the Contract.

20. SEVERANCE

20.1 If, at any time, any clause or part-clause of the Contract is or becomes illegal, invalid 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 clause or part of a clause shall be deemed deleted. Any modification to deletion of a clause or part of a clause under this clause 20.1 shall not affect the validity and enforceability of the rest of the Contract.

20.2 If one party gives notice to the other of the possibility that any clause or part clause of these terms is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such clause so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original clause.

21. TERMINATION

21.1 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 28 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or

(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (j) a creditor or encumbrance of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 21.1(d) to clause 21.1(k) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (m) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010);
- (n) any warranty given by the either party in this Contract is found to be untrue or misleading;
- (o) the other party ceases, or threatens to cease, to trade;

- (p) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt;

and Smartest reserves the right, without liability or prejudice to its other rights to the Customer, to terminate the Contract or disable the Customer's access to any Product and/or Service following the occurrence of any of the above sub-clauses a) to n) attributable to the Customer, or the Customer's breach of any part of the Contract. For the purposes of clause 21.1b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this Contract; or
- (b) any 6-month period during the term of this Contract.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

21.2 Without affecting any other right or remedy available to it, either party may terminate this Contract on giving not less than one weeks' written notice to the other party.

21.3 Smartest and its third party service providers may destroy or otherwise dispose of any of the transaction data and/or personal data in its possession upon termination of this Contract. If Smartest has not exercised its right under this clause 21.4 and the Customer has requested a copy of its transaction data and/or personal data, no later than 2 days after the effective date of the termination of this Contract Smartest will to the extent practicable endeavour, subject to the ability of its third party service providers to provide the Customer with a back-up of the Customer's transaction and/or personal data.

21.4 On termination of this Contract for any reason:

- (a) all licenses granted under this Contract shall immediately terminate;
- (b) the Customer shall return and make no further use of any Service and/or Product, equipment, property and other items (and all copies of them) belonging to the other party;
- (c) Smartest's and its third party service providers may destroy or otherwise dispose of any of the Customer Data in its possession;
- (d) all fees under the Contract shall become immediately due and payable, whether or not invoiced at such date; and
- (e) the accrued rights of the parties as at termination, or the continuation after termination or the coming into effect of any provision expressly stated to

survive or come into effect or implicitly surviving or coming into effect on termination, shall not be affected or prejudiced.

22. PERSONAL INFORMATION

- 22.1 Smartest will use personal information in accordance with Smartest's Privacy Policy, together with the Order Confirmation.
- 22.2 Any personal data (as defined in the Data Protection Act 1998) obtained by Smartest as a result of performing the Contract will be held in accordance with the Data Protection Act 1998 and owned by Smartest. The personal data will be used for the purposes of performing the Contract.
- 22.3 The Customer confirms that in each case, when an individual's personal information or data is provided by the Customer to Smartest:
- (a) the details provided will be correct and the Customer agrees to notify Smartest of any changes;
 - (b) the Customer will have the individual's consent to Smartest using the individual's personal information as set out in Smartest's then-current Privacy Policy; and
 - (c) the Customer agrees to indemnify Smartest in respect of any liability, expenses or losses Smartest, or any of its Affiliates, may incur if the Customer has failed to obtain the individual's consent.
- 22.4 The Customer agrees that Smartest may use, and take action in relation to, any information about the Customer held by Smartest as set out in Smartest's then-current *Privacy Policy*.

23. CONFIDENTIALITY

- 23.1 Subject to clause 23.2, 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, contractors, subcontractors and third party service providers who require the Confidential Information to enable Smartest to provide the Products or deliver the Services) any of the contents of the 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, contractors and third party service providers as a result of or in connection with this Contract (**Confidential Information**). For the avoidance of doubt, these confidentiality provisions will apply to the Customer's transaction data which Smartest will share with third party service providers in order to provide the

Products and Services detailed within this Contract. Smartest will arrange for each third party service provider to enter into an agreement containing obligations of confidentiality.

23.2 The restrictions imposed by clause 23.1 on both parties 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 breach of clause 23.1;
- (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 juridical, 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 this 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) that is authorised for release by the written consent of the party to whom the information relates;
- (f) which is necessary or desirable under any law, regulation or court order;
- (g) was in the other party's lawful possession before the disclosure; or
- (h) which was independently developed by the receiving party without reference to any Confidential Information.

Provided that in respect of paragraphs b), d) and f) above, the disclosing Party shall use all reasonable endeavours to first inform the other Party in writing before any such disclosure is made, unless prohibited by law.

23.3 The Customer shall not make (and shall procure that no person connected with it nor any of its directors, officers or employees shall make) any public announcement concerning the subject matter of the Contract without the prior written approval of Smartest, such approval not to be unreasonably withheld or delayed.

23.4 The obligations of confidentiality shall cease after a period of 2 years from the Commencement Date of this Contract, save that the receiving party will be able to

keep one copy of the Confidential Information pursuant to legal/regulatory obligations and internal compliance policies.

23.5 The Customer agrees to inform Smartest immediately if one of Smartest's third party service providers has attempted to solicit business from the Customer.

23.6 Smartest shall not be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

23.7 This clause 23 shall survive termination of this Contact, however arising.

24. NOTICES

24.1 All notices in connection with this Contract shall accord with the provisions of this clause 24.

24.2 The addresses for notices to each party are as follows:

(a) for notices to Smartest

For the attention of Smartest's SourcePosition Team

SmartestEnergy Limited

Dashwood House, 69 Old Broad Street, London, EC2M 1QS

A notice or other communication shall be deemed to have been received: if delivered personally, when left at our registered office; 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 if sent by e-mail, immediately upon transmission.

(b) for notices to the Customer

The Customer's Delivery Email Address

A notice or other communication shall be deemed to have been received immediately upon transmission.

25. GOVERNING LAW AND JURISDICTION

25.1 This Contract is governed by English Law.

25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this Contract); and the parties agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly no party will argue the contrary. The United Nations Convention on Contract for the International Sale of Goods 1980 shall not

apply to this Contract.

26. OTHER IMPORTANT TERMS

- 26.1 A party who is not a party or a permitted assignee of (or a successor to) a party may not enforce any term of this Contract pursuant to the Contract's (Rights of Third Parties) Act 1999, other than that party's Affiliates.
- 26.2 No failure or delay by each party or any of their respective Affiliates, in exercising any right, power or privilege under this Contract will operate as a waiver of it, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or the exercise of any other right power or privilege under this Contract.
- 26.3 Nothing in the Contract is intended to, or shall be deemed to establish any partnership or joint venture between any of the parties, or constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 26.4 Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law.
- 26.5 The Customer may not assign, sub-contract or deal in any way with, any of its rights or obligations under this Contract or any document referred to in it, save that Smartest may assign its rights under this Contract to any entity in its Group or a third party on prior written notice of 30 Business Days to the Customer.

ANNEX 1

THE PRODUCT AND SERVICE OPTIONS

Option one – 'Manage'

1. A daily, weekly and/or monthly emailed SourcePosition Manage Report; and
2. Access to the SourcePosition Portal with standard capabilities.

Option two – 'Expert'

1. Access to the SourcePosition Portal with premium capabilities; and
2. Training on the SourcePosition Portal, provided by a third party service provider.

ANNEX 2
THE PRODUCT DESCRIPTIONS

1. The SourcePosition Reports

Product	Product Description
SourcePosition Manage Reports	<p>SourcePosition Manage Reports are provided by Smartest to the Customer daily, weekly and/or monthly and are also available via the on line portal (available 24/7).</p> <p>Depending on the Customer's personalisation, the reports may contain:</p> <ul style="list-style-type: none"> (a) the Customer's hedged and unhedged position with respect to monthly reference volumes; (b) the value of your current energy purchases against the market (vs. average end of day market price); (c) estimate of your final closed forward price; (d) table detailing all hedges; (e) mark to market position; and (f) exposure at risk position. <p>Subject to clause 15.1, Smartest will deliver the reports to the Customer's Delivery Email Address after Business Hours on a weekly basis. For the avoidance of doubt, time will not be of the essence.</p>

2. The SourcePosition Portal

The SourcePosition Portal is a secure expert hub that gives access to; Market Data, a suite of contract, position, mark to market, exposure at risk, hedge performance and market price reports; position management tools plus optional budget functionality and time & price trigger alerts. It is based on

market leading software from a third party service provider. Depending on the Customer's product and service selection, the SourcePosition Portal will either provide the standard or premium capabilities described below.

<p>Standard capabilities</p>	<p>Depending on the Customer's personalisation, the on line portal may give customers the ability to:</p> <p>enter a budget market price</p> <ul style="list-style-type: none"> (a) set price or time sensitive trigger to be alerted to market prices at specific times in the day or when these move outside your predefined boundaries (b) download and schedule all reports (c) request a bespoke report from Smartest <p>Smartest will deliver the reports to the Customer's Delivery Email Address (subject to clause 15.1) according to the customer set schedule. For the avoidance of doubt, time will not be of the essence.</p>
<p>Premium capabilities</p>	<p>Depending on the Customer's personalisation, the on line portal may give customers the ability to:</p> <ul style="list-style-type: none"> (a) view live market prices (UK Power Baseload market prices; (b) view end of day market prices; (c) enter locations and meters; (d) enter a budget market price; (e) set price or time sensitive trigger to be alerted to market prices at specific times in the day or when these move outside your predefined boundaries; (f) download and schedule all reports; (g) manage their position with the position management tool; (h) enter a What-If Hedge; (i) enter a demand forecast;

	<p>(j) enter half-hourly consumption data;</p> <p>(k) request a bespoke report from Smartest;</p> <p>Depending on the Customer's personalisation, the on line portal reports may contain:</p> <p>(a) the Customer's hedged and unhedged position with respect to monthly reference volumes;</p> <p>(b) the value of your current energy purchases against the market (vs. average end of day market price);</p> <p>(c) estimate of your final closed forward price;</p> <p>(d) table detailing all hedges;</p> <p>(e) the value of your current energy purchases against the market (vs. average end of day market price);</p> <p>(f) mark to market position;</p> <p>(g) exposure at risk position;</p> <p>(h) historic market prices; and</p> <p>(i) hedge vs. market performance.</p> <p>Smartest will deliver the reports to the Customer's Delivery Email Address according to the customer set schedule. For the purposes of this clause time will not be of the essence.</p>
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ANNEX 3

THE SERVICE DESCRIPTIONS

Service	Service Description
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<p>Training on the SourcePosition Portal</p>	<p>Depending on the Customer's personalisation Smartest will provide a third party training provider to translate the Customer's risk policy into a SourcePosition configuration and the training may provide:</p> <ul style="list-style-type: none">(a) expertise on SourcePosition system configuration;(b) portfolio hedging scenarios (open, fixed, floating);(c) formalised methodology (forward transactions & hedging, prompt & day ahead position management, balancing exposure);(d) effective governance arrangements (align with business risk appetite);(e) limits/delegation of authority;(f) reporting; and(g) practical support implementing policy within the SourcePosition Portal. <p>Neither Smartest or its third party training provider will provide any investment advice. The services provided by the third party training provider described in this Annex 3 are not specified activities under part II of the RAO.</p>
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