

Marble Power Limited
Deemed Contract Scheme
Terms and Conditions of Supply

1. The Scheme

- 1.1. We have made this Scheme pursuant to Schedule 6 to the Electricity Act and Schedule 2B to the Gas Act. It applies to you if you use Energy that we Supply wholly or mainly for business use and you have not entered a contract with us on the basis of a Quotation Document.
- 1.2. We may amend this Scheme from time to time. If we do make an amendment, we will first send the full text of the amendment to the Authority, after which time the amendment will come into force. Once the amendment comes into force, it will apply to all Deemed Contracts that come into existence from that point on. It will also apply to any Deemed Contracts that already exist, unless the amendment states otherwise. We may also amend this Scheme from time to time in accordance with clause 18.3.
- 1.3. If we need to provide evidence of this Scheme, any amendments to it, or the Deemed Contract Schedule of Charges (or any changes to it) in any courts of justice or any legal proceedings, we will produce a copy of any document we have sent to the Authority as conclusive evidence.

2. The Supply

- 2.1. You confirm that you own or use each Site and that each Site is currently connected to the system of the Network Operator.
- 2.2. You agree to pay any part of our Charges that are not currently part of a genuine dispute.
- 2.3. You agree to comply with any Credit Support Requirements that we may notify to you from time to time.
- 2.4. You agree that, for as long as we are the Registrant to any Supply Point, all Energy that is supplied to the relevant Site will be treated as having been supplied under our Deemed Contract Scheme, even if you have a contract with any other person for supplying energy to your Site.
- 2.5. In the event that the Supply of gas to any Site is temporarily interrupted we will pass on any relevant compensation payments we receive from your transporter as a result of such temporary supply interruption.

3. National Terms of Connection

- 3.1. In relation to the supply of electricity to Embedded Sites, we act on behalf of your Distribution Network Operator to make an agreement with you. The agreement is that you and your Distribution Network Operator both accept the National Terms of Connection (NTC) and agree to keep to its conditions. This will happen from the time that you enter into this Deemed Contract and it affects your legal rights. The NTC is a legal agreement. It sets out rights and duties in relation to the connection at which your Distribution Network Operator delivers electricity to, or accepts electricity from, your business. If you want a copy of the NTC or have any questions about it, please write to: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF: phone 0207 706 5100, or see the website at www.connectionterms.co.uk.

4. Customer Warranties and Covenants

- 4.1. By accepting a Supply, you represent, undertake and warrant that you have full power and authority to perform your obligations under the Deemed Contract and, in relation to each Site:

- a) you will use the Energy wholly or mainly for business purposes;
 - b) you have informed us if it constitutes a Microbusiness;
 - c) all information that you provide to us or our Agent is true and accurate;
 - d) you are party to a Connection Agreement in respect of the Site;
 - e) you have complied with all Applicable Requirements; and
 - f) the Site has a Meter, which meter is compliant with the Applicable Requirements and compatible with our billing systems.
- 4.2. The Warranties shall be deemed to be repeated by you on each day of the period between the Effective Date and the date on which we cease to be the Registrant for that Site. You must monitor the continued accuracy of the Warranties and inform us as soon as is reasonably practicable should any Warranty become (or be likely to become) untrue, or inaccurate or misleading to any material extent.
5. **Appointment of Service Providers**
- 5.1. We will ensure that Service Providers are appointed at all times in respect of the Meter at each Site, to the extent not appointed by you.
6. **Contract Term**
- 6.1. The Deemed Contract takes effect on the Effective Date and shall continue in force until the first to occur of termination in accordance with clause 14 (*Suspension or termination*), termination in accordance with clause 18 (*Change in law*) or your entry into a formal energy-supply agreement with us or with another energy supplier (a 'new supplier').
- 6.2. If you enter into a formal Energy supply agreement with us or with a new supplier the Deemed Contract will end:
- a) on the date the new supplier starts to supply Energy to you, provided they are the Registrant for each Supply Point at each of your Sites; or
 - b) if you enter into an Energy supply agreement with us pursuant to a Quotation Document, on the date you and we agree that your supply agreement is considered to have started.
7. **Sites and Supply**
- 7.1. The Supply shall be delivered at each Supply Point and rights and risks in the Supply shall pass to you on delivery and (without limiting the generality of the foregoing) in particular any losses suffered at or beyond any Supply Point shall be at your risk and for your account.
- 7.2. The Supply to each Site is delivered through infrastructure operated by third party Network Operators and you acknowledge that we have no control and no obligation in relation to that infrastructure and we do not guarantee that the third parties will deliver Energy to the Supply Points at all times nor that the Energy delivered will be free of brief variations in voltage or frequency or pressure. If you need a continuous supply of electricity you should consider providing your own emergency backup supply.
8. **Charges**
- 8.1. Throughout the Supply Term you will pay for all Energy Supplied during an Invoicing Period to each Site on the basis of the Deemed Contract Prices. We may make changes to the Deemed Contract Prices at any time and the change shall take effect in respect of any Energy Supplied from the date of the change.
- 8.2. You will indemnify us in respect of any directly incurred additional reasonable costs or losses reasonably incurred or reasonably suffered by us in relation to or incidental to the Supply,

including and in respect of any of the following:

- a) after notice to terminate the Deemed Contract or the Supply to any Site or any Supply Point under clause 14 (*Suspension or termination*), in respect of the period commencing on the date on which the notice takes effect and ending at the end of the Registrant Period for the relevant Site or Supply Points;
- b) subject to clause 8.2 (a), if we (acting reasonably) consider that the information provided to us was misleading or inaccurate to a material extent;
- c) the imposition, or variation in the rate, of any tax, levy, duty, tariff or impost (including any energy-related duty such as (as a non-exhaustive example) the Climate Change Levy) or of any cost related to obligations to which we are subject (such as (as a non-exhaustive example) the Renewables Obligation);
- d) any amounts payable by us, or costs arising, as a result of any change in law (including changes in the interpretation of laws), or of any change in Applicable Requirements or of any directions or requirements of the Secretary of State, or of any fundamental change in the structure of (or manner of calculating) third party charges (including those of a Network Operator), or of any charge introduced by the Authority or pursuant to the Applicable Requirements;
- e) any amounts payable by us to any Service Provider (whether appointed by us or by the Customer) or to the Network Operator;
- f) any losses or costs that we incur as a result of you not paying any invoices with cleared funds by the Payment Date, save for a Disputed Amount pending resolution of that dispute;
- g) if you are required by us to pay by direct debit and fail to do so, except where such failure is directly as a result of an outstanding dispute and is in respect of that Disputed Amount;
- h) the costs and losses that we suffer or incur by reason of becoming the Registrant for the Supply Point in question;
- i) the costs and losses that we suffer or incur as a result of any Warranty proving to have been false, materially inaccurate or materially misleading at the time it was made or repeated; or
- j) if the Meter has to be changed or modified because it cannot provide the information necessary to record the consumption of electricity in accordance with the Applicable Requirements.

8.3. If we seek to recover any additional costs in accordance with clause 8.2, we will (to the extent practical) provide you with such supporting information as you may reasonably require.

8.4. Without prejudice to the specific requirements of clause 10 (*Terms of Payment*), you must pay any Value Added Tax applicable to any amounts due by you under the Deemed Contract.

9. **Statements**

9.1. We will, if possible, by the tenth day of the calendar month following the end of each Invoicing Period, prepare and submit to you a written statement (the "**Statement**") setting out details of:

- a) the aggregate Metered Consumption at each Site for each day of that Invoicing Period and the Charges payable;
- b) the amount of Value Added Tax payable on the above amounts; and

- c) the aggregate amount payable by you as a result of the calculations carried out pursuant to this clause 9.1.
- 9.2. If you (acting reasonably) consider that any aspect of the Statement is incorrect, you must notify us accordingly as soon as reasonably practicable (and in any event within ten (10) Business Days after becoming aware of the same) following receipt of such Statement and the Parties shall consult and co-operate with each other to seek to determine whether an error has occurred and, if so, the cause of it. In the event that the Parties are unable to reach agreement, either Party may refer the matter for determination in accordance with clause 19 (*Dispute Resolution*).
- 9.3. If any information relating to the Supply required by us to prepare a Statement is not available at the time that Statement is prepared, then we may prepare that Statement based on our reasonable estimate of such information.
- 9.4. Subject to clause 9.5, if there is any change to the information used to prepare a Statement (an **“Original Statement”**) after such Original Statement has been issued (including where information that we estimated pursuant to clause 9.3 in order to prepare an Original Statement subsequently becomes available, or to reflect an error), then either Party may, by notice to the other, require an adjustment payment to be made to reflect the changed or newly available information. Any such adjustment payment shall be included in the next Statement to be produced after the date of such notice (a **“Subsequent Statement”**).
- 9.5. Save in respect of fraud, neither we nor you shall under any circumstances be entitled to initiate any dispute concerning any sum shown in, or which should have been shown in, a Statement more than six (6) Months after that Statement is, or should have been, produced.

10. **Terms of Payment**

- 10.1. In relation to each Invoicing Period, no later than the Invoice Date, we will submit an Invoice to you for an amount equal to that stated in the relevant Statement or Statements.
- 10.2. We will issue each Invoice by email or such alternative method as we may in our sole discretion determine.
- 10.3. We will use reasonable endeavours to ensure that each Invoice is calculated by reference to Actual Data for as much of the relevant Invoicing Period as is reasonably possible. If Actual Data has not been provided in respect of the whole of the Invoicing Period, we will use Estimated Data in respect of the periods not supported by Actual Data. In calculating the Estimated Data we will, without limitation, take account of any historic consumption data provided to us to the extent that we reasonably believe it to be accurate. We will also use Estimated Data where we reasonably consider that the Actual Data is inaccurate or incomplete. Any information or calculation in any Invoice that is not prepared wholly by reference to Actual Data will be updated and amended in subsequent Invoices after the relevant Actual Data becomes available (including on reconciliation of any Actual Data pursuant to the Applicable Requirements). If any element of the Charges is either wrongly omitted from or wrongly included in an Invoice, then we will issue a credit note or a debit note (as appropriate) as soon as practicable followed by a revised Invoice.
- 10.4. You must, subject only to clause 10.5, pay each Invoice by the Payment Date in sterling and (where we so require) by direct debit. All amounts stated to be payable under the Deemed Contract are exclusive of any VAT, Climate Change Levy or any other tax chargeable on them. You must pay any VAT, Climate Change Levy or any other tax properly chargeable in respect of any Supply made to you under the Deemed Contract provided that you have received an Invoice for that Supply.
- 10.5. If you dispute any item or part of any item on any Invoice in good faith (a **“Disputed Amount”**), you must pay the undisputed items and/or parts of items in accordance with clause 10.4, and clause 10.6 shall apply in respect of the Disputed Amount.

- 10.6. If you raise a dispute in accordance with clause 10.5, you must give us notice of the Disputed Amount and reasons for raising the dispute in writing. The Parties shall act in good faith to try to resolve the dispute within seven (7) Business Days of the date of receipt of such notice. If the Parties fail to agree whether the Disputed Amount is payable, the matter shall be determined in accordance with clause 19 (*Dispute Resolution*). The due date for payment shall remain as the Payment Date for the original Invoice.
- 10.7. You must pay any sum determined to be payable in respect of any Disputed Amount in accordance with clause 10.4 within two (2) Business Days after the dispute being resolved.
- 10.8. If you fail to pay any amount due under the Deemed Contract, save for a Disputed Amount pending resolution of that dispute, we may charge interest on such outstanding amount at the rate equal to LIBOR plus six percent (6%). Such interest shall accrue on a daily basis from the due date to the date payment is made and shall be compounded monthly.
- 10.9. You must ensure that the Credit Support Requirements are maintained throughout the period from the Effective Date until the date on which we cease to be the Registrant in respect of any of the Sites.

11. **Meters and Equipment**

- 11.1. In the event that either Party disputes the accuracy of any Meter, we will promptly arrange for such Meter to be inspected and tested in accordance with the Applicable Requirements and any other relevant law. If the Meter is found to be operating within the relevant limits of accuracy, the cost of the inspection shall be borne by the Party who disputed its accuracy. If the Meter is found to be inaccurate, we will bear the costs of the inspection and repair.
- 11.2. You must grant (or procure the grant of) Access Rights to any Agent for any purpose connected with the Deemed Contract (and such access shall be safe and reasonable), including but not limited to our rights pursuant to clause 14 (*Suspension or Termination*) to Isolate the Site or any Supply Point.
- 11.3. If either we or our Agent attempts to exercise the Access Rights but is prevented from doing so, you must indemnify us for (and shall on demand pay) all costs associated with the attempt to exercise the Access Rights and/or resulting from the inability to exercise the Access Rights.
- 11.4. You must notify both us and the Network Operator as soon as possible if there has been damage to or interference with any Meter, and you must provide us with all information that we reasonably require (either in our own capacity or on behalf of the Network Operator) to assess the cause, nature and effect of the damage or interference. If you wilfully damage or unlawfully interfere with any Meter, we may immediately terminate the Deemed Contract pursuant to clause 14.4(f) and you must indemnify us for all costs reasonably incurred as a result of such damage or interference.
- 11.5. You must notify the Network Operator as soon as possible if a loss of supply causes, or is likely to cause, an emergency or a situation in which people or property are likely to suffer damage.
- 11.6. The Parties agree that for the purposes of a Supply of electricity, the Meter need not be certified in accordance with schedule 7 to the Electricity Act.
- 11.7. If a Smart Meter is installed at any Site:
 - a) the display unit as well as the meter itself must not be removed from the Site without our consent;
 - b) we may use the Smart Meter to monitor remotely the Site's Energy consumption;
 - c) we may repair and update the Smart Meter remotely; and
 - d) we may use data from the Smart Meter to calculate the Charges and for any of the purposes identified in clause 26 (*Data Protection*).

12. **Force Majeure**

- 12.1. Neither Party shall be liable to the other for any delay or failure to fulfil its obligations under the Deemed Contract due to the occurrence of an event of Force Majeure provided that:
- a) the Parties shall not be relieved by reason of Force Majeure from any obligation to indemnify or make any payment under the Deemed Contract, provided that you will be under no obligation to make payments of any element of the Charges that directly relate to consumption of Energy in respect of any period of time during which no Energy is actually supplied as a result of Force Majeure; and
 - b) the Party claiming to be affected by Force Majeure shall take all reasonable measures to mitigate and/or remedy the effects of the Force Majeure as soon as possible.
- 12.2. The Party claiming to be affected by Force Majeure shall promptly notify the other Party:
- a) of the nature of the Force Majeure, the expected duration of the Force Majeure, and the measures it is taking to remedy and/or mitigate the effects of the Force Majeure; and
 - b) when the Force Majeure ceases to have effect.

13. **Liability**

- 13.1. Subject to clause 13.4 and any provision of the Deemed Contract that provides for an indemnity, each Party's liability to the other Party (whether for breach of contract, in tort or otherwise) under or in connection with the Deemed Contract shall be limited to physical damage to property.
- 13.2. The maximum liability of either Party to the other Party (whether for breach of contract, in tort (including negligence) or otherwise) under or in connection with the Deemed Contract shall not exceed, per incident or series of related incidents and in aggregate, one hundred thousand pounds sterling (£100,000) for each event (or series of connected events) in any twelve month period.
- 13.3. Subject to clause 13.4 and any provision of the Deemed Contract that provides for an indemnity, neither Party will be liable to the other Party (whether for breach of contract, in tort (including negligence) or otherwise) under or in connection with the Deemed Contract for:
- a) Economic Loss;
 - b) indirect or consequential loss or damage of any nature; or
 - c) any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty, calculated by reference to profits, income, production or accruals or reduction of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.
- 13.4. Nothing in the Deemed Contract shall exclude or limit the liability of either Party to the other Party:
- a) for death or personal injury resulting from negligence;
 - b) for fraudulent misrepresentation;
 - c) as regards any obligation owed by either Party under the Applicable Requirements or any law (but only to the extent that any such obligation is owed by one Party to the other Party and the Applicable Requirements expressly prevent the relevant Party from limiting its

liability for failure to perform such obligation);

d) as regards any obligation to pay the Charges, including any interest thereon.

13.5. You must indemnify us for all direct costs, claims, demands or expenses that we incur as a consequence of your failure to comply with the Deemed Contract or the Applicable Requirements or as a result of any of your acts, omissions or defaults relating to any agreement from time to time in place with any third party including, but for the avoidance of doubt not limited to, any agreement with a Service Provider third party. Such liability to be at all times subject to the maximum liability stated in clause 13.2.

13.6. Each Party shall take all steps to mitigate any costs or losses it may suffer and for which the other Party may be liable under the Deemed Contract.

13.7. Each Party hereby acknowledges and agrees that the provisions of this clause 13 are fair and reasonable having regard to the circumstances as at the Effective Date.

14. **Suspension or Termination**

14.1. If either Party (for the purposes of this clause 14, the "**Defaulting Party**") is in material breach of the Deemed Contract and such material breach is not capable of being remedied then, without prejudice to any other rights or remedies that either Party may have, the Party that is not in default (for the purposes of this clause 14, the "**Non-Defaulting Party**") may terminate the Deemed Contract by giving the Defaulting Party notice to that effect and specifying the termination date (the "**Termination Notice**"), such termination date to be not less than fifteen (15) Business Days after the date of the Termination Notice.

14.2. If the Defaulting Party is in material breach of the Deemed Contract and such material breach is capable of being remedied then without prejudice to any other rights or remedies that either Party may have, the Non-Defaulting Party may give the Defaulting Party notice requiring that such breach be remedied (the "**Remedy Notice**").

14.3. You may terminate the Deemed Contract on written notice with immediate effect if:

a) we, as the Defaulting Party, have failed to remedy the breach specified in the Remedy Notice, to your reasonable satisfaction within ten (10) Business Days after receipt of the Remedy Notice;

b) any sum payable by us under the Deemed Contract is not paid within ten (10) Business Days after its due date for payment; or

c) we are subject to an Insolvency Event.

14.4. We may arrange for any or all of the Sites to be De-Energised and to terminate the Deemed Contract insofar as it applies to those Sites and/or may terminate the Deemed Contract on written notice to you with immediate effect if:

a) you as the Defaulting Party have failed to remedy to our reasonable satisfaction within ten (10) Business Days after receipt of the Remedy Notice the breach specified in the Remedy Notice;

b) any sum payable by you under the Deemed Contract, save for a Disputed Amount pending resolution of that dispute, is not paid within ten (10) Business Days after the due date for payment;

c) any Warranty or representation made by you proves to be false, misleading, inaccurate or misleading at the time it was made or repeated;

d) you are subject to an Insolvency Event;

- e) in our reasonable and good faith opinion, your ability (or the ability of your Credit Support Provider) to perform its obligations under the Deemed Contract (or under any Credit Support Document), is materially impaired, and no reasonable performance assurance has been provided upon our request therefor;
 - f) you wilfully damage, or unlawfully interfere with, any Meter;
 - g) you are in breach of your obligations in respect of Credit Support Requirements under clause 10.9; or
 - h) you cease to be the owner or occupier of a Site or require the permanent De-Energisation of the Supply Points.
- 14.5. The Deemed Contract shall automatically terminate in respect of any Site if:
- a) any Supply Licence or other consent required for the Supply to that Site expires, is terminated or is revoked and is not replaced; or
 - b) a Last Resort Supply Direction (as defined in the Supply Licence) is given to an electricity supplier other than us in respect of such Site, the date of termination being the date on which the Last Resort Supply Direction was given.
- 14.6. Either Party may terminate the Deemed Contract on written notice to the other with immediate effect if an event of Force Majeure subsists for a period exceeding thirty (30) days.
- 14.7. We or our Agent may arrange (on such notice as is practicable in the circumstances) for a Site or for any or all of the Supply Points to be De-Energised if we consider that it is necessary in order to:
- a) avoid danger or because a failure to De-Energise would or might involve us being in breach of any Applicable Requirements;
 - b) avoid interference with supply to another person which we reasonably believe may result from or be caused by your installation; or
 - c) enable maintenance work to be carried out,
- and, for the avoidance of doubt, we shall not be obliged to give any notice where, in our opinion, such De-Energisation is required to prevent damage or personal injury.
- 14.8. If we De-Energise any Supply Point in accordance with the Deemed Contract, you must indemnify us for the costs, fees and expenses that we reasonably incur including, if applicable, the costs of Re-Energisation of the Supply Point. We will not Re-Energise the Supply Point until all monies (including interest charges) that you owe have been paid and/or you have remedied any breach of the Deemed Contract to our satisfaction.
- 14.9. Without prejudice to clause 14.10, after any termination pursuant to this clause 14, we shall not be obliged to provide the Supply to the relevant Site or the relevant Supply Point (as the case may be) but all of your obligations and warranties and all of our rights hereunder shall continue to apply until the expiry of the Registrant Period.
- 14.10. The expiry or termination of the Deemed Contract or any termination of Supply to any Site or any Supply Point, each in accordance with the terms of the Deemed Contract, shall not affect any rights or obligations of either Party which may have accrued prior to such date. In addition, the rights and obligations of each party under clauses 8 (*Charges*), 10 (*Terms of Payment*), 13 (*Liability*), 17 (*Confidentiality*) and 19 (*Dispute Resolution*) shall survive such expiry or termination.
15. **Good Quality CHP & Renewable Supply**

15.1. We will not supply Good Quality CHP Energy or Renewable Energy.

16. **Customer Transfer Process**

16.1. We may enter an objection under the customer transfer process and prevent an alternative supplier from Registering a Site:

- a) if you are in breach of any of your obligations under the Deemed Contract;
- b) if you have not made a payment due under the Deemed Contract (other than in respect of a Disputed Amount);
- c) if an alternative supplier attempts to Register the Site in error;
- d) if an alternative supplier attempts to Register one or more MPANs or MPRNs relating to the Site, but does not (where relevant) attempt to Register the other related MPANs or MPRNs relating to the same Site; or
- e) if an alternative supplier attempts to Register an MPAN or MPRN or any associated MPAN or MPRN relating to the Site that remains subject to this Deemed Contract.

17. **Confidentiality**

17.1. Subject to clause 17.2, each Party undertakes to treat as confidential and not to, at any time, divulge to any person (other than any of its respective officers or employees or the respective officers or employees of any company in the recipient Party's Group who require the same to enable them to properly carry out their duties) any of the contents of the Deemed Contract or any information relating to the other Party or its business or its affairs which came into its possession or any of its employees, agents or contractors as a result of or in connection with the Deemed Contract (for the purposes of this clause 17, "**Confidential Information**").

17.2. The restrictions imposed by clause 17.1 shall not apply to the disclosure of any Confidential Information:

- a) which is now or subsequently comes into the public domain otherwise than as a result of a breach of clause 17.1;
- b) which is required by the laws or regulations of any country with jurisdiction over the affairs of any company within the recipient Party's Group; any order of a court of competent jurisdiction or by any competent judicial, governmental or regulatory body or any applicable regulatory organisation; or in accordance with the rules of any listing authority or recognised stock exchange on which the shares of any company in the recipient Party's Group are listed or traded;
- c) to any consultants, banks, financiers or advisers to the disclosing Party provided always that the disclosing Party has first obtained enforceable undertakings binding the recipients to confidentiality in terms no less strict than the obligations imposed under the Deemed Contract;
- d) to the Authority or to the Secretary of State and their respective agents to enable the Authority and/or the Secretary of State to monitor developments in the energy market;
- e) insofar as it relates to the name and address of a Party or the location of any Site or Supply Point;
- f) that is authorised for release by the written consent of the Party to whom the information relates; or
- g) which is necessary under any Applicable Requirement,

provided that, in respect of paragraphs (b) and (d) above, the disclosing Party shall use all reasonable endeavours to first inform the other Party in writing before any such disclosure is made.

- 17.3. Neither Party shall 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 Deemed Contract without the prior written approval of the other Party, such approval not to be unreasonably withheld or delayed.

18. **Change in Law**

- 18.1. Subject to clauses 18.2 and 18.3, if there is a change in law (including changes in the interpretation of laws) or change to the Applicable Requirements, which materially and adversely changes or affects the operation and effect of the Deemed Contract, the Party so affected may notify the other Party that it wishes to review the Deemed Contract and the Parties shall meet and seek to agree any consequential amendments. If the Parties are unable to agree on such consequential amendments within sixty (60) days of the date of notice served under this clause 18.1, the Party that requested to review may terminate the Deemed Contract by giving thirty (30) days' notice in writing to the other Party.

- 18.2. Without prejudice to clause 18.1, if any change is made to the Applicable Requirements, which in our reasonable opinion requires non-material changes to be made to the Deemed Contract, then we may give you written notice of the changes that we propose to make. You will be deemed to have accepted any changes proposed in this manner twenty one (21) days from the date of the notice unless you refer the matter for resolution under clause 19 (*Dispute Resolution*). Such change cannot give rise to a right to terminate under clause 18.1.

- 18.3. We may issue revised Terms and Conditions to you to the extent reasonably required to take account of changes to the Applicable Requirements (whether such change is material or non-material) or as we otherwise consider being necessary. We do not have to obtain your permission before making any changes to these Terms and Conditions and you will be deemed to accept such changes with effect from such date as we tell you that they apply. Such changes cannot give rise to a right to terminate under clause 18.1.

19. **Dispute Resolution**

- 19.1. Either Party may by notice in writing to the other, refer any dispute arising out of or in connection with the Deemed Contract that remains unresolved between the Parties for a period of ten (10) days for consideration by a senior manager or a director of each Party (for the purposes of this clause 19, "**Dispute Notice**") who shall seek to resolve the dispute. Any Dispute Notice shall contain a statement setting out the facts relevant to the dispute.

- 19.2. Neither Party may (save for interlocutory relief) commence other legal proceedings until twenty five (25) days after the date of the Dispute Notice.

20. **Waiver**

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

21. **Severability**

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

22. Notices

22.1. Notices given under the Deemed Contract shall be in writing and shall be given or sent by hand, facsimile transmission or courier to the registered office of the respective Party or, in the case of a notice from us to you, to any of your Sites. Such notice shall be effective as follows:

- a) by hand at the time of delivery;
- b) by facsimile transmission on completion of transmission, provided that a copy of the notice is also sent by first class mail recorded delivery on the same working day; or
- c) by courier forty eight-(48) hours after dispatch.

22.2. Communication for usual business purposes between the Parties may be sent by e-mail or other electronic communication (but not notices required to be served under the Deemed Contract), the receipt of which shall be acknowledged by the receiving Party and shall be deemed to have been received on the next Business Day.

23. Entire Agreement

These Terms and Conditions constitute the entire agreement between the Parties in respect of the Supply. Other terms (express or implied) are excluded to the fullest extent permitted by law.

24. Assignment

We can transfer all or any of our rights and obligations under the Deemed Contract or appoint a subcontractor to carry out any of our obligations. Your rights and obligations under the Deemed Contract are personal to you and cannot be assigned or otherwise transferred without our prior written consent.

25. The Contracts (Rights of Third Parties) Act 1999

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

26. Data Protection

26.1. You agree to provide any information that we reasonably request for the purposes of:

- a) setting up and managing your account, including managing any security;
- b) entering into all agreements and obtaining all registrations necessary for the Supply;
- c) credit checking;
- d) managing the process of Registering Supply Points;
- e) complying with Applicable Requirements; and
- f) otherwise administering the Deemed Contract.

26.2. Any personal data (as defined in the Data Protection Legislation) that we obtain as a result of performing the Deemed Contract will be held in accordance with the Data Protection Legislation and will be owned by us. The personal data will be used for the purposes set out in clause 26.1.

27. Governing Law

The Deemed Contract and any non-contractual obligations arising out of or in connection with the Deemed Contract shall be construed in accordance with and governed by the laws of England and Wales. Any dispute arising out of or in connection with the Deemed Contract shall

be subject to the exclusive jurisdiction of the English courts to whose jurisdiction the Parties irrevocably submit.

28. Definitions and Interpretation

28.1. In the Deemed Contract:

“Access Rights” means the right for us and our Agents to enter a Site (subject to your reasonable requirements as to health and safety except in case of emergency) in order to perform or exercise rights under the Deemed Contract;

“Actual Data” means, in relation to a Site, meter data representing the Metered Consumption;

“Agent” means any agent, representative, Service Provider or contractor appointed by us in order for us to perform or exercise rights under, or in relation to, the Deemed Contract;

“Applicable Requirements” means the Electricity Act, the Gas Act, the Licences, the Industry Agreements and any other legislation, agreement, licence or code to which either Party is or should be a party or is subject to which affects its ability to perform its obligations under the Deemed Contract;

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

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

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

“Charges” means our charges for Energy Supplied to you;

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

“Companies Acts” means the Companies Act 1985 and the Companies Act 2006 as in force from time to time;

“Connection Agreement” means the agreement made pursuant to clause 3.1, or any other connection agreement between the Customer and the Network Operator;

“Credit Support Document” means any instrument required to be provided or procured by you under the Credit Support Requirements;

“Credit Support Provider” means the issuer of any Credit Support Document;

“Credit Support Requirements” means (where applicable) your obligations in respect of credit support as notified by us in accordance with clause 2.3;

“CUSC” means the Connection and Use of System Code as further defined in the Transmission Licence;

“Data Protection Legislation” means the Data Protection Act 1998 and Regulation EU 2016/679 (General Data Protection Regulation);

“De-Energise” means, in relation to a Site, taking steps such that electricity or gas (as the context requires) is permanently prevented from flowing through the Supply Point and the term **“Re-Energise”** and similar terms shall be construed accordingly;

“Deemed Contract” means a contract to Supply Energy under these Terms and Conditions;

“Deemed Contract Prices” means the prices published by us from time to time on our website applicable to Deemed Contracts;

“Default Rate” means the standing charge and/or unit rate specified in our “Default Tariff” published from time to time on its website;

“Disputed Amount” has the meaning given to it in clause 10.5;

“Distribution Network” means the system for the distribution of electricity or gas to a Supply Point;

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

“Effective Date” means the date on which the Supply commenced;

“Electricity Act” means the Electricity Act 1989 and any secondary legislation made under that Act;

“Embedded Site” means, in relation to a Supply of electricity, a Site that is connected to the electricity distribution system of an entity that is licensed under section 6(1)(c) of the Electricity Act;

“Energy” means electricity or natural gas as the context requires;

“Energy Charges” means the commodity-related charges payable in respect of a Supply;

“Estimated Data” means, in relation to a Site, our estimate of the Energy consumed at the Site;

“Force Majeure” means, in respect of a Party, any event or circumstance beyond the reasonable control of that Party, including;

- a) war, hostilities, rebellion, civil war, terrorism;
- b) earthquakes, flood, lack of water arising from weather or environmental problems, fire or other environmental catastrophe;
- c) riot, civil commotion or disorders;
- d) explosion or other accident; or
- e) acts of God and acts of any governmental, local or other competent authority but not including strikes, lockouts and labour disputes in relation to that Party);

“Gas Act” means the Gas Act 1986 and any secondary legislation made under that Act;

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

“Group” means, in respect of a company, any company that is from time to time a Subsidiary or a Holding Company of the company and any other Subsidiary of any such Holding Company;

“Holding Company” has the meaning given to that expression in the Companies Acts;

“Industry Agreements” means the CUSC, the BSC, the Grid Code, the Network Code, the Distribution Codes, the SPAA and the Master Registration Agreement (as such terms are defined in the Supply Licence);

“Insolvency Event” means, in relation to a Party, the following events in respect of that Party:

- a) passing a resolution for the Party's winding-up (other than for the purpose of and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution;
- b) the Party having a petition for a winding-up order presented against it;
- c) any step is taken to appoint an administrative receiver in relation to the Party;
- d) 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 relevant jurisdiction;

“Invoice” means an HM Revenue & Customs compliant invoice showing the Charges in relation to the supply of Energy during the Invoicing Period and detailing any additional costs or amounts that we may be entitled to pursuant to the Deemed Contract;

“Invoicing Period” means the period of one Month in respect of which Invoices are to be issued, provided that the first Invoicing Period shall be the period commencing on the Start Date and the last Invoicing Period shall end on the End Date;

“Large Gas Supply” a Supply of more than 732,000 kWh of gas at a Site;

“Meter” means, in relation to the Supply of Energy to a Site, such meter and associated equipment as the Supplier may reasonably require the Customer to install at the Site for the purpose of measuring the Supply and the term **“Metering”** shall be construed accordingly;

“Metered Consumption” means, in relation to a Site, the actual consumption of Energy at the Supply Point as measured by the Meter;

“Microbusiness” as defined by Ofgem means a business that:

- i. employs fewer than 10 employees (or their full time equivalent) and has an annual turnover or balance sheet no greater than €2 million; or
- ii. consumes not more than 100,000 kWh of electricity per year; or
- iii. consumes not more than 293,000 kWh of gas per year;

“Month” means a calendar month;

“MPAN” means, in relation to the supply of electricity to a Site, the meter point administration number;

“MPRN” means, in relation to the Supply of gas to a Site, the meter point registration number;

“National Electricity Transmission System” means the system consisting (wholly or mainly) of high voltage electric lines as further defined in the Transmission Licence;

“Network Code” means The Uniform Network Code, an agreement between each distributor and supplier of gas which governs the transportation of gas through the gas distribution networks;

“Network Operator” means, in relation to a Site, the entity operating the gas or electricity infrastructure through which the Supply is made (or is to be made), being an entity authorised to transmit or distribute electricity under the Electricity Act or an entity authorised to transport gas under the Gas Act;

“Party” means either you or us (as the context requires) and **“Parties”** shall mean both of them taken together;

“Payment Date” in relation to an Invoice, means the date falling fourteen (14) days after the issue of that Invoice;

“Quotation Document” means a document setting out pricing and other details issued by us to prospective customers which, when signed by the customer and received by us, constitutes a binding offer by the customer to purchase a Supply;

“Registrant” means, in relation to the Supply Point or Supply Points a Site, the person registered as responsible for the import of electricity or gas at such Supply Point or Supply Points under the BSC or the Network Code (as the context requires) (and the terms **“Register”**, **“Registered”** and **“Registering”** shall be construed accordingly);

“Registrant Period” means, in relation to a Site, the period starting on the Effective Date and expiring on the date on which we cease to be the Registrant for any Supply Point at that Site;

“Remedy Notice” has the meaning set out in clause 14.2;

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

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

“Screen Rate” means the British Bankers’ Association Interest Settlement Rate for Sterling for the relevant period displayed on the appropriate page of the Reuters screen or, if the agreed page is replaced or the service ceases to be available, such other page or service displaying the appropriate rate as we may reasonably determine;

“Service Provider” means, in relation to a Meter, a person or persons appointed to provide, install, maintain or administer that Meter, provide data retrieval and/or data processing services or to carry out the aggregation of metering data;

“Settlement Period” has the meaning given to that term in the BSC;

“Site” means the premises to which a Supply is made and any reference to Site shall be to any or all (as appropriate) of the Sites to which the provisions of the Deemed Contract relate from time to time;

“Smart Meter” means a Meter that can be read remotely by the supplier and which the customer is able to read;

“SPAA” means the Supply Point Administration Agreement as defined in the Supply Licence;

“Subsidiary” means a subsidiary within the meaning of the Companies Acts;

“Supply” means the supply of Energy by us to a Site;

“Supply Licence” means the electricity supply licence granted to the us under the Electricity Act 1989 or the gas supply licence granted to the Supplier under the Gas Act 1986 (as the context requires);

“Supply Point” means, in relation to a Site, the point or points to which the Supply is delivered;

“Terms and Conditions” means this document;

“Transmission Licence” means the licence granted to National Grid Electricity Transmission Plc under section 6(1)(b) of the Act;

“Warranty” means each of the representations, undertakings and warranties set out in clause 6.1;

“we” means Marble Power Limited, a company registered in England and Wales (with number 08474535) whose registered office is at Uskmouth Power Station, West Nash Road, Nash, Newport, Gwent NP18 2BZ and the terms **“us”** or **“our”** shall be construed accordingly; and

“you” means the person, firm or company contracting with us for a Supply pursuant to the Deemed Contract and the expression **“your”** shall be construed accordingly.

28.2. In the Deemed Contract:

- a) references to a "person" includes reference to an individual, body corporate, or partnership (and vice versa), references to the singular include the plural (and vice versa), and references to a gender includes every gender;
- b) references to statutory or regulatory provisions or Applicable Requirements include any amendments, variations, consolidations or replacements and include any subsidiary

- regulations, agreements or codes made thereunder;
- c) the expressions "including" and "in particular" shall be construed without limitation;
 - d) unless otherwise stated, references to any clause are to those clauses of the Terms and Conditions;
 - e) the word "costs" shall include financing charges, and a reasonable rate of return on the capital represented by those costs;
 - f) words and expressions used shall where appropriate be construed:
 - i. as if they were contained in an Act of Parliament to which the Interpretation Act 1978 applies;
 - ii. as they are defined in the Act or any other Applicable Requirements; or
 - iii. in accordance with their wider usage in the electricity industry generally; and
 - g) the headings are inserted for convenience only and are to be ignored for the purposes of construction or interpretation.
- 28.3. In respect of the Deemed Contract, where the last day of any stated period is not a Business Day then the period shall be deemed to end on the next Business Day thereafter.