

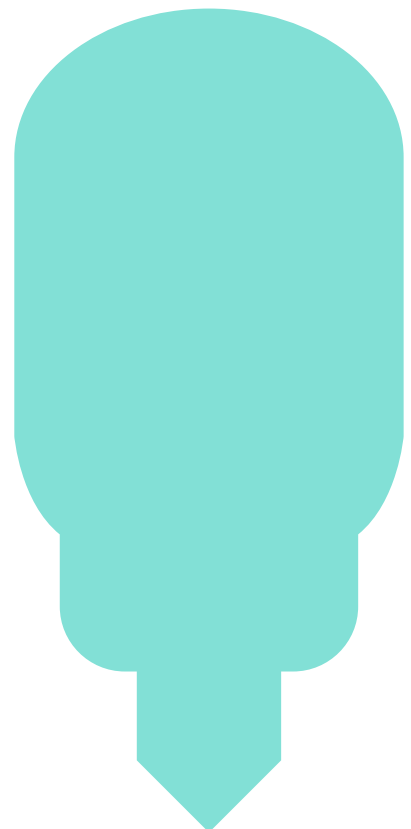


# Feed-in Tariff statement of terms

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North Yorkshire, YO8 8PH. Registered in England and Wales No:05893966

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## 1. Definitions & interpretation

1.1 In the FIT Agreement (unless the context otherwise requires):

**"Accredited FIT Installation"** means an Eligible Installation (as defined in the Supply Licence) that has been accredited by the Authority pursuant to the FIT Order.

**"Act"** means the Electricity Act 1989.

**"Authority"** means the Gas and Electricity markets Authority constituted under the Utilities Act 2000.

**"Benefits"** means all benefits (whether or not in existence at the Effective Date) received (or capable of being received) by either Party (including all such renewable, environmental and embedded benefits), but always excluding any benefit associated with the FIT Scheme.

**"BSC"** means the Balancing and Settlement Code maintained pursuant to the NETSO Licence.

**"Business Day"** means a day (other than a Saturday) on which banks are open for domestic business in the City of London.

**"Buyer"** means Drax Energy Solutions Limited (company number 05893966).

**"Central FIT Register"** means the electronic register kept and maintained by the Authority for the purpose of recording details relating to the FIT Scheme.

**"Change in Law"** means: (a) the coming into effect of any Law that is not in effect at the Effective Date; and/or (b) the modification, repeal or replacement of any Law after the Effective Date; and/or (c) a change after the Effective Date in the interpretation or application by any Competent Authority of any Law, but excluding (in each case) any remedies or sanctions exercised by a Competent Authority as a result of any breach of the FIT Agreement by a Party.

**"Competent Authority"** means the Authority and (to the extent having jurisdiction over either or both of the Parties, the FIT Agreement and/or its subject matter) any court, agency, inspectorate, minister, ministry, administrative or regulatory body, authority, official or public or statutory person.

**"Confirmation Date"** has the meaning given to that expression in the Supply Licence.

**"Contract Schedule"** means the contract schedule to which these FIT Terms are attached (or reference is made).

**"Customer"** means any corporate entity or business which the Buyer also supplies electricity to.

**"DCUSA"** means the Distribution Connection and Use of System Agreement maintained pursuant to the distribution Licences.

**"Distribution Code"** has the code of that name maintained pursuant to the distribution Licences.

**"Distribution Network"** means the system of electrical lines owned or operated by the holder of a distribution Licence whose "distribution services area" encompasses the geographic location of the Generating Plant's connection (or proposed connection).

**"Effective Date"** means the date on which the FIT Agreement becomes effective in accordance with the provisions of the Contract Schedule.

**"Effective Period"** means the period from the Start Date to the termination of the FIT Agreement. **"Eligibility Date"** has the meaning given to that expression in the Supply Licence.

**"Eligibility Period"** has the meaning given to the expression in the Supply Licence.

**"Export"** means all the electricity that is generated by the Generating Plant during the Effective Period, and delivered to the Export Connection Point (and, in respect of any shorter period, means the electricity so delivered in that period).

**"Export Connection Point"** means the distribution side of the point at which electricity may flow from the Generating Plant to the Distribution Network.

**"Export Payment"** means, in respect of any period, the volume of Metered Export (including where applicable Export deemed by the Buyer in accordance with clause 6.3) in that period multiplied by the Regulated Export Tariff.

**"Fees"** mean any fees payable by the Generator to the Buyer as detailed in the Contract Schedule or as amended in accordance with clause 11.1

**"FIT Agreement"** means the agreement formed by the Contract Schedule and these FIT Terms.

**"FIT Licensee"** has the meaning given to that expression in the Supply

Licence.

**"FIT Order"** means the Feed-in Tariffs Order 2012.

**"FIT Payment Period"** means, in the first instance, the period beginning on the Start Date and ending at 24:00 on the earliest of the following dates thereafter:

- a. 31 March;
- b. 30 June;
- c. 30 September; or
- d. 31 December,

and subsequently each successive period of three calendar months; provided that the last FIT Payment Period under the Contract shall end on the first of the dates referred to above to occur on or after the end of the Effective Period.

**"FIT Scheme"** has the meaning given to that expression in the Supply Licence.

**"FIT Terms"** means this Feed-in Tariff Statement of Terms.

**"Force Majeure"** means, in respect of a Party, any event or circumstance which is beyond the reasonable control of such Party (other than a lack of funds, Changes in Law, mechanical breakdown, plant failure, or strike lockout or other industrial action of such Party's own employees, agents or contractors); provided that such event or circumstance could not have been prevented or overcome had such Party acted in accordance with Good Industry Practice.

**"Generating Plant"** means the electricity generating station described in the Contract Schedule (including all associated plant and apparatus, but not the Distribution Network).

**"Generation"** means all the electricity that is generated by the Generating Plant during the Effective Period, excluding any parasitic auxiliary loads and applicable losses between the Generating Plant and the relevant Metering Equipment, but including that which is consumed on-site (and, in respect of any shorter period, means the electricity so generated in that period).

**"Generation Tariff"** means, in respect of Generation in any period, the payment rate for such Generation and such period (which is dependent on the Tariff Code), determined in accordance with the Supply Licence.

**"Generation Payment"** means, in respect of any period, the volume of Metered Generation in that period multiplied by the Generation Tariff.

**"Generator"** means the person named as such in the Contract Schedule

**"Information"** means any and all information provided by (or on behalf of) the Generator to the Buyer in relation to the FIT Agreement and/or the Generating Plant (including the contents of the Contract Schedule).

**"Insolvency Event"** means being declared or becoming insolvent, having a moratorium declared in respect of any indebtedness, entering into administration, receivership, administrative receivership or liquidation or threatening to do any of these things (other than for the purposes of a solvent corporate restructure), taking or suffering any similar action in any jurisdiction or any step is taken (including making of an application, entering into a board resolution or giving of a notice) by it or by any other person.

**"Installed Capacity"** means the electrical generating capacity of the Generating Plant from time to time.

**"Good Industry Practice"** means, in respect of a person, exercising that degree of skill diligence prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that person under the same or similar circumstances.

**"Law"** means: (a) any law (including the common law) having effect in the United Kingdom (or any part of it) from time to time (including the Act and the legislation relating to the Associated Benefits); and (b) any binding regulation, condition or other requirement imposed by a Competent Authority from time to time (including any requirement of any Licence, the BSC, the MRA, the DCUSA or any other document referred to in a Licence).

**"Licence"** means a licence granted under section 6 of the Act.

**"Metering Equipment"** means the metering equipment necessary to measure the Generation and/or the Export.

**"Metered Export"** means, for any period, the Export for that period as (subject to Clauses 6.3 and 7.4) measured by the relevant Metering Equipment and reported in accordance with Clause 6.4 or 6.5.

**"Metered Generation"** means, for any period, the Generation in that

period as (subject to Clause 7.4) measured by the relevant Metering Equipment and reported in accordance with Clause 4.3 or 4.4.

**"Migrated ROO Generators"** has the meaning given to that expression in the Supply Licence.

**"Nominated Recipient"** has the meaning given to that expression in Clause 7.1.

**"Owner"** has the meaning given to the expression in the Supply Licence.

**"MRA"** means the Master Registration Agreement maintained pursuant to the distribution Licences.

**"NETSO"** means the holder from time to time of the NETSO Licence.

**"NETSO Licence"** means the transmission Licence in which section C of the standard transmission licence conditions has effect.

**"Party"** means either of the Buyer or the Generator (and "Parties" means both of them).

**"Payee"** means the Generator, or (where the Generator has requested in accordance with Clause 7.1) the Nominated Recipient.

**"Payment"** means a Generation Payment and/or (in respect of a Regulated Export Tariff Period) an Export Payment.

**"Prohibited Grant"** means a grant from public funds in respect of purchasing or installing the Generating Plant that has not been repaid, and that precludes the Generating Plant from being accredited under article 8 of the FIT Order.

**"Proof"** means a dated photograph of the Metering Equipment display showing the meter reading for the Generation and / or Export at that date.

**"Registered"** means to be registered as responsible under the relevant Laws for the metering system relating to export at the Export Connection Point.

**"Regulated Export Tariff"** means, in respect of Export in any period, the payment rate for such Export and such period (which is dependent in part on the Technology), determined in accordance with the Supply Licence.

**"Regulated Export Tariff Opt In Date"** means, in respect of each Regulated Export Tariff Opt In Notice, the effective date specified in such Regulated Export Tariff Opt In Notice; provided that no date will be validly specified if such date is:

- a. earlier than 1 April 2011;
- b. earlier than the date the Regulated Export Tariff Opt In Notice is received by the Buyer; or
- c. less than 12 months after a Regulated Export Tariff Opt Out Date (or any comparable request to another FIT Licensee).

**"Regulated Export Tariff Opt In Notice"** means a request by the Generator for the Buyer to pay the Regulated Export Tariff in respect of the Generating Plant (in any standard form specified by the Buyer from time to time).

**"Regulated Export Tariff Opt Out Date"** means, in respect of each Regulated Export Tariff Opt Out Notice, the effective date specified in such Regulated Export Tariff Opt Out Notice; provided that no date will be validly specified if such date is:

- a. earlier than 1 April 2011;
- b. earlier than the date the Regulated Export Tariff Opt Out Notice is received by the Buyer; or
- c. less than 12 months after a Regulated Export Tariff Opt In Date (or any comparable request to another FIT Licensee).

**"Regulated Export Tariff Opt Out Notice"** means a request by the Generator for the Buyer to not pay the Regulated Export Tariff in respect of the Generating Plant (in any standard form specified by the Buyer from time to time). **"Regulated Export Tariff Period"** means one of the periods (if any) described in Clause 5.

**"ROO"** means the Renewables Obligation Order 2009 and/or the Renewables Obligation (Scotland) Order 2009;

**"Start Date"** means either:

- a. where no FIT Licensee has previously been recorded on the Central FIT Register in respect of the Generating Plant, the day after the Confirmation Date for the Generating Plant; or
- b. otherwise, the Switch Date (as defined in the Supply Licence) on which the Buyer is recorded on the Central FIT Register as the FIT Licensee in respect of the Generating Plant.

**"Supply Licence"** means the Buyer's electricity supply Licence.

**"Tariff Code"** means a code allocated to each Accredited FIT Installation by the Authority.

**"Tariff Date"** means in relation to an Eligible Installation for which the method of determining the Tariff Date is specified in the FIT Order, means the date determined in accordance with the FIT Order, and in relation to any other Eligible Installation means the Eligibility Date;

**"Technology"** means the technology used by the Generating Plant, as specified in the Contract Schedule.

- 1.2 In the FIT Agreement (unless the context otherwise requires):
  - a. words in the singular shall include the plural and vice versa, a reference to any gender includes a reference to all other genders, and a reference to a person includes any corporation or an incorporated body of persons;
  - b. references to "Clauses" are to the clauses of these FIT Terms;
  - c. reference to any Law is a reference to it as it may have been, or may from time to time be, modified or re-enacted (and shall include any subordinate legislation or requirement made under it);
  - d. the words "include", "including" and "includes" are to be construed as if they were immediately followed by the words "without limitation";
  - e. references to a Party include, where the reference permits, references to that Party's agents,
  - f. contractors and permitted transferees (and their agents and contractors);
  - g. references to "days" and "months" are to calendar days and months; and
  - h. headings are for convenience only and shall not affect its interpretation.
- 1.3 In the event of any conflict between the constituent parts of the FIT Agreement, the following order of priority shall apply: (1) the Contract Schedule; then (2) these FIT Terms.

## 2. General/eligibility

- 2.1 The Generator represents and undertakes that the following are true (and will remain true throughout the period of the FIT Agreement):
  - a. the Information is complete and accurate;
  - b. the Generating Plant has not previously been accredited under the ROO (except where it is a Migrated ROO Generator);
  - c. no Prohibited Grant has been made in respect of the Generating Plant;
  - d. it is the Owner of the Generating Plant;
  - e. where the Generating Plant is not connected to the Distribution Network for the purpose of exporting electricity, that it is its intention to use any and all Generation (and the Generator acknowledges that any Generation but not so used will not be eligible for FIT Payments); and
  - f. the Generating Plant is an Accredited FIT Installation.
- 2.2 Without prejudice to the representations and undertakings given by the Generator under Clause 2.1, it shall promptly notify the Buyer on becoming aware that any such representations and warranties are not, or cease to be, accurate.
- 2.3 The Generator shall promptly provide the Buyer with the information and evidence relating to the Generator and the Generating Plant requested by the Buyer from time to time, and shall promptly:
  - a. notify the Buyer of any changes to the Generating Plant (including in respect of changes to Installed Capacity);
  - b. notify the Buyer where the Generator ceases to be the Owner of the Generating Plant by emailing
  - c. feedintariff@drax.com (and the Generator shall give the Buyer as much prior notice of such event as is practicable);
  - d. notify the Buyer where the Generating Plant ceases to be an Accredited FIT Installation or is removed from the Central FIT Register; and/or
  - e. provide the Buyer with such declarations as the Buyer

- may reasonably require from the Generator (and/or the Nominated Recipient, if applicable) in respect of the Generating Plant.
- 2.4 The Buyer undertakes that it will not unduly discriminate in relation to the FIT Scheme between the Generator and any other person with which the Buyer contracts pursuant to the FIT Scheme. The Buyer shall fulfil its obligations under the FIT Scheme (insofar as relevant to the Generator) efficiently and expeditiously.
- 2.5 To the extent that the Generator falls into the definition of a Customer, Domestic Customer or Micro Business Consumer under the Electricity Supply Licence, participation in the FIT Scheme and involvement in Small- scale Low Carbon Generation shall have no effect on the rights and obligations resulting from that status under Sections A and B of the Electricity Supply Licence.
- 3. Commencement and duration**
- 3.1 The FIT Agreement shall come into effect on the Effective Date, but the Buyer shall have no obligations or liabilities under or in relation to the FIT Agreement until the Start Date. The FIT Agreement shall continue until the earliest of:
- the day that the Generator requests, so long as at least 28 days' written notice has been given to the Buyer, and provided that:
    - on the day of termination, either another FIT Licensee has been registered on the Central FIT Register as the FIT Licensee in respect of the Generating Plant, or the Export Connection Point has been de-energised; and
    - the Generator has provided the Buyer with Generation and Export (where applicable) meter readings;
  - the day that the Buyer requests, provided that, on the day of termination:
    - the Buyer is no longer a FIT Licensee; or
    - the Generator is not a person to which the Buyer is obliged by its Licence to offer terms under the FIT Scheme;
  - the Buyer ceasing after the Start Date to be registered on the Central FIT Register as the FIT Licensee in respect of the Generating Plant;
  - the Generating Plant ceasing to be included in the Central FIT Register;
  - the Generator ceasing to be the Owner of the Generating Plant;
  - the expiry of the Eligibility Period applicable to the Generating Plant;
  - the Generating Plant ceasing to be an Accredited FIT Installation (including as the result of an Extension, as defined in the Supply Licence); and
  - the FIT Scheme ceasing to exist.
- 3.2 The end of the FIT Agreement shall be without prejudice to the rights, remedies and obligations of either Party which may have arisen or accrued prior to such end, and without prejudice to any provisions of the FIT Agreement that are expressly (or by implication) intended to survive.
- 3.3 Should the Generator cease to be the Owner of the Generating Plant then the Generator should advise the Buyer of such change of Ownership as soon as reasonably practical.
- 4. Generation**
- 4.1 The Generator must submit all Metered Generation readings no later than 3 (three) Business days after the end of the FIT Payment Period.
- 4.2 The Buyer will pay the Generation Payment to the Payee in respect of the Metered Generation during each FIT Payment Period in accordance with Clause 7.
- 4.3 Where the Metering Equipment for Generation does include remote meter reading functionality, the Generator shall be deemed to have submitted those meter readings as the Metered Generation, and shall be responsible for notifying the Buyer of any discrepancy between the Metered Generation referred to in the Buyer's statement under Clause 7.2 and the actual meter readings.

- 4.4 Where the Metering Equipment for Generation does not include remote meter reading functionality:
- the Generator shall notify the Buyer of the Generation (as recorded by the Metering Equipment) for each FIT Payment Period. The Generator shall do so by such reasonable means as the Buyer may specify from time to time), by within 5 Business Days after the end of each FIT Payment Period. Such notification must be accompanied by the Proof; and
  - in respect of any FIT Payment Period for which the Buyer (or its contractor or agent) has not physically read the Metering Equipment, the Metered Generation for that FIT Payment Period shall be the Generation reported by the Generator in accordance with Clause 4.2(a); provided that:
    - the Buyer shall review the reasonableness of the data received from the Generator, and may query the data with the Generator or the Authority; and
    - in the absence of any data from the Generator, the Generation for that FIT Payment Period shall be deemed to be zero.
- 5. Regulated export tariff periods**
- 5.1 Where the Contract Schedule specifies that the Regulated Export Tariff is to apply, a Regulated Export Tariff Period shall:
- commence on the Start Date; and
  - end on the next Regulated Export Tariff Opt Out Date to occur thereafter the Start Date.
- 5.2 Where the Contract Schedule does not specify that the Regulated Export Tariff is to apply, a Regulated Export Tariff Period shall only arise where the Generator subsequently serves a Regulated Export Tariff Opt In Notice.
- 5.3 Where the Generator serves a Regulated Export Tariff Opt In Notice, a Regulated Export Tariff Period shall:
- commence on the relevant Regulated Export Tariff Opt In Date; and
  - end on the next Regulated Export Tariff Opt Out Date to occur thereafter.
- 5.4 Where the Generator serves a Regulated Export Tariff Opt In Notice, the Generator represents and undertakes that no request to a FIT Licensee to cease paying the Regulated Export Tariff in respect of the Generating Plant has been made within the 12 months preceding the date specified in the Regulated Export Tariff Opt In Notice.
- 5.5 Where the Generator serves a Regulated Export Tariff Opt Out Notice, the Generator represents and undertakes that no request to a FIT Licensee to pay the Regulated Export Tariff in respect of the Generating Plant has been made within the 12 months preceding the date specified in the Regulated Export Tariff Opt Out Notice.
- 6. Export**
- 6.1 The Generator must submit all Metered Export readings no later than 3 (three) Business days after the end of the FIT Payment Period.
- 6.2 The provisions of this Clause 6 shall only apply in respect of Export during any Regulated Export Tariff Period.
- 6.3 The Buyer will pay the Export Payment to the Payee in respect of the Metered Export during each FIT Payment Period in accordance with Clause 7.
- 6.4 Where the Installed Capacity is 30kW or less, and it is not possible or practical to measure export by export meter readings, the Buyer shall determine the Export for each FIT Payment Period in accordance with the relevant provisions of the FIT Order and the Supply Licence.
- 6.5 Where the Metering Equipment for Export does include remote meter reading functionality, the Generator shall be deemed to have submitted those meter readings as the Metered Export, and shall be responsible for notifying the Buyer of any discrepancy between the Metered Export referred to in the Buyer's statement under Clause 7.2 and the actual meter readings.
- 6.6 Where the Metering Equipment for Export does not include remote meter reading functionality:
- the Generator shall notify the Buyer of the Export (as

- recorded by the Metering Equipment) for each FIT Payment Period. The Generator shall do so by such reasonable means as the Buyer may specify from time to time), by within 5 Business Days after the end of each FIT Payment Period. Such notification must be accompanied by the Proof; and
- b. in respect of any FIT Payment Period for which the Buyer (or its contractor or agent) has not physically read the Metering Equipment, the Metered Export for that FIT Payment Period shall be the Export reported by the Generator in accordance with Clause 6.5(a); provided that:
- i. the Buyer shall review the reasonableness of the data received from the Generator, and may query the data with the Generator or the Authority; and
  - ii. in the absence of any data from the Generator, the Export for that FIT Payment Period shall be deemed to be zero.
- 6.7 The Generator shall sell, and the Buyer shall buy, the Export. The Export is sold with full title guarantee, free from all charges, liens, other encumbrances and third party claims. Title and risk in, and ownership of, the Export shall pass to the Buyer at the Export Connection Point.
- 6.8 The Generator hereby grants to the Buyer the sole and exclusive right to purchase the Export during a Regulated Export Tariff Period, and shall not sell such Export to any third party. Only the Buyer shall be entitled to be Registered during a Regulated Export Tariff Period, and the Buyer may object to any application by a third party to become so Registered.
- 7. Payments**
- 7.1 The Generator can opt to have the Payments made directly to a third party (the "Nominated Recipient"). Where a Contract Schedule specifies a Nominated Recipient, or the Generator gives the Buyer at least 10 Business Days' notice that Payments are to be made to a Nominated Recipient, the Buyer shall make the Payments to the Nominated Recipient until such time as the Generator gives the Buyer at least 10 Business Days' notice requesting that Payments be made to the Generator (or another Nominated Recipient).
- 7.2 Subject to Clause 6.5, within 10 Business Days following the month after the end of each FIT Payment Period, the Buyer shall issue to the Payee a statement setting out:
- a. the Generation for that FIT Payment Period, and the Generation Payment payable by the Buyer in respect thereof;
  - b. any Export during any Regulated Export Tariff Period occurring (in whole or part) during that FIT Payment Period, and the Export Payment payable by the Buyer in respect thereof; and
  - c. any Fees applicable to the FIT Payment Period, and the amount payable by the Generator in respect thereof.
- 7.3 Within 10 Business Days after issuing the statement for a FIT Payment Period under Clause 7.2, the Generator shall issue the Buyer an invoice reflecting the information contained in the statement provided by the Buyer in accordance with Clause 7.2 and the Buyer shall (subject to Clause 7.11) within 15 Business Days after that pay to the Payee the Payments (net of the Fees) stated in that statement.
- 7.4 If the Generator has two or more Accredited FIT Installations which are not being metered separately and use the same technology, the Buyer shall pro-rate the FIT Payments due to the Generator based on the maximum operating capacity of each installation.
- 7.5 The Buyer reserves the right to reduce, recoup or withhold FIT Payments if instructed to do so by the Authority, or in the event that the Generator is (or the Buyer has reasonable cause to believe that the Generator is) in breach of these FIT Statement of Terms, or involved in abuse of the FIT Scheme or is no longer eligible for the FIT Scheme.
- 7.6 If there has been an error made by the Buyer, the Generator, another FIT Licensee or the Authority which has resulted in the Generator receiving FIT Payments in excess of its entitlement, the Buyer may either:
- a. reduce the Generator's next FIT Payment(s) in order to recover the excess; or
  - b. require the Generator to repay the excess to the Buyer within 30 days (in which case the Generator shall do so).
- 7.7 If there has been an error made by the Buyer, the Generator, another FIT Licensee or the Authority which has resulted in the Generator receiving FIT Payments below its entitlement, the Buyer shall credit the next FIT Payment in order to reimburse the Generator.
- 7.8 Where no other FIT Licensee has previously been recorded on the Central FIT Register in respect of the Generating Plant, the Payments in respect of the first FIT Payment Period hereunder will be calculated by reference to the period from the Eligibility Date for the Generating Plant (but, in the case of Migrated ROO Generators, only to the extent such date occurred 6 months (or less) prior to the Start Date).
- 7.9 For the avoidance of doubt, the Payments relating to the last FIT Payment Period hereunder will not be payable until the end of the FIT Payment Period (which may occur after the end of the FIT Agreement).
- 7.10 All sums payable under the FIT Agreement are stated exclusive of VAT or any other applicable tax or duty payable upon such sums, which shall be added if appropriate at the rate prevailing at the relevant tax point.
- 7.11 The Buyer may net any payments due to the Generator off any outstanding debts due from the Generator to the Buyer under any supply contract between the Parties.
- 7.12 The Buyer will notify the Generators and/or Nominated Recipients to which it makes any payments as soon as reasonably possible at the occurrence of any Insolvency Event.
- 7.13 All sums payable under the FIT Agreement shall be made in line with the data on the Central FIT Register.
- 8. Benefits**
- 8.1 The Buyer shall be entitled to all of the Benefits relating to the Generation during the Effective Period, and to all of the Benefits relating to the Export during any Regulated Export Tariff Period.
- 8.2 The Generator shall undertake all such steps as the Buyer may reasonably request in order that the Generator or the Buyer (as applicable) may obtain Benefits to which the Buyer is entitled (including obtaining accreditations and providing information).
- 8.3 The Generator shall undertake all such steps as the Buyer may reasonably request in order to transfer Benefits to which the Buyer is entitled, and which are issued to the Generator, to the Buyer.
- 8.4 The Buyer shall ensure that, throughout any Regulated Export Tariff Period and in so far as it is necessary to do so in order that the Export can qualify for Benefits, the Export will be consumed in the United Kingdom.
- 9. Meters & audit**
- 9.1 The Generator undertakes that the Metering Equipment will be installed and that it will comply with the Metering Legislation (as defined in the Supply Licence).
- 9.2 The Generator will at all material times be the owner/ lessee of the Metering Equipment. The Generator will ensure that the Metering Equipment is in an accessible location, and is protected and maintained in good working order and in a safe condition. The Generator shall let the Buyer know immediately if the Metering Equipment is interfered with or damaged.
- 9.3 The Generator will allow the Buyer (or any other person nominated by it) access to the Metering Equipment at all reasonable times (and at any time in an emergency). This is so that the Buyer can inspect, read, install, operate, calibrate, replace, maintain, test, repair, renew, remove and disconnect the Metering Equipment.
- 9.4 The Buyer shall have the right to inspect and audit the books and records (including accounting records, and meter readings) of the Generator relating to the performance of its obligations under the FIT Agreement, and to make copies of such books and records. This is so that the Buyer can audit compliance with the FIT Agreement and the FIT Scheme.
- 9.5 The Generator will maintain records of:
- a. details of Generation and (where applicable) Export meter readings, for a minimum of one year after the reading date;
  - b. details of all payments relating to FIT Generation or Export received from the Buyer, for a minimum of one year after the payment date; and

- c. all details of the Generating Plant; including but not limited to certificates, maintenance records, changes or adjustment to the Generating Plant for a period of 6 years after the termination of the FIT Agreement.
- 9.6 The Generator will notify the Buyer if the Generator's installation is modified or replaced, including but not limited to:
- a. any extensions, which may affect the eligibility and capacity calculation of a Generating Plant;
  - b. any modification of meters including if a smart meter has been installed;
  - c. any installation of a storage device.

**10. Switching**

- 10.1 If the Buyer is to replace an existing FIT Licensee as the FIT Licensee for the Generating Plant, the Generator:
- a. authorises the Buyer to cancel any existing agreement with the existing FIT Licensee on the Generator's behalf;
  - b. authorises the Buyer to ask for information about the Generator and/or Generating Plant from the existing FIT Licensee; and
  - c. shall give the Buyer Generation and Export (where applicable) meter readings at the Start Date.
- 10.2 If the Generator no longer wishes to receive Payments from the Buyer, the Generator shall serve notice in accordance with Clause 3.1(a).
- 10.3 The Generator agrees that the Buyer may transfer any outstanding amounts, credits and information in connection with the FIT Payments:
- a. from a previous FIT Licensee to the Buyer; and
  - b. by the Buyer to a subsequent FIT Licensee, and that the Buyer will be entitled to recover outstanding amounts transferred to it.
- 10.4 Subject to the remainder of these terms, the Buyer undertakes to give all reasonable assistance to the Generator to switch from a FIT Licensee to the Buyer and from the Buyer to another FIT Licensee as the case may be.
- 10.5 The application process for Switching to or from the Buyer together with timelines is available from the Buyer's website.

**11. Variation**

- 11.1 The Buyer can vary the FIT Agreement and/or these FIT Terms on 30 days prior written notice to the Generator, including without limitation where:
- a. a Change in Law occurs (including changes to the FIT Scheme);
  - b. changes occur to the Central FIT Register and the information recorded thereon;
  - c. The Central FIT Register is amended in any way by the Authority; and
  - d. The Authority issues any relevant guidance or direction to the Buyer.

**12. Limitation of liability**

- 12.1 Nothing in the FIT Agreement shall exclude or limit the liability of either Party for:
- a. death or personal injury resulting from the negligence of that Party;
  - b. fraud or fraudulent misrepresentation; or
  - c. any liability for which that Party cannot lawfully limit its liability.
- 12.2 Subject to Clause 12.1, neither Party shall be liable to the other Party for loss arising from any breach of the FIT Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as likely to occur in the ordinary course of events.
- 12.3 Subject to Clause 12.1, the neither party's aggregate liability under or in relation to the FIT Agreement (whether in contract, tort or otherwise) shall exceed £100,000 (One hundred thousand pounds sterling).

**13. Force majeure**

- 13.1 To the extent that either Party is unable to carry out, or is delayed in carrying out, any of its obligations under the FIT Agreement due to a circumstance of Force Majeure, the FIT Agreement shall remain in effect and that Party shall be deemed not to be in breach of the FIT Agreement, or otherwise liable to the other Party; provided that:
- a. the non-performing Party must give the other Party prompt notice describing the circumstances of the Force Majeure including the nature of the occurrence and its expected duration and where reasonably practicable will furnish regular reports with respect thereto during the period of the Force Majeure;
  - b. the suspension of performance must be of no greater scope and of no longer duration than is required by the Force Majeure;
  - c. no obligations of any Party that arose before the Force Majeure will be excused as a result of the Force Majeure;
  - d. the non-performing Party must use all reasonable endeavours to remedy its inability to perform as quickly as possible; and
  - e. the non-performing Party must give notice as soon as reasonably practicable once the circumstances of Force Majeure have ceased.

**14. Complaints procedure**

- 14.1 The Buyer will use all reasonable endeavours to discharge its obligations under these terms and its duties under the FIT Scheme.
- 14.2 If discontinuing the registration process the Buyer will notify the Generator in writing, explaining the reason why the application is being discontinued. If the Generator is unhappy with the service it has received from the Buyer or the decision to discontinue the registration, the Generator should contact the Buyer in the first instance to try and resolve any issue using the details below.
- 14.3 Should the Generator have any complaint about the Buyer then the Generator should contact the Buyer in the first instance with the details of the complaint using the following contact details:
- feedintariff@drax.com  
 Drax Energy Solutions Limited,  
 32 The Havens,  
 Ransomes Europark,  
 Ipswich,  
 Suffolk,  
 IP3 9SJ  
 Tel: 01473 632584
- We will endeavour to resolve any such complaint in accordance with the Buyer's Complaints Procedure within 8 weeks (available at <https://energy.drax.com/complaints/>).
- 14.4 If the Generator has a complaint about the Buyer which relates to the information contained on the Central FIT Register the Generator should contact the Buyer in the first instance explaining why the Generator believes the information on the Central FIT Register is inaccurate and provide supporting evidence. The Generator may write to the Central FIT Register Manager at Ofgem at the following address to obtain confirmation of details held on the Central FIT Register:

Ofgem  
 10, South Colonnade,  
 Canary Wharf,  
 London  
 E14 4PU

Email: [FITregister@ofgem.gov.uk](mailto:FITregister@ofgem.gov.uk)  
 Fax: 020 7901 7066

- 14.5 If the Generator does not receive a satisfactory response within 8 weeks of the date of receipt by the Buyer of the complaint and the Generator is a micro business as defined by Ofgem then the Generator may refer your complaint to the Energy Ombudsman (<https://www.ombudsman-services.org/sectors/energy>).
- 14.6 If the Generator has a complaint about the FIT scheme which does not fall into the above categories, then they should refer to the following guidance: <https://www.ofgem.gov.uk/environmental-and-social-schemes/feed-tariffs-fit/contacts-guidance-and-resources/dispute-resolution>

## 15. Use of information

- 15.1 The Information may be used by the Buyer, its employees and/or its agents, and those of other companies within the Buyer's corporate group to help:
- identify the Generator when it calls;
  - detection and prevention of crime, fraud or loss; and
  - marketing, administration of accounts, services and products.
- 15.2 Information can be shared by the Buyer and third parties who provide and/or receive services in relation to the FIT Agreement.
- 15.3 The Buyer may carry out fraud prevention checks with fraud prevention agencies which may retain a copy of the search.
- 15.4 The Buyer may monitor or record telephone calls, to help improve customer service, for security purposes, for administering the account and debt recovery purposes.
- 15.5 The Generator agrees that the Buyer, the Authority and/or other FIT Licensees and or any other relevant authority may use the Information provided by the Generator or Nominated Recipient in relation to the FIT Agreement for administration, fraud prevention, reporting and auditing purposes.

## 16. Confidentiality

- 16.1 Subject to Clause 16.2, neither of the Parties shall, at any time, whether before or after the Effective Period, divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person any commercially confidential information that comes into that Party's knowledge as a consequence of the FIT Agreement without the consent of the other Party. Furthermore, neither Party shall use any such information otherwise than for the purposes of the FIT Agreement.
- 16.2 The restrictions imposed by Clause 16.1 shall not apply to the disclosure by a Party of any information:-
- which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality;
  - which is required to be made in accordance with Law;
  - to any of that Party's (or its contractors') respective agents or contractors who require the same to enable them properly to carry out their duties under the FIT Agreement;
  - to any consultants, banks, financiers, insurers or advisors of that Party;
  - to any proposed transferee of the whole or any part of that Party's rights and interest under the FIT Agreement; or
  - to any person proposing to invest in or purchase some or all of the assets of that Party, provided in the case of (c), (d) (e) and (f) that such disclosure is no wider than is necessary in the circumstances, and that the Party allowing such disclosure is responsible for any disclosure or use of such information by such persons otherwise than in accordance with Clause 16.1.

## 17. Notices

- 17.1 Any notice, or other communication, to be given by one Party to the other under or in relation to the FIT Agreement shall be in writing and addressed and sent to the Buyer at its registered office, or to the Generator at the address shown in the Contract Schedule. Such notices must be sent by hand or first class prepaid post or facsimile transmission or email and will be deemed to have been received, in the case of delivery by hand, when delivered, in the case of first class prepaid post, on the second day following the day of posting or in the case of email, on the day of sending, and, in the case of facsimile on acknowledgement by the addressee's facsimile receiving equipment, unless in the case of email such sending or in the case of facsimile such acknowledgement occurs than on a Business Day or after 1700 hours on a Business Day, in which case receipt shall be deemed to have occurred at 0900 hours on the next Business Day. Either Party may, by notice to the other Party, change the address, email address or facsimile number at which notices or other communications under the FIT Agreement are to be given to it.

## 18. Miscellaneous

- 18.1 No delay or omission by either Party in exercising any right, power or remedy under the FIT Agreement shall be construed as a waiver of such right, power or remedy; and any single or partial exercise shall not prevent any other or further

exercise of the same or the exercise of any other right, power or remedy.

- 18.2 The FIT Agreement (and any documents referred to in the FIT Agreement), the Application form and the Principal Generator Terms as detailed in Part 1 Clause 6.3 and 6.4 of the Standard Licensee Terms constitute the whole and only agreement between the Parties relating to its subject matter and, except to the extent repeated in the FIT Agreement, supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto. Each Party acknowledges that in entering into the FIT Agreement on the terms and conditions set out in the FIT Agreement it is not relying upon any representation, warranty, promise or assurance made or given by the other Party or any other person, whether or not in writing, at any time prior to the execution of the FIT Agreement which is not expressly set out therein. Neither of the Parties shall have any right of action against the other Party arising out of or in connection with any undertaking, representation, warranty, promise, assurance or arrangement referred to above (except in the case of fraud).

- 18.3 The Generator shall not assign or otherwise transfer any of its rights or obligations under the FIT Agreement without the prior written consent of the Buyer. The Buyer may assign any of its rights, or transfer any of its obligations, under the FIT Agreement to any person on notice to (and without any further consent by) the Generator. Without prejudice to the foregoing, the Generator will enter into any reasonable agreement required by the Buyer in order to record any such assignment or transfer.

- 18.4 If a provision of the FIT Agreement is declared invalid or unenforceable in whole or part that provision shall be deemed not to be part of the FIT Agreement to that extent and all the other provisions of the FIT Agreement shall remain in force and effect.

- 18.5 The Generator and the Buyer agree that the provisions of the FIT Agreement are not intended to confer any rights on any third party and accordingly the provisions of the Contract (Rights of Third Parties) Act 1999 are excluded.

- 18.6 The FIT Agreement, and all non-contractual obligations arising out of or in connection with it, shall in all respects be governed by and construed in accordance with the laws of England.

- 18.7 The Buyer will treat the Generator's GDPR in scope data in line with its privacy policy which can be found at <https://drax.com/privacy-policy>

## 19. National terms of connection

- 19.1 The following statement applies during any Regulated Export Tariff Period and is included in compliance with the Buyer's obligations under the DCUSA. In the statement the Generator is "you", the Buyer is "supplier", and other words and expressions have the meanings given in the NTC (as defined below):  
Your supplier is acting on behalf of your network operator to make an agreement with you. The agreement is that you and your network operator both accept the National Terms of Connection (NTC) and agree to keep to its conditions. This will happen from the time that you enter into this contract and it affects your legal rights. The NTC is a legal agreement. It sets out rights and duties in relation to the connection at which your network operator delivers electricity to, or accepts electricity from, your home or business. If you want a copy of the NTC or have any questions about it, please write to:

Energy Networks Association,  
4 More London Riverside,  
London,  
SE1 2AU

Tel:0207 706 5100, or see the website at  
[www.connectionterms.co.uk](http://www.connectionterms.co.uk)