

# SmartGen Terms and Conditions

This agreement (the “**Agreement**”) is made up of these SmartGen Terms and Conditions (and, where applicable, the FIT Terms) and your Application, which form a legally binding contract between Good Energy Limited (“**Us**”, “**We**”, “**Our**”) and you (“**You**”, “**Your**”), for the supply by You to Us of Metered Export and Benefits and, where applicable, the administration of the Feed-in Tariff.

## 1. Definitions and interpretation

1.1. In this Agreement the following words have the following meaning

“**Account**” means:

- (a) the bank account that You notify us of when You submit Your Application;
- (b) if You sell power to us at the time of Your Application and do not tell us of an alternative account, the bank account that We make payments to in connection with that arrangement; or
- (c) such other account as You notify us of in writing from time to time;

“**Accredited**” means accredited by the Authority as being a generating station capable of generating from an Eligible Low-Carbon Energy Source where the Authority has confirmed in writing to the operator of the generating station the accreditation and the Authority has not since withdrawn that accreditation;

“**Act**” means the Electricity Act 1989, as amended by the Utilities Act 2000 and all subsequent amendments to these acts;

“**Application**” means the application made by You to participate in the SmartGen scheme;

“**Authority**” refers to the Secretary of State, The Office of the Gas and Electricity Markets (Ofgem), or the market regulator as appropriate;

“**Benefits**” means all payments, certificates, reliefs, allowances or other benefits (whether in existence on the Effective Date or at any time subsequent) received or accruing (or capable of being received or accrued) by either Party, and that are associated with the Installation and/or the Energy and such reference to benefits shall include without limitation Embedded Benefits, REGOs and New Benefits;

“**BSC**” means the Balancing & Settlement Code;

“**Central FiT Register**” means the register maintained by the Authority for the purposes of the FiT Scheme;

“**Connection Agreement**” means the agreement with the Local Distribution Company entered into for the connection of the Installation to the local electricity distribution system;

“**Data Aggregator**” has the meaning as given in the BSC;

“**Data Collector**” means the company responsible for the collection of data relating to electrical output, as provided for in the BSC;

“**Day Ahead Market Price**” means the UK Hub Hourly Day Ahead Market outturn price, as recorded by EPEX SPOT (or such other provider as We may select from time to time at Our sole discretion);

“**Delivery Point**” means the point of entry of the Metered Export to the local distribution system;

“**Dispute Notice**” has the meaning given in clause 7.9;

“**Distribution Code**” means the distribution code required to be drawn up by each Local Distribution Company and approved by the Authority;

“**Eligibility Date**” means the date from which Your entitlement to FiT Payments commences, as recorded in the Central FiT Register;

“**Eligibility Period**” means the period during which You are entitled to receive FiT Payments, as recorded in the Central FiT Register;

“**Effective Date**” has the meaning given in clause 9;

“**Eligible Low-Carbon Energy Sources**” has the meaning given in the Feed-in Tariffs Order 2010;

“**Embedded Benefits**” means the benefits attributable to the Installation by virtue of the siting of the Delivery Point including, where relevant,

- (a) Balancing Services Use of System Charges (as defined in the BSC),

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- (b) generator distribution use of system charges,
- (c) payments in respect of Assistance for Areas with High Electricity Distribution Costs pursuant to section 184 of the Energy Act 2004,
- (d) any reduction or avoidance of TRIAD charges or
- (e) any reduction or avoidance of charges related to Us applied by an electricity distribution or transmission company to Us associated with the transmission or distribution of electrical energy across the electricity transmission or distribution system;

**“Energy”** means the electrical energy (expressed in kWh) generated by the Installation other than any such electrical energy consumed by the Installation in connection with its operation and maintenance;

**“Export Meter”** means (where applicable) a meter which measures the amount of electricity, generated by Your Installation, which is then exported to the grid;

**“Export Meter Reading”** means the measure by an Export Meter of the amount of electricity, generated by Your Installation, which has been exported to the grid;

**“Export Tariff Payment”** means a payment under the FiT Scheme which is based on the amount of electricity, generated by Your Installation, which has been exported to the grid and measured by the applicable Export Meter or (where applicable – see clause 7.3 below) which is treated as having been exported to the grid;

**“Feed-in Tariff”** or **“FIT”** is the tariff whose details and rates are set out in the Regulations;

**“FIT Licensee”** means a licensed electricity supplier which is participating in the FiT Scheme (either on a mandatory or voluntary basis);

**“FIT Payment”** means a payment under the FiT Scheme in respect of electricity generated by Your Installation, being either a Generation Tariff Payment or an Export Tariff Payment;

**“FIT Scheme Rules”** means the relevant standard license conditions (i.e. those applicable to licensed electricity suppliers) which govern the operation of the FiT Scheme, the Feed-in Tariff Order 2012 (as amended) and any other legislation, rules or guidance (including guidance published by the Authority) which apply to the FiT Scheme from time to time;

**“FIT Terms”** means the additional terms and conditions applicable if You have opted to receive Export Tariff Payments set out in the Schedule;

**“Force Majeure”** means in respect of any party any event or circumstance which is beyond the reasonable control of such party and which results in or causes the failure of that party to perform any of its obligations under this Agreement including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems (other than as required as a source of Energy), explosion, fault or failure of plant and apparatus which could not have been prevented by Prudent Operating Practice, governmental restraint, any act of parliament, other legislation, by-law, prohibition, measure or directive of any kind of any governmental, parliamentary, local or other competent authority; provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of such party;

**“Generation Meter”** means a meter which measures the amount of electricity generated by Your Installation;

**“Generation Meter Reading”** means the measure by a Generation Meter of the amount of electricity generated by Your Installation;

**“Generation Tariff Payment”** means a payment under the FiT Scheme which is based on the amount of electricity generated by Your Installation and measured by the applicable Generation Meter;

**“Grid Code”** means the Grid Code drawn up by NGC pursuant to its transmission Licence;

**“Half-Hour”** means any period of 30 minutes commencing on the hour or half past the hour or any alternative period used from time to time pursuant to the BSC and **“Half-Hourly”** shall be construed accordingly;

**“HH Export Meter”** means an Export Meter that measures electricity passing through it on a Half- Hourly basis;

**“Input Electricity”** has the meaning given in the Renewables Obligation Orders;

**“Installation”** is a generating station described in the Application which is capable of generating electricity from Eligible Low-Carbon Energy Sources;

**“Installed Capacity”** means the full load capability of the Installation expressed in kW;

**“kW”** means kilowatt;

**“kWh”** means kilowatt hour;

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**“Levelisation Payment”** means a payment made by the Authority to Us in connection to the Metered Output of an Accredited Installation;

**“Licence”** means a licence granted under section 6 of the Act;

**“Licence Exempt”** means there is no requirement to hold a Licence under the terms of the BSC;

**“Local Distribution Company”** means the owner or operator of the electricity distribution network in accordance with the Act;

**“Long Stop Date”** means the date before which specified certificates from the previous Qualifying Period must be transferred to Us. For REGOs this is 15 May each year;

**“Meter Operator”** means the installer and maintainer of metering equipment;

**“Meter Reading”** means a reading taken from a Generation Meter Reading or an Export Meter Reading;

**“Metered Export”** means the amount of Energy generated by the Installation that is not used onsite and is not used as Input Electricity and that is delivered to the Delivery Point and measured at that point by the Export Meter expressed in kWh unless otherwise specified;

**“Metered Output”** means the total electricity generated by the Installation as measured by the Generation Meter;

**“Metering Regulations”** means all regulations with which Generation Meters and/or Export Meters must comply as part of the FiT Scheme Rules, including:

- (a) Schedule 7 to the Electricity Act 1989;
- (b) The Meters (Approval of Pattern of Construction and Manner of Installation Regulations 1998 (S.I. 1998/1565));
- (c) The Meters (Certification) Regulations 1998 (S.I. 1998/1566);
- (d) The Electricity (Approval of Pattern or Construction and Installation and Certification) (Amendment) Regulations 2002 (S.I. 2002/3129);
- (e) The Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995 (S.I. 1995/2607);
- (f) The Measuring Instruments (EC Requirements) (Electrical Energy Meters) (Amendment) Regulations 2002 (S.I. 2002/3082);
- (g) The Measuring Instruments (Active Electrical Energy Meters) Regulations 2006 (S.I. 2006/1679).

**“MPAN”** means metering point administration number, as defined in the BSC;

**“MWh”** means Mega Watt hour;

**“New Benefits”** means any new benefit, exemption or right (including those that replace (in whole or in part) exemptions, benefits or rights that are specifically set out in this Agreement) associated with the Installation or the Metered Output which are introduced or first become available after the Effective Date;

**“NGC”** means the National Grid Company plc or their appointed successors;

**“NHH Export Meter”** means an Export Meter that measures electricity passing through it on a cumulative Non-Half-Hourly basis;

**“Nominated Recipient”** means a person appointed by You to receive particular FiT Payments and recorded as such on the Central FiT Register;

**“Onsite Usage”** means the electricity generated by the Installation from Eligible Low-Carbon Energy Sources and is used by You for purposes other than Input Electricity;

**“Prudent Operating Practice”** means practices and procedures which are or should be adopted at the relevant time by a person exercising in the general conduct of its undertaking that degree of judgement, skill, diligence, prudence and foresight which would ordinarily and reasonably be expected from a skilled and experienced operator engaged in the business of operating an Installation (of the same or similar type) as that now installed at the Site(s) lawfully in accordance with all applicable health, safety and environmental Regulations having regard to the capability of such plant;

**“Qualifying Period”** is defined as the inclusive dates between 1 April and 31 March the following calendar year;

**“Quarter”** means each period three months commencing on 1 January, 1 April, 1 July and 1 October each year (or such other date as We may notify You of from time to time), and:

- (a) in the case of the Quarter in which the Effective Date falls, the period from the Effective Date to the end of that Quarter; and
- (b) in the case of the Quarter in which this Agreement expires or is terminated, the period from the start of that Quarter to the date of expiry or termination.

**“Reading Date”** means the date(s) by which You are required to provide Us with a Meter Reading. These will be the twentieth day of the final month of each Quarter or such other date that We tell You about;

**“Regulations”** means in particular, but not exclusively, Condition 33 of the Licence, the Feed-in Order, the Authority’s Guidelines and any relevant guides or directions published by the Authority or by the Secretary of State from time to time;

**“REGO”** means the certificate issued by the Authority under The Electricity Regulations 2003 (Guarantees of Origin of Electricity Produced from Renewable Energy Sources);

**“Renewables Obligation Orders”** means collectively the Renewables Obligation Order 2009 and the Renewables Obligation (Scotland) Order 2009 (or equivalent determinations under any amendments to those Orders or re-enactments of the renewables obligation upon revocation of those Orders);

**“Self-Billing Invoice”** means an invoice produced by Us on Your behalf to record Your implied request for and its deemed receipt of payments due from Us and shall include VAT, which shall be shown separately;

**“Standing Charge”** means a charge payable by You to Us set out in the SmartGen Payments Schedule or, if You have opted to receive Export Tariff Payments, as notified by Us to You in connection with Your Application or (in either case) as otherwise in writing from time to time;

**“Site”** is the location of the Installation;

**“SmartGen Payments Schedule”** is the schedule detailing the charges/benefits associated with the SmartGen scheme as issued and updated by Us from time to time;

**“Standardised Monthly Template”** is the template for the monthly submission of data required by the Authority in order for REGOs to be issued as set out by the Authority;

**“System Sell Price”** means the price paid under the BSC for a net surplus of imbalance energy; and

**“Working Day”** means a weekday other than a public holiday in England.

1.2. This Agreement includes:

- (a) the Application;
- (b) these SmartGen Terms and Conditions;
- (c) any subsequent SmartGen Payments Schedules.

1.3. In this Agreement:

- (a) words in the singular shall include the plural and vice versa;
- (b) a reference to any gender includes a reference to all other genders;
- (c) a reference to a person includes any corporation or an incorporated body of persons;
- (d) references to clauses, paragraphs and schedules are to the clauses of, paragraphs of and schedules to this Agreement unless stated otherwise;
- (e) any reference to legislation or statute or statutory provisions shall include;
  - (i) any subordinate legislation made from time to time under that legislation or statute or statutory provision respectively; and
  - (ii) a reference to it as it may have been, or may be from time to time, amended, modified or re-enacted.

1.4. The headings and table contents of this Agreement are for convenience only and shall not affect its interpretation.

1.5. Save where the context requires otherwise, any reference to a **“day”** is to any day unless it is specified as a Working Day and **“daily”** shall be construed accordingly.

## **2. FIT Export Rate and application of the FIT Terms**

2.1. As part of Your Application, We will offer You a price that We will pay You for Metered Export and Benefits. However, if You are eligible to do so, You may choose not to accept that price and instead opt to receive Export Tariff Payments in relation to Your Installation.

2.2. If You have opted to receive Export Tariff Payments, You must also appoint us as Your FIT Licensee.

2.3. If You have opted to receive Export Tariff Payments, subject to clauses 3.2 and 3.3, the FIT Terms shall apply. If We are already the FIT Licensee in respect of the Installation when You complete the Application, this Agreement replaces Your existing feed in tariff agreement with Us in relation to the Installation.

**3. Conditions precedent and eligibility criteria for Export Tariff Payments**

3.1. The provisions of this Agreement are subject to the following conditions precedent being and remaining fulfilled at all times:

- (a) if the Installation is equipped with a NHH Export Meter, You must have appointed Us as the supplier of electricity to the Installation pursuant to our standard terms of supply;
- (b) You must have entered into a Connection Agreement;
- (c) You must hold a valid generation Licence or be Licence Exempt;
- (d) the Installation must be Accredited and, where its Total Installed Capacity is less than 50kW, certified under the Microgeneration Certification Scheme; and
- (e) We must be registered as the “supplier” on the MPAN for Your Export Meter; and
- (f) We must hold a supply Licence for England, Wales and Scotland and We must be a signatory of the BSC.

3.2. By opting to receive Export Tariff Payments, You confirm that the criteria set out this clause 3.2 are met in relation to the Installation. Before completing the Application, You must therefore ensure that all of these criteria are and will be met:

- (a) the Installation is an “eligible installation” within the meaning of the FIT Scheme Rules;
- (b) You are the owner of the Installation;
- (c) Your Installation is located in Great Britain, does not contain equipment which has previously been accredited under the FiT Scheme or any other renewables support scheme and has a total installed capacity (within the meaning of the FIT Scheme Rules) of no more than 5MW (or 2kW for micro CHP systems);
- (d) a Generation Meter which is compliant with the Metering Regulations is in place for the Installation;
- (e) where applicable (see clause 7.2 below) an Export Meter which is compliant with the Metering Regulations is also in place for Your Installation;
- (f) You have not received any grants from public funds in respect of any of the costs of purchasing and/or installing Your Installation or if You have received any grants in relation to costs of this kind, You have informed Us of this and have repaid the grants in question if this is required, in accordance with the FIT Scheme Rules, for You to participate in the FiT Scheme;
- (g) You have not claimed, and will not be claiming, renewables obligation certificates in relation to Your Installation; and
- (h) for the period in which this Agreement is effective, You have not received, and will not be receiving, any payments under the FiT Scheme from any other energy company in relation to electricity generated by Your Installation.

If You do not meet (or cease to meet) the eligibility criteria described in clause 3.2 (or any other criteria that may be applicable under the FiT Scheme Rules) You will not be entitled to receive (further) payments under the FiT Scheme.

3.3. The FIT Terms will take effect, and Your participation in the FiT Scheme via Us will become fully effective, as soon as (but not before) all of the following have happened:

- (a) Your Installation has been registered successfully on the Central FIT Register;
- (b) Your Installation is recorded on the Central FiT Register as being owned by You; and
- (c) We are recorded on the Central FIT Register as being the “FiT Licensee” in respect of Your Installation.

3.4. If at any time You do not meet the eligibility criteria to receive Export Tariff Payments set out in this clause 3.2, the price that we shall pay for the Metered Export and Benefits shall be:

- (a) where the System Sell Price is greater than zero, 87.5% of the lower of the System Sell Price or the Day Ahead Market Price; or
- (b) where the System Sell Price is less than or equal to zero, zero and You shall pay to Us an administration charge equal to the positive value of the System Sell Price.

3.5. The following details in relation to Your Installation will remain the same as in Your initial application to join the FiT Scheme:

- (a) Your Eligibility Date and Eligibility Period, as recorded on the Central FIT Register; and
- (b) the relevant “Generation Tariff” and “Export Tariff” rates that will be applicable to Your Installation.

**4. Sale and purchase**

- 4.1. Subject to clause 3.1, from the Effective Date until the termination of this Agreement
- (a) You shall sell, deliver and where necessary transfer, and We shall purchase and where necessary accept, the Metered Export and all Benefits.
  - (b) You shall not sell or seek to sell the Metered Export or Benefits to any party other than Us.
- 4.2. Except where You have opted to receive Export Tariff Payments, We shall pay to You the rate detailed in the SmartGen Payments Schedule for the time period in question, in respect of the Metered Export and Benefits.
- 4.3. If You have opted to receive the Export Tariff Payments, the FiT Terms will apply and We will pay You for the Metered Export and Benefits in accordance with Paragraph 2.1 of the FiT Terms.
- 4.4. You shall transfer to us REGOs that derive from all Metered Output (including any Onsite Usage). These shall be delivered by You to Us before the relevant Long Stop Date. We will not pay for REGO certificates transferred to Us after the Long Stop Date.
- 4.5. If any of the REGOs or other Benefits that You have sold under this Agreement are revoked at any time You shall indemnify Us against any costs incurred, provided that such revocation has not arisen as a result of the actions of or any default by Us.
- 4.6. Title and risk in, and ownership of, the Metered Export shall pass to Us at the Delivery Point. Title and risk in, and ownership of, the Benefits shall vest in Us either upon:
- (a) transfer, where it is necessary for such Benefits to be transferred; or
  - (b) delivery of the related Metered Export at the Delivery Point where it is not necessary for such Benefits to be transferred.

**5. Your obligations**

- 5.1. You shall pay to Us the Standing Charge at the times and in the manner in that We notify You of in writing from time to time.
- 5.2. You shall use Your best endeavours to obtain all of the Benefits applicable to the Installation. You shall provide to the Authority all required monthly data via the Standardised Monthly Template, in compliance with the Authority timetable, or according to any updated timetable or procedure published by the Authority in order for the issue of REGOs and any other Benefits.
- 5.3. You undertake that the Installation will be operated and maintained in accordance with Prudent Operating Practice and shall use reasonable endeavours to ensure that:
- (a) the Installation is operated in accordance with Our Bio-generation Procurement Policy, details of which are contained in the Application;
  - (b) the Installation generates and delivers Energy from Eligible Low-Carbon Sources to the Delivery Point whenever it is practicable that it should do so; and
  - (c) maintenance work in respect of the Installation is carried out in consultation with Us giving Us notice of at least a month's notice where it is reasonably practicable to do so.
- 5.4. You must notify Us:
- (a) of any change to the Installation metering or other matters which may affect Your entitlement to the Feed-in Tariff; and
  - (b) as soon as reasonably possible and in any event within 10 days if the Installation ceases to output electricity from Eligible Low-Carbon Sources.
- 5.5. You shall:
- (a) provide to Us, on request, information on the Onsite Usage, including information concerning any significant electrical loads and profiles associated with those loads;
  - (b) where You are Licence Exempt, We hereby direct You to deliver to the Delivery Point all Energy in excess of Onsite Usage generated by the Installation;
  - (c) nominate Us as Your FiT Licensee if You have chosen to receive Export Tariff Payments;
  - (d) where the Installation is equipped with a NHH Export Meter, appoint Us as the supplier of electricity to the Installation.

5.6. You warrant that You have the power to enter into, perform and comply with all Your obligations under this Agreement and that Your entry into, performance of or compliance with Your obligations do not nor will not violate any law to which You are subject or, where applicable, Your memorandum or articles of association.

## **6. Grid connection arrangements**

6.1. You must ensure that You have obtained any permission that is needed from the local electricity grid network operator to export power to the grid and that You comply with any requirements relating to ongoing use of the grid connection for these purposes. If a Connection Agreement, governing the export arrangements, is not already in place, then by exporting electricity to Us under this Agreement, We may be required under electricity industry rules to ensure that You enter into a standard connection agreement with the network operator under the industry standard procedure described in clause 6.2 below.

6.2. Where applicable (see clause 6.1 above), We are 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 Agreement and it affects Your legal rights. The NTC is a legal agreement. It sets out rights and duties in relation to the connection where Your network operator delivers electricity to, or accepts electricity from, Your home or business. If You want a copy of the NTC or have any questions about it, please write to: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF; phone 0207 706 5137; or see the website at [connectionterms.co.uk](http://connectionterms.co.uk)

## **7. Metering**

7.1. You must ensure that the Generation Meter complies with the Metering Regulations and is located in an accessible location (see clause 7.4).

7.2. If Your Installation has an installed capacity of above 30kW, You must ensure that an Export Meter is in place and that the Export Meter complies with the Metering Regulations and is located in an accessible location (see clause 7.4). If Your Installation has an installed capacity of above 30kW and a compliant Export Meter is not in place, You will not be entitled to claim any Export Tariff Payments.

7.3. If Your Installation has an installed capacity of 30kW or less and an Export Meter is not in place, the amount of electricity which is treated as having been exported to the grid (as long as Your Installation is connected to the grid) will be calculated by Us on a “deemed” basis in accordance with the FIT Scheme Rules.

7.4. Clauses 7.1 and 7.2 place an obligation on You to ensure that the Generation Meter and (if applicable) the Export Meter is located in an accessible location. What exactly this means will depend on the particular circumstances of Your Installation. However, as a general rule, it will mean: (i) that the relevant meter is in a location and a position that means it can easily be accessed and read by a person without the use of any equipment, such as tools, a ladder or a torch; and (ii) that Your installer has installed the relevant meter in line with any relevant industry guidance relating to accessibility issues, such as guidance produced by the MCS. For Installations in a rural location, it also means that the building in which the meter is installed is easily accessible on foot from a public road. If We reasonably consider, following a visit by one of Our appointed metering agents/contractors, that any Generation Meter or Export Meter is not (for whatever reason) in an accessible location, We will have the right to require You to pay a reasonable charge, based on the additional costs payable to Our agent for gaining the necessary access.

7.5. Unless otherwise agreed in writing with Us, We shall appoint a Data Collector and a Data Aggregator to collect data in respect of the Metered Export. Where You appoint the Data Collector, You shall indemnify Us against all liabilities, costs, expenses, damages and losses suffered or incurred by Us arising out of or in connection with any breach of the appointment of the Data Collector.

7.6. You shall:

- (a) provide such information reasonably required by Us in respect of the Metered Export on request; and
- (b) provide us with a Meter Reading on the Reading Date (except in relation to Your Export Meter if you have a HH Export Meter).

7.7. If We ask You to do so at any time and provide You with reasonable notice, You must ensure that We or any person authorised by Us is given safe access to Your premises for any of the following purposes:

- (a) to inspect and test any Total Generation Meter and/or Export Meter and collect Generation Meter Readings and/or Export Meter Readings;
- (b) to inspect the Installation and verify the accuracy of any information You have provided to Us in relation to the FIT Scheme and/or this Agreement.

7.8. If You fail to provide Meter Readings within the required time scale or if any Meter Readings fail validation by Us, Your payments may be suspended until We have received from You fully updated, valid Meter Readings.

- 7.9. Unless the accuracy of Metering Equipment is disputed by notice in writing (a “**Dispute Notice**”) given by either Party to the other, the Metering Equipment shall be deemed to be accurate. If a Dispute Notice is given the relevant Metering Equipment shall as soon as practicable be examined. If on such examination the Metering Equipment is found to be:
- (a) outside the levels prescribed in relevant Law then:
    - (i) You shall, as soon as practicable procure that the relevant Metering Equipment (in whole or in part) shall be recalibrated and/or replaced as required and the cost of such test, recalibration, and / or replacement shall be paid by You; and
    - (ii) We shall, acting reasonably, calculate any adjustment to past payments that is necessary to reflect any inaccuracy of the Metering Equipment and any such adjustment shall be accounted for in the following invoice prepared in respect of this Agreement;
    - (iii) We shall, acting reasonably, make such adjustments to all subsequent invoices to reflect any inaccuracy of the Metering Equipment until this inaccuracy has been remedied; and
    - (iv) in the event that any inaccuracy has a material adverse effect on the level of Benefits that We have received, will receive, or to which We would have been entitled had there been no such inaccuracy then You shall take reasonable steps to remedy such adverse effect and shall be liable for losses suffered by Us in relation to such adverse effect (including where any Benefits are revoked in consequence of such inaccuracy).
  - (b) within the levels prescribed in relevant Law, then the cost of testing the Metering Equipment or any part thereof shall be paid by the party which issued the Dispute Notice.
- 7.10. If You become aware of any inaccuracy in respect of the Metering Equipment then You shall inform Us by written notice within two Working Days of becoming aware of the same and the procedure set out in clause 7.7 shall apply.
- 7.11. Provided that no such device nor the installation thereof shall interfere with or impede the production of electricity, We may at our discretion install Metering Equipment and devices to obtain data remotely from Metering Equipment for the purpose of measuring the Metered Export or Metered Output or for any other purpose as may be agreed with You in writing. You shall grant, so far as You are able, on a non-exclusive basis to Us all such rights, consents or licences which We may require from You in connection with the installation and retention of such equipment and communication equipment, lines and apparatus ancillary thereto. The cost of installation shall be at Our expense, unless there is evidence of meter tampering.
- 7.12. You agree that We may perform an accuracy check on any Meter Readings that You submit and if that accuracy check finds that Your Meter Reading(s) is/are inaccurate or abnormal, then You give Us permission to amend Your Meter Reading(s) as appropriate. We will keep a history of any changes made to Your Meter Readings.

## **8. Invoicing and payment**

- 8.1. If You have not opted to receive Export Tariff Payments or if clause 3.4 applies:
- (a) We shall pay for the Metered Export and any other Benefits (excluding REGOs) at the rate set out in the SmartGen Payments Schedule or in clause 3.4. We shall send You a Self-Billing Invoice setting out the payments due and the underlying data promptly following the end of each Quarter. We shall transfer by direct bank transfer to the Account all payments due promptly after the issue of the Self-Billing Invoice.
  - (b) We will pay to You the value set out in the SmartGen Payments Schedule for the period applicable for each REGO that derives from the Metered Output that is successfully transferred to Our REGO account on the REGO register. We shall send You a Self-Billing Invoice setting out the REGO payments due promptly following the end of each Quarter. We shall transfer, by direct bank transfer to the Account all payments due in respect of the REGOs promptly after the issue of the Self-Billing Invoice.
- 8.2. If You have opted to receive Export Tariff Payments We shall pay You for:
- (a) the Generation Payment in accordance with the FiT Terms; and
  - (b) the Metered Export and any other Benefits at the rate set out in the FiT Terms. We shall send You a Self-Billing Invoice setting out the payments due in respect of Metered Export and other Benefits and the underlying data promptly after We have received the related Levelisation Payment following the end of each Quarter. We shall transfer by direct bank transfer to the Account all payments due promptly after the issue of the Self-Billing Invoice.
- 8.3. Where this Agreement states that We shall raise a Self-Billing Invoice:
- (a) We shall:

- (i) ensure that each Self-Billing Invoice contains details of Our name, address and VAT registration number, together with all the other details which constitute a full VAT invoice; and
  - (ii) inform You if the issue of Self-Billing Invoices will be outsourced to a third party
  - (b) You shall:
    - (i) accept each Self-Billing Invoice raised by Us in accordance with this Agreement;
    - (ii) not raise sales invoices for the transactions covered by any Self-Billing Invoice; and
    - (iii) notify Us immediately if You (1) change Your VAT registration number, (2) cease to be VAT registered or (3) sell Your business or part of Your business.
- 8.4. If the Standing Charge applies, We will send You an invoice within 30 days of the end of each Quarter setting out the Standing Charge that is payable. You shall, within 15 working days of receipt of such invoice, transfer to Us by bank transfer or by cheque all payments due under such invoice.
- 8.5. We may set off any payments due and payable under this Agreement against any debts owed by You to Us from time to time.
- 8.6. Amounts payable under this Agreement are exclusive of value added tax. You must pay UK taxes and duties, including VAT, at the appropriate rates, on the amounts payable under this Agreement in accordance with current legislation. Accordingly, We will charge You VAT at the standard prevailing rate unless You send us a completed, valid VAT certificate that shows that You do not have to pay VAT at the standard rate. If You do this, We will charge You VAT at the appropriate reduced rate from the date We receive the certificate.
- 8.7. Any amount due and remaining unpaid for more than 28 days after the date of an invoice shall bear interest from day to day at a rate equal to 2% above the base lending rate of Lloyds TSB Bank plc from time to time in force.
- 8.8. If You dispute a payment please contact Us immediately and We will work with You to resolve the issue. If either party disputes any part of an invoice the relevant party shall pay any undisputed part when it is due. Interest as set out in clause 8.7 shall apply to the disputed part which subsequently is agreed or determined to have been properly payable.
- 8.9. We reserve the right to reduce, withhold or recoup payments if it has been identified that an error has occurred regardless as to the source of the error.

## 9. Duration

This Agreement is effective from the date (the “**Effective Date**”) upon which the conditions precedent set out in clause 3.1 (and, where applicable, the eligibility criteria set out in clause 3.2) have been met or waived by Us and shall continue until it is terminated in accordance with clause 10.

## 10. Termination

- 10.1. Either party may terminate this Agreement:
- (a) by giving written notice not more than 14 days after We have issued You with a revised SmartGen Payments Schedule; or
  - (b) by giving not less than three months’ written notice to the other,
- provided, in each case, that such notice shall not expire before the time 24:00 hours on the 31 March immediately following the date of the notice.
- 10.2. Either party (the “**Initiating Party**”) may terminate this Agreement with immediate effect by notice in writing to the other party (the “**Breaching Party**”) on, or at any time after, the occurrence of any of the following events:
- (a) the Breaching Party being in breach of any term of this Agreement and, if the breach is or was capable of remedy, having failed to remedy the breach within 30 Working Days of receipt of written notice of the breach from the Initiating Party;
  - (b) the Breaching Party passing a resolution for its winding-up, or a court of competent jurisdiction making an order for the winding-up or dissolution of the Breaching Party;
  - (c) the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or an encumbrance taking possession of or selling, any substantial part or parts of the Breaching Party's assets, rights, or revenues; (except for the case of reconstruction);
  - (d) the Breaching Party making an arrangement or composition with its creditors generally or making an application to a court for protection from its creditors generally; or

- (e) the Breaching Party being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that Section the sum of £10,000 was substituted for the sum of £750.

10.3. We may terminate this Agreement immediately if:

- (a) You no longer own or operate the Installation;
- (b) the electricity connection has been disconnected;
- (c) We suspect that You have illegally abstracted electricity or have interfered with electricity related equipment or have provided a falsified any Meter Reading;
- (d) the Installation has been removed or has ceased to function; or
- (e) You have opted to receive Export Tariff Payments and:
  - (i) We are no longer a FiT Licensee;
  - (ii) You cease to be eligible to continue participating in the FiT Scheme in relation to the Installation; or
  - (iii) it is necessary for Us to terminate this Agreement in order to comply with the FiT Scheme Rules and/or any direction given by the Authority.

10.4. You may terminate this Agreement by giving not less than 14 days written notice to Us within 14 days of the date of receiving notification of a variation under clause 12.

10.5. At the end of this Agreement, You will send a Meter Reading in respect of all Metering Equipment to Us for the termination date. Where termination Meter Readings are not provided, We will use a Meter Reading provided by You prior to the termination date.

10.6. The termination of this Agreement will not affect any rights which may have accrued to either party prior to its termination.

## **11. Liability**

11.1. We will not be liable to You for any failure to comply with this Agreement which is directly or indirectly caused by any circumstances beyond Our reasonable control. You will not be liable to Us for any failure to comply with this Agreement which is directly or indirectly caused by any circumstances beyond Your reasonable control.

11.2. We will not, under any circumstances (even if caused by our negligence), be liable to You for any economic loss (for example, loss of profit, income, business, contracts or goodwill) which You suffer or any other loss which You suffer which would not reasonably have been expected, at the time the Agreement was entered into, to follow from any failure by Us to comply with its terms. In addition, Our liability for any loss or damage, other than personal injury or death, which is caused by Our negligence or failure to comply with any other obligation owed to You will not exceed £5,000 in total. However, nothing in this clause is intended to limit or exclude Our liability for paying FiT Payments which are properly claimed by You under this Agreement.

## **12. Variation**

12.1. We will have the right to vary this Agreement at any time by giving You written notice of the variation(s). We will ordinarily give You at least 20 days' prior notice before any variation takes effect, so giving You the opportunity to terminate this Agreement under clause 10.4 if You do not wish to be bound by the variation. However, We will have the right to vary this Agreement on less than 20 days' notice where this is reasonably necessary in order to reflect any change in the FiT Scheme Rules, any other change in law (including the standard electricity licence conditions that apply to Us) or any change to the Central FiT Register. Where We consider it appropriate to do so, We may provide You with written notice of particular variations for the purposes of this clause by way of publishing the revised terms on our website.

12.2. We reserve the right to make a variation that would allow us to charge You an annual fee for providing FiT Licensee services to You. If We wished to make a variation of this kind, including the introduction of extra clauses explaining how and when the fee would be payable, the 20 day notice requirement described in clause 12.1 would apply, so giving You the opportunity to terminate this Agreement under clause above if You do not wish to be bound by the variation.

12.3. We will have the right to transfer this Agreement to another company, and if We do so, Your obligations or liabilities under this Agreement will not be affected.

12.4. This Agreement is personal to You, as the owner of the Installation, and so cannot be transferred by You to anyone else.

## **13. Complaints**

- 13.1. Should You have any question, comment or complaint relating to this Agreement or (if applicable) Your participation in the FiT Scheme via Us, please contact Us as soon as possible to discuss this.
- 13.2. In relation to any complaint We receive from You, We will seek to resolve that complaint and, in doing so, will comply with Our published dispute resolution process –accessible on Our website at [goodenergy.co.uk](http://goodenergy.co.uk).

#### **14. Force Majeure**

If either party shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure, this Agreement shall remain in effect but save as otherwise provided herein both parties' obligations affected by the circumstance of the Force Majeure shall be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

- (a) the non-performing party gives 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 continues to furnish regular reports with respect thereto during the period of the Force Majeure;
- (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (c) no obligations of either party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (d) the non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible; and
- (e) the non-performing party shall give notice as soon as reasonably practicable once the circumstances of Force Majeure have ceased.

#### **15. Compliance with laws and agreements**

- 15.1. At all times each party shall ensure that it complies with the relevant provisions of the Act, the Regulations and any other legislation, rules or regulations whatsoever in any manner affecting the performance by that party of its obligations under this Agreement.
- 15.2. You shall comply with, in each case in all material respects, the requirements and provisions, where relevant, of any applicable Connection Agreement, the Distribution Code, the Grid Code, the BSC and any agreement with Your Meter Operator.
- 15.3. We agree to comply with, in each case in all material respects, the requirements and provisions, where relevant, of the Distribution Code, the Grid Code and the BSC.

#### **16. Data protection**

- 16.1. We are committed to protecting Your personal information and data and will process any personal data in accordance with Our privacy policy, as amended from time to time. You can find a copy of our policy at [goodenergy.co.uk/privacy-policy](http://goodenergy.co.uk/privacy-policy).
- 16.2. Information You provide or that We hold about You or any Nominated Recipient may be used by us, our employees and/ or our agents, to help: (1) identify You when You call; (2) the detection and prevention of crime, fraud or loss; and (3) the administration of accounts, services, and products.
- 16.3. In addition to the circumstances described in clause 16.2 above, information about You or any Nominated Recipient can be shared between Us and third parties, including the Authority, other FiT Licensees and appointed meter reading contractors, where We consider this is necessary in order to fulfil Our obligations under this Agreement and/or the FiT Scheme.
- 16.4. We may monitor or record telephone calls, to help improve our customer service, for security purposes, for administering Your account and debt recovery purposes.
- 16.5. You must ensure that where You provide Us with information relating to any other person (for example, a Nominated Recipient, a joint owner of the Installation or one of Your employees) You have permission to do so and have notified that person that his or her information, as provided to Us, may be used in the manner described in this clause 16.

#### **17. General**

- 17.1. Notices in relation to this Agreement will be sent to You at the correspondence address provided in Your Application (or, if no address was provided and You already receive payments from Us in respect of Metered Export at the time of Your Application, the correspondence address that We currently hold for You). Your notices must be sent to either;

smartgen@goodenergy.co.uk or SmartGen, Good Energy, Monkton Park Offices, Monkton Park, Chippenham, SN15 1GH or such other address as We may notify You of at any time.

- 17.2. Any notice or consent must be in legible writing in the English language and sent by pre-paid letter, by hand or by email. Any posted or emailed notice is deemed to have been served three working days after posting and a notice delivered by hand is deemed to have been served at the time of delivery, a notice given by email on receipt of delivery notice.
- 17.3. If there is any inconsistency between these SmartGen Terms and Conditions and any other documents comprising the Agreement, then these SmartGen Terms and Conditions will prevail.
- 17.4. Where You comprises of more than one person (for example, if You are partners in a firm), the obligations and liabilities under this Agreement are joint and several.
- 17.5. Each of the clauses and sub-clauses of this Agreement operates separately from the others and survives independently of the others.
- 17.6. Neither We nor You have entered into this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in these terms.
- 17.7. If You require anything from Us in addition to our obligations under this Agreement We will be entitled to charge a reasonable amount for any work or materials, including administration charges.
- 17.8. The Parties shall keep this Agreement confidential, except where otherwise required by law or for the performance of their respective obligations, including independent auditing purposes or the requirements of the Authority. This paragraph shall survive for 3 years following the termination or expiration for whatever reason of this Agreement.
- 17.9. The laws of England apply to this Agreement. This Agreement is subject to the exclusive jurisdiction of the English Courts. Each party irrevocably waives any right it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

The following terms apply if You have opted to receive Export Tariff Payments.

## 1. Information

- 1.1. It is essential that We have complete and accurate information about Your Installation and other issues that relate to Your right to participate in the FiT Scheme and receive payments from Us under this Agreement. For this reason:
- (a) You must ensure that all information (including, as illustrative examples only, any confirmation or declaration set out in this or any other document) that You provide to Us in relation to the FiT Scheme and/or this Agreement is complete and accurate at the time You provide it to Us;
  - (b) You must ensure that if any information You have already provided to Us (including, but not limited to, any declarations and other information in the Application) ceases to be accurate or up to date, You then inform Us in writing of the change as soon as reasonably possible and ensure that We are provided with the correct, updated information, including any appropriate supporting documentation that may be needed to verify the change. Examples, but not in any way an exhaustive list, of some of the particular changes that might occur and that You would need to inform Us about include:
    - (i) any modification to Your Installation which might affect its eligibility or capacity calculation (including reductions or extensions) for the purposes of the FiT Scheme;
    - (ii) any change in the ownership of Your Installation; and
    - (iii) decommissioning.
  - (c) We may ask You from time to time to provide Us with additional information or documents to verify the accuracy of information You have provided previously or to fill in any gaps in the information We need to have about You and Your Installation. We may also ask You from time to time (including the annual check described in clause (d) below) to provide us with a specific confirmation that information held on the Central FiT Register about You and Your Installation is complete and accurate. In any situations of the kind described in this clause, You must respond to Us in writing with the required information, documents or confirmation as soon as reasonably possible;
  - (d) We will contact You annually to confirm that information held in Our records and on the Central FiT Register about You and Your Installation is complete and accurate. In response to this kind of request for an “Annual Declaration”, You must provide Us with accurate and up to date information about You and Your Installation.
- 1.2. When You tell Us about a change to information You have provided to Us previously, We may need to update the Central FiT Register accordingly. The relevant changes will apply from the date on which the Authority confirms they should take effect.
- 1.3. You must ensure that You retain for at least one year any information which You receive from Us, or provide to Us, in relation to the FiT Scheme and/or this Agreement. This includes all the meter readings taken from or supplied by You, including Generation Meter Readings and/or Export Meter Readings supplied to Us under this Agreement, as well as details of all payments made to You under the FiT Scheme.

## 2. Payment

- 2.1. As long as You provide Us with the required Meter Readings in accordance with clause 7.6(b), We will pay You:
- (a) a Generation Tariff Payment; and
  - (b) an Export Tariff Payment,
- each on a Quarterly basis.

Each such payment will be calculated by reference to the applicable “tariff code” (as recorded in the Central FiT Register) and the applicable tariff rate published by the Authority under the FiT Scheme Rules.

- 2.2. For the avoidance of doubt, the amount of any FiT Payments paid to You will be calculated by reference to the FiT Scheme Rules, including the tariff rates published by the Authority under these rules. Where tariff rates are changed by the Authority, or any other changes occur to the FiT Scheme Rules which affect the basis on which FiT Payments are made, the changes will be reflected in the FiT Payments that You are entitled to receive under this Agreement.
- 2.3. If You require that FiT Payments are made to a Nominated Recipient then You must inform Us in writing. We will not start making FiT Payments to the Nominated Recipient until We have all the information that We need to verify that person’s details and update the Central FiT Register accordingly. For the avoidance of doubt, even where FiT Payments are being made to a Nominated Recipient, You will remain fully responsible to Us for complying with this Agreement.

- 2.4. If at any time You wish to change the Nominated Recipient, then You must inform Us in writing. We will then send You a change of Nominated Recipient form for You to complete and return to Us. We will not start making FiT Payments to the new Nominated Recipient until We have all the information that We need to verify that person's details and update the Central FiT Register accordingly.
- 2.5. If a Levelisation Payment is not made by Ofgem or is reduced in any way, We may reduce or withhold a Generation Tariff Payment or Export Tariff Payment from You. If We receive a partial amount in respect of any Levelisation Payment, We will try to pay You a proportionate amount of the Levelisation Payment based on the amount actually received by Us from Ofgem.
- 2.6. We will have the right to reduce or withhold FiT Payments from You or recoup FiT Payments that have already been made in the following circumstances:
  - (a) if it has been identified that there has been an error by the Authority, You or Us which has led to Us making FiT Payments in excess of Your entitlement under the FiT Scheme;
  - (b) if an abuse of the FiT Scheme is identified by the Authority; and/or
  - (c) if We are required by the FiT Scheme Rules and/or any direction given to Us by the Authority to reduce, withhold or recoup FiT Payments from You. Examples (but not an exhaustive list) of when this might apply are where You have failed to provide particular information which is required under the FiT Scheme Rules or where information You have provided is then found to be inaccurate.
- 2.7. If We are notified by the Authority that Your Installation has been suspended or removed from the Central FiT Register or that You have otherwise been suspended from participating in the FiT Scheme, We will have the right to suspend payment of any further FiT Payments unless and until We are told by the Authority that We can re-commence making payments to You (either on the same basis as before, or on a reduced basis, if this is what the Authority requires).

### **3. Switching**

- 3.1. You will have the right to terminate this Agreement at any time if You wish to switch to another FiT Licensee to receive FiT Payments. You must inform Us in writing of Your wish to terminate this Agreement for this reason and provide us with details of the FiT Licensee to whom You wish to switch. You will also need to have applied to Your new FiT Licensee so that it can instigate the switching process by making the necessary changes to the Central FiT Register. We will then participate in the switching process as necessary in order to facilitate the switch to Your new FiT Licensee.
- 3.2. As part of the switching process, You will need to provide Your new FiT Licensee with a Meter Reading (or Meter Readings) for the switch date. The new FiT Licensee will then finalise the switch on the Central FiT Register and provide us relevant Meter Reading(s) for the switch date. We will not have any responsibility for making a final payment to You under this Agreement until We have received the necessary final Meter Reading(s).