

## Power Purchase Agreement (PPA) Terms & Conditions

### 1 Agreement

- 1.1 This PPA agreement comprises of:
- (a) these terms and conditions;
  - (b) any annexed Schedules; and
  - (c) the Quote.
- 1.2 On the Customer's entry into this agreement, the Customer also immediately enters into the Licence.
- 1.3 The terms of the Licence are incorporated into this agreement.

### 2 Sale and Purchase of Solar Energy

- 2.1 The Company agrees to sell, and the Customer agrees to buy the Energy Generation from the SGU and pay the Energy Generation Charges during the Term of this agreement.
- 2.2 The Company agrees to install the SGU in accordance with the SGU Design attached to this agreement, by:
- (a) a CEC Accredited Installer; and
  - (b) in accordance with CEC Design and Install Guidelines and any such criteria applicable to CEC Accredited Installers.
- 2.3 In addition to this agreement, the Company will also be bound by the CEC Solar Retailer Code of Conduct, which contains rules applicable to the sale and installation of solar photovoltaic systems.

### 3 Term

- 3.1 Subject to clause 4.1, this agreement starts on the Start Date and concludes on the earlier of:
- (a) on the End Date; or
  - (b) on the expiry or termination of the Licence agreement; or,
  - (c) on the date of termination of this agreement.

### 4 Renew

- 4.1 The Customer may renew the agreement by sending a notice to the Company 90 days before the End Date indicating the Customer's intention to renew the agreement. The Customer may only renew the agreement once after the Initial Term.
- 4.2 Unless the Company receives notice under clause 4.1: this agreement shall terminate in accordance with clause 3.1(a) and; :
- (a) the Customer remains liable to pay all outstanding Energy Generation Charges and any other outstanding Charges;
  - (b) the Company may terminate the Licence agreement;
  - (c) the Company may remove the SGU from the Premises; or,
  - (d) the Customer may terminate the agreement under clause 24.2.
- 4.3 Where the Company does receive notice under clause 4.1, this agreement shall automatically renew at the End Date for an Operational Term.

### 5 Conditions Precedent – Owner consent

- 5.1 The Company is not obliged to perform its obligations

under this agreement and may terminate this agreement unless:

- (a) it is satisfied that the Customer owns or has the right to occupy the relevant Premises for the Term of the agreement;
- (b) the Customer has a satisfactory credit assessment or, if required, has procured adequate credit support and/or a guarantee from a guarantor in a form acceptable to the Company; or
- (c) the Customer, or the owner of the Premises, has entered into a Licence agreement with the Company.

### 6 Additional Condition Precedent - Pre-installation Consents

- 6.1 The Company is not obliged to perform its obligations under this agreement and may terminate this agreement unless the Customer has obtained each of the following (as required) prior to any date notified by the Company to the Customer as the Target Date:
- (a) the grid connection approval from the local electricity distributor;
  - (b) all other relevant approvals, consents, and permits prior to Installation from the relevant local council/planning authority; and
  - (c) any Body Corporate approval.

### 7 Quality or Quantity of Energy Supply

- 7.1 The Customer acknowledges and agrees that the quantity and quality of the Energy Generation from the SGU may be affected by environmental, site conditions and/or other factors beyond the reasonable control of the Company (including the condition of the SGU) and the Customer accepts that, except to the extent required by law, the Company does not give any specific warranties or guarantees as to the Energy Generation from the SGU in this regard.
- 7.2 If the Customer has knowledge of any potential or actual loss of quality or continuity of Energy Generation from the SGU, it must notify the Company within 14 days of obtaining such knowledge.

### 8 Existing Site Conditions

- 8.1 The Customer must ensure that the Company (together with any vehicle/s and equipment) has safe, convenient and unhindered access to the meter box, switchboard, proposed inverter location and the roof where the SGU is to be mounted during any pre-Installation site inspection and/ or Installation. If there is inadequate access the Customer must inform the Company before the pre-Installation site inspection or, if no pre-Installation site inspection is to be conducted, before the Installation.
- 8.2 If, in the reasonable opinion of the Company, the Premises does not comply with electricity standards imposed by law, the Customer must arrange (at its cost) for a qualified electrician to rectify the fault(s)

at the costs of the Customer. The type of works that an electrician may need to carry out to ensure that the Premises is compliant, may include, but are not limited to, the following:

- (a) rectifying inadequate wiring or existing electrical supply;
- (b) installing a safety switch; or,
- (c) upgrading a switchboard, a meter panel board or works to the meter box where a meter box is non-compliant.

8.3 The Customer must ensure that the roof area of the Premises where the SGU is to be installed:

- (a) is structurally sound and large enough to accommodate the size and weight of the SGU and mounting base/frames; and,
- (b) has suitable north, north east or north-west aspect to accommodate the SGU.

8.4 Where, in the reasonable opinion of the Company, the existing site conditions renders it unsafe, non-compliant or illegal or uneconomical to carry out the Installation and the Customer fails to rectify the condition within fourteen (14) days of being notified by the Company, the Company may terminate this agreement and the Customer shall pay reasonable costs of the Company incurred for the works performed in accordance with this agreement.

## 9 Testing and Commissioning

9.1 The Company shall test/commission the SGU onsite to confirm that it is compliant with manufacturer's specifications and to ensure the SGU is fully operational.

## 10 Target Date

10.1 The Company will use reasonable endeavours to deliver and install the SGU at the Premises on the Target Date.

10.2 The Customer agrees, however, that:

- (a) the Target Date is only a target and not a strict deadline; and
- (b) the Company will not be liable to you if it fails to deliver and install the SGU at the Premises by the Target Date.

10.3 The Company will notify the Customer if it does not think it can deliver and install the SGU at the Premises by the Target Date, and give the Customer a new Target Date.

10.4 If the Company has not delivered and installed the SGU at the Premises within four (4) weeks after the original Target Date, the Customer may terminate this agreement and, the Company shall be liable to pay the Customer any refund required under clause 11.1(a) and may collect any component of the SGU remaining on the Premises (if any).

## 11 Refund

11.1 If the Customer has paid the Company any fees and charges under this agreement, but the agreement

ends for any of the following reasons before the Company installs the SGU at the Premises, then the Company will promptly refund the money the Customer has paid:

- (a) if the Company has not delivered and installed the SGU at the Premises within four (4) weeks after the original Target Date, and the Customer chooses to end the agreement under clause 10.4;
- (b) if the Company gives the Customer notice of an Increased Price Event prior to the Target Date, and the Customer chooses to end the agreement rather than accept the price increase; or
- (c) Grid Connection Approval is refused.
- (d) If any of the equipment quoted is unattainable and the Customer does not agree to equipment of a similar quality to be substituted.

## 12 Government Rebates and STC Incentive

12.1 The Customer acknowledges and agrees that as a pre-condition of entering into this agreement it assigns all of existing and future rights, title and interest in and to all STCs created or able to be created in respect of the SGU and any environmental rights it is eligible to create to the Company (including its agents, assigns or Related Bodies Corporate).

12.2 By signing this agreement the Customer agrees to appoint the Company as its agent for the purposes of completing any Assignment Form and assigning its rights under clause 12.1 to the Company or any other person nominated by the Company. If requested by the Company, the Customer shall complete the Assignment Form provided. The Company may terminate this agreement if the Customer does not complete the Assignment Form and submit it to the Company.

12.3 The Company has calculated the STC Incentive based on:

- (a) the maximum quantity of STCs that can be created in respect of the SGU under law, taking into account the Site-Specific Performance Estimate; and
- (b) the monetary value of that quantity of STCs.

12.4 The Customer warrants that the Customer has not previously created, or assigned the right to create, any STCs in respect of the SGU or any other solar photovoltaic generating unit at the Premises. The Customer gives the Company the warranty in this clause 12.4:

- (a) when the Customer accepts the offer set out in the Quote; and
- (b) again on the Installation Date.

## 13 Post-Installation of the SGU

13.1 The Customer acknowledges and agrees that:

- (a) the SGU will be situated at the Premises;
- (b) the Company owns the SGU;
- (c) unless the customer otherwise notifies the Company in writing within seven (7) days after the Installation

- Date, the Customer shall be deemed to be satisfied with the installation of the SGU and the items listed within the Customer Satisfaction Sheet;
- (d) the Customer grants to, or must procure the grant to, the Company a licence to use and access the Premises to allow the Company to install, maintain and operate the SGU;
  - (e) the Customer must not purport to sell or grant security over the SGU;
  - (f) the Customer consents to the Company taking steps to protect its ownership, including placing notices at or near the SGU and noting its interest on corporate or property registers;
  - (g) the SGU is properly characterised as a fitting which is able to be removed from the Premises without damage or loss of essential utility to the SGU, or to the fabric and integrity of the Premises themselves, and is not a fixture;
  - (h) the SGU has been made available temporarily for the supply of Energy Generation to the Customer and is not a permanent or substantial improvement of the Premises;
  - (i) the Customer will ensure the SGU remains connected to internet at all times;
  - (j) the Company may carry out remote access, update, analysis, monitor, testing or other such works necessary for the provision of services on the SGU; and
  - (k) unless the Customer elects to exercise its option to purchase the SGU on termination of this agreement, the Company has the right to take re-delivery of the SGU for re-assembly, potential re-use or sale following expiry or termination of the agreement.

#### 14 Personal Property Securities

- 14.1 If the Company determines that this agreement (or a transaction in connection with it) contains or gives rise to a registrable security interest for the purposes of the PPSA, the Company may, make a registration under the PPSA for whatever collateral class it thinks fit. The Customer consents to any such registration or notification.

#### 15 Energy Generated by the SGU

- 15.1 The Company has calculated the Site-Specific Performance Estimate for the SGU and the Premises in accordance with the CEC System Design Guidelines.
- 15.2 The Company agrees to sell and the Customer agrees to purchase, during the Term, the Energy Generation by the SGU.
- 15.3 The Energy Generation may be calculated by the Company in any of the following ways:
- (a) by reading the meter integrated to the inverter of the SGU;
  - (b) where reading in accordance with Clause 15.3(a) is not available, by measurement using a SGU Metering Device (if applicable) located at the Premises; or,

- (c) by estimating the amount of energy produced based on:
  - (i) the specifications of the SGU;
  - (ii) the prevailing site conditions at the Premises where the SGU is located;
  - (iii) the location of the SGU; and,
  - (iv) any other relevant information.

#### 16 SGU Metering Devices

- 16.1 The Company may at its cost install an SGU Metering Device at the Premises.
- 16.2 Where the SGU Metering Device is installed, the Customer must:
- (a) allow the Company to install, operate and maintain the SGU Metering Device at the Premises;
  - (b) if required, to the extent such a connection is available, provide an internet connection for the SGU Metering Device;
  - (c) allow access to an SGU Metering Device at all reasonable times to any employee, agent or contractor of the Company;
  - (d) not damage or interfere in any way with a SGU Metering Device or permit any energy consumption from the SGU that is not recorded by the SGU Metering Device;
  - (e) not mortgage, charge or otherwise deal with the SGU Metering Device inconsistently with the rights of its owner;
  - (f) must notify the Company as soon as possible if it suspects that the SGU Metering Device(s) is, or may become, defective, damaged or operating in accurately;
  - (g) may (acting reasonably), at any time by notice, require the Company to make arrangements to test the SGU Metering Device(s); and,
  - (h) allow the Company (or its agents) to read the SGU Metering Device(s) at appropriate intervals.
- 16.3 the Company must arrange to have an SGU Metering Device tested if it receives a notice from the Customer under sub-clauses 16.2(f) or (g), in which case:
- (a) the Customer must pay the cost of testing the SGU Metering Device; or,
  - (b) if testing reveals the SGU Metering Device is not operating properly, the Company must reimburse the Customer the cost of testing the SGU Metering Device by way of adjustment in the Customer's next invoice and adjust any invoices rendered in accordance with the correct reading on the SGU Metering Device.
- 16.4 the Company is not required to adjust the Customer's invoices to the extent that the Customer or any third party caused the relevant inaccuracy of the readings and the adjustment would cause the Company loss.
- 16.5 The Company must arrange, at its cost, to replace or repair a SGU Metering Device if it is not operating within the manufacturer's specifications.
- 16.6 The data recorded by the meter integrated to the

Inverter of the SGU (or an SGU Metering Device where applicable) will be prima facie evidence of the amount of Energy Generation which the Company sells to the Customer and the basis for calculation of the Charges.

## 17 Charges

17.1 For an Invoicing Period, the Customer must pay the Charges to the Company. The Charges may comprise any or all of the following:

- (a) According to the election of the Company in the Quote:
  - (i) Fixed Energy Charge; or
  - (ii) Energy Generation Charge calculated by multiplying Energy Generation with Energy Generation Rate;
- (b) Late Payment Fee;
- (c) Direct Debit Dishonour Payment Fee;
- (d) Credit Card Processing Fee;
- (e) Internet Access Fee, where internet access is provided to the customer by the Company for the purpose of providing services under this agreement. The Company has no obligation to provide the Customer with an internet connection but may do so in its absolute discretion; or
- (f) any other fee payable in accordance with this agreement.

17.2 Late Payment Fee, Direct Debit Dishonour Payment Fee and Credit Card Processing Fee are or will be based on the costs the Company incur as a result of receiving card payments, issuing paper bills, reconnecting the SGU, processing payments and late payments. As a result, the Company may change these fees if these costs change.

17.3 The Company shall, upon receiving a written request from the Customer, review the basis of any estimates, allocations or pro-rata assessments used in determining such Charges or revise the rates of such Charges.

17.4 In the event of an SGU fault (not due to the act or omission of the Customer or a party other than the Company), the Company will reduce the Charges for each day there is an SGU fault by an amount calculated in one of the following ways:

- (a) in the case of total failure of the SGU:
  - (i) if the Customer is on a fixed monthly charge contract, the Charges will be reduced by an amount equal to:

$$\frac{1}{\text{total number of days in that month}} \times \text{Fixed Energy Charge per month as specified in the Quote}; \text{ or}$$

- (ii) if the Customer is not on a fixed monthly charge contract, the Charges will be reduced by an amount equal to:

$$\text{Energy Generation Rate} \times \text{total capacity of the SGU};$$

or

- (b) in the case of partial failure of the SGU, the Charges will be reduced by an amount equal to:

$$\text{Energy Generation Rate} \times \text{total capacity of the SGU}.$$

The amount the Charges are reduced each day in accordance with this clause 17.4 shall not exceed the amount the Company is entitled to charge the Customer under clause 17.1(a) for that day. This clause 17.4 shall apply until the SGU fault is rectified by the Company.

17.5 Unless expressly stated otherwise, all amounts under this agreement are stated as GST exclusive amounts. If any GST is or becomes payable in respect of a Taxable Supply of goods or services under this agreement, the Charges payable by the Customer for that Taxable Supply of goods or services will be increased by an amount equal to the GST payable. The Company must provide the Customer with a Tax Invoice in respect of any Taxable Supply under this agreement.

## 18 Changing the Charges

18.1 The Energy Generation Rate will be increased according to the Fixed Review Rate in accordance with the Quote.

18.2 The Company may adjust the Charges at any time prior to the Expiry Date if there is an Increased Cost Event, by an amount necessary to recover all of the Company's costs arising as a direct or indirect result of the Increased Cost Event.

18.3 The Customer agrees that the Company may change the terms of this agreement to the extent reasonably required by a change of law.

18.4 The Company will give the Customer notice of the Increased Cost Event, and the date that the new charges will apply as soon as practicable.

## 19 Invoices & Payment

19.1 The Company will prepare and issue an invoice to the Customer on a regular basis but no more once per calendar month.

19.2 An invoice may be in respect of one or more goods or service.

19.3 Invoices may be issued, at the Company's election:

- (a) in hard copy, sent by mail;
- (b) by email; or
- (c) via an electronic billing platform nominated by the Company.

19.4 Each invoice prepared by the Company must include:

- (c) the period to which the invoice applies;
- (d) the Charges payable for the period;
- (e) sufficient information to enable the Customer to verify the Charges;
- (f) a statement that it is a Tax Invoice and the amount of GST payable; and
- (g) the due date for payment.

19.5 The due date for payment of an invoice will be set by reference to the payment terms set out in the Quote (or, if none is set out, 14 days from the date of the invoice). The Customer must pay the Company the Charges set out in an invoice by the due date for payment, provided that a payment due on a day that is not a Business Day may be paid on the next Business Day. Any failure by the Customer to pay the Charges by the due date for payment may result in termination of this agreement in accordance with clause 24.1.

19.6 The Customer must pay each invoice by direct debit or electronic transfer of cleared funds to the bank account nominated by the Company or via an electronic billing platform nominated by the Company. The Customer will only be considered to have made a payment once the Company, or an agent authorised to accept payments on behalf of the Company, receives the payment in cleared funds. Direct Debit Dishonour Payment Fee and Credit Card Processing Fee may be applicable in accordance with the rate set out in the Quote

19.7 The Customer must pay a Late Payment Fee for any payment made after the due date of an Invoice

19.8 If the Customer disputes the amount of an invoice, the Customer must:

- (a) provide the Company with notice of the amount in dispute and the reasons for the dispute as soon as possible; and
- (b) if the dispute is not resolved before the due date for payment of the relevant invoice, pay to the Company (by the due date for payment) the whole invoice amount.

19.9 If the Company believes there is an error in an invoice, or receives information relevant to an invoice after sending it to the Customer, the Company may adjust the invoice (whether paid or not) and send a replacement or adjustment invoice to the Customer or credit the Customer's account.

19.10 If the Customer does not pay an invoice in full by the due date for payment, then, in addition to any other right it may have under this agreement, the Company may require the Customer to pay interest on the unpaid amount and compensate the Company for any costs incurred in recovering the unpaid amount. Interest on outstanding amounts will:

- (a) be at a rate equal to the Westpac Banking Corporation Overdraft Business Rate plus 5%, compounded monthly; and,
- (b) accrue on a daily basis from the due date for payment until the date the Company receives payment in full.

## 20 Warranties

20.1 The Customer represents and warrants to the Company, and the Company represents and warrants to the Customer, that each of the following statements is correct and not misleading in any

material respect on the date of this agreement and will be correct and not misleading in any material respect:

- (a) it has the power, without any further consent of any other person, to enter into and perform its obligations under this agreement;
- (b) it has in full force and effect the authorisations necessary for it to enter into this agreement and each document to be executed at or before the Effective Date to which it is a party, to comply with its obligations and exercise its rights under them and to allow them to be forced;
- (c) its obligations under this agreement are valid and binding and enforceable against it;
- (d) this agreement and the performance of its obligations under it do not contravene its constitution or any law or regulation by which it is bound or cause a default under any agreement, undertaking or other obligation by which it is bound; and
- (e) it is not Insolvent.

20.2 The Customer warrants that it:

- (a) is the occupier of the Premises for the Term and will, as soon as it becomes aware, notify the Company of any changes to its occupancy;
- (b) has, to the extent that it is able to do so, obtained all necessary approval from any Body-Corporate, government body or tenant required to ensure that the SGU can be installed on the Premises and, where relevant, connected to the Network.
- (c) the SGU is not the subject of any third-party security granted by the Customer;
- (d) will ensure that the conditions of the Premises remain at all times conducive to maintain the Energy Generation from the SGU;
- (e) must not alter, remove, interrupt or otherwise interfere with the SGU or any part of it, or allow any other party to do so, without written consent of the Company;
- (f) will not allow any party to install any other power generation, energy storage system, or other devices, or execute any agreements with a third party which may reasonably impact the normal functioning of the SGU without the prior written consent of the Company; and
- (g) will take out and maintain appropriate insurance with a reputable insurance company, which insurance covers the SGU for no less than its replacement value and which notes the Company as an interested party.

## 21 Guarantees

21.1 Subject to clause 21.2, the Company guarantee:

- (a) our workmanship, and the workmanship of the Company's contractors, in installing the SGU; and
- (b) the operation and performance of the SGU, will be free from fault or defect for the 5 years or the term of this agreement, whichever is longer, commencing on the date the SGU is installed (Guarantee Period), and we will repair any such default or defect notified to the Company within the

Guarantee Period, including by replacing all or part of the SGU where necessary, within a reasonable timeframe at no cost to the Customer.

21.2 The guarantee in clause 21.1 will not apply where:

- (a) the fault or defect is not notified to the Company within the Guarantee Period; or
- (b) the fault or defect is a result of:
  - (i) something done by the Customer or someone else, and not the Company or the Company's contractors; or
  - (ii) something beyond the Company's reasonable control that occurred after installation;
  - (iii) the SGU being damaged after installation;
  - (iv) the SGU being maintained other than by the Company in accordance with the Safety and Maintenance Documents; or
  - (v) the SGU being repaired, modified, reinstalled or repositioned by anyone other than a service technician approved by the Company in writing.

21.3 The guarantee in clause 21.1 is additional to any other guarantee or warranty the Customer may have:

- (a) from the manufacturer of the SGU; or
- (b) under any applicable law, including the Australian Consumer Law, although these other guarantees and warranties may not cover labour costs, travel costs and delivery costs arising from a claim under these other guarantees and warranties. The Company will notify the Customer if this is the case, and tell the Customer the costs payable. The costs will be payable in advance.

21.4 During the Guarantee Period, the Company will provide reasonable assistance to the Customer in making any guarantee or warranty claim against the manufacturer of the SGU, including by acting as the Customer's liaison with the manufacturer.

## 22 Implied Warranties

22.1 If any condition or warranty is implied into this agreement by law (including by any statute), then the Company's Liability (if any) for breach of that condition or warranty in connection with any goods or services supplied or to be supplied by the Company under this agreement (that are not of a kind ordinarily acquired for personal, domestic or household consumption), is limited, as far as the law permits and at the Company's option, to resupplying the goods or services or paying for their resupply.

22.2 Nothing in this agreement is to be taken to exclude, restrict or modify any condition or warranty that the Company is prohibited by law from excluding, restricting or modifying. All other conditions and warranties, whether or not implied by law, are excluded.

## 23 Dispute Resolution

23.1 If a dispute arises under this agreement in relation to an obligation to be performed by any party which cannot be settled by negotiation within 30 days after commencing negotiation, then any party may give written notice to the other parties declaring that a dispute exists. The notice must set out the details of the dispute and the steps taken to resolve the

dispute.

23.2 The parties must use their reasonable endeavours to resolve the dispute by negotiation.

23.3 No party may commence legal proceedings concerning a matter in dispute (other than for the purpose of seeking urgent injunction or declaratory relief) unless the parties have attempted to resolve the dispute in accordance with sub-clauses 23.1 and 23.2.

23.4 Notwithstanding the existence of a dispute, then unless this agreement is terminated, the parties must continue to perform its obligations under this agreement.

23.5 Each party must bear its own costs incurred for resolving the disputes in accordance with Clause 23.1 and 23.2.

## 24 Termination

24.1 The Company may terminate this agreement:

- (a) by providing the Customer with 14 days' notice if any of the following occur:
  - (i) the Customer breaches any warranties under clause 20;
  - (ii) the Customer failed to pay any invoices due and payable under this agreement within 7 days;
  - (iii) the Customer becomes Insolvent; or
  - (iv) the Customer breaches any material provision of this agreement and, if the breach is capable of remedy, the Customer has not remedied that breach within 14 days of notification by the Company; and

24.2 immediately if any of the following occur:

- (i) the Company (acting reasonably) believes the Customer has provided the Company with false or misleading information concerning a material aspect of this agreement, including information regarding the ownership or occupation of the Premises, the Customer's energy consumption or the Customer's credit position; or
- (ii) the Licence to install the SGU on the Premises, expires or is terminated.

24.3 The Customer may terminate this agreement by providing the Company with 14 days' notice of termination and paying the Buy-Out Charge.

## 25 Remedy for Termination

25.1 Where this agreement is terminated pursuant to clauses 24.2 or 28.4, the Company may elect to:

- (a) Sell the SGU to the Customer, and the Customer must buy the SGU, at the Buy Out Charge as specified in the Quote. Upon payment of the Buy Out Charge, the Company will procure the transfer of ownership of the SGU to the Customer; or
- (b) Remove the SGU from the Premises, in which event, the Customer must do all things necessary to allow the Company to access the Premises for the purpose of the removal.

25.2 Where this agreement is terminated pursuant to clause 24.3 the Company will transfer the ownership of the SGU to the Customer upon receiving the Buy Out Charge as specified in the Quote.

25.3 Where Buy Out Charge is payable by the Customer, the Customer shall pay the Buy Out Charge for the relevant year in accordance with the amount specified in the Quote without apportioning the Buy Out Charge of the period in accordance with the date that this agreement is terminated.

## 26 Personal Guarantee

- 26.1 In the event that the Customer's credit check reveals an unsatisfactory result, the Company may require a guarantor to guarantee Customer's performance of the obligations under this agreement.
- 26.2 In consideration of the Company entering into this agreement with the Customer, the guarantor guarantees the performance by the Customer of all of their obligations under the contract and indemnify the Company against any cost or loss whatsoever arising as a result of the default by the Customer in performing the Customer's obligations under this contract for whatever reason.
- 26.3 The Company may seek to recover any loss from the guarantor before seeking recovery from the Customer and any settlement or compromise with the Customer will not release the guarantor from the obligation to pay any balance that may be owing the Company. This guarantee is binding on the guarantors, their executors, administrators and assigns and the benefit of the guarantee is available to any assignee of the benefit of this contract with the Company.

## 27 Preservation of Rights

- 27.1 On the expiry or termination of this agreement, each Party will retain any rights it may have against the other for any past breach of the agreement or in respect of any amounts payable to it under this agreement.

## 28 Force Majeure

- 28.1 If a Force Majeure Event occurs and prevents a party from performing any of its obligations under this agreement (the "Affected Party"), then the Affected Party must notify the other parties as soon as possible of the nature of the Force Majeure Event, the time of its commencement and likely duration and the extent to which the Affected Party is prevented from performing its obligations.
- 28.2 An Affected Party's obligations under this agreement are suspended to the extent that the Affected Party is prevented from performing them by a Force Majeure Event. However, a Force Majeure Event will not suspend any obligation of a party to make a payment to the other party.
- 28.3 An Affected Party must endeavour to overcome the effects of a Force Majeure Event, provided that:
- (a) nothing in this clause will require the Affected Party to settle any industrial dispute; and,
  - (b) performance of an Affected Party's obligations must

recommence once the relevant Force Majeure Event has been rectified or ceases to exist.

- 28.4 If a Force Majeure Event continues for more than 6 weeks, either party may terminate this agreement by giving at least 14 days notice to the other party.

## 29 Liability

- 29.1 Except as otherwise provided for in this agreement, the Company has no Liability for any loss or damage the Customer suffers arising as a consequence of, or in connection with the supply, control or use of energy at the Premises, unless and to the extent that the Customer's loss or damage is directly caused by a breach of this agreement or by the wilful or negligent act or omission of the Company.
- 29.2 Each party shall mitigate any damages or loss suffered or incurred as a result of any breach of this agreement by any other party.
- 29.3 The Company has no Liability to the Customer for:
- (a) any indirect or consequential losses or damages of any kind; or
  - (b) any Economic Loss.
- 29.4 So far as the law allows and subject to clauses 29.1 or 29.3, the Company's Liability to the Customer arising out of or in connection with this agreement is limited to loss, damages, costs, charges and expenses directly sustained or incurred by the Customer as a result of:
- (a) personal injury to the Customer or its employees or agents; or,
  - (b) damage to the property of the Customer or its employees or agents, caused by the Company's breach of this agreement or negligent act or omission, up to a maximum of \$10,000 per event.
- 29.5 The Company's liability to contribute towards any rectification of the SGU due to hail or flooding damage is \$5,000.

## 30 Financial Information

- 30.1 The Customer agrees to authorise the Company to perform any searches or credit checking including the use third-party credit reporting services.

## 31 Confidentiality

- 31.1 The Customer, its officers, employees, agents, contractors and advisors must not disclose any Confidential Information.
- 31.2 Nothing in this clause will prevent the Customer disclosing Confidential Information in circumstances where disclosure is:
- (a) required by law;
  - (b) required for the Customer to carry out its obligations or exercise its rights under this agreement;
  - (c) to the Customer's officers, employees, agents, contractors and related bodies corporate (limited to the extent those persons are required to have access to such Confidential Information);
  - (d) to potential buyers of the Customer's business or potential assignees of this agreement;

- (e) required by a recognised stock exchange of which the Customer is a member;
- (f) to the Customer's legal or other professional advisers; or
- (g) with the prior written consent of the Company.

### 32 Personal Information

- 32.1 The Company may collect and disclose personal information (as defined in the Privacy Act 1988 (Cth)) about the Customer in accordance with its Privacy Policy Statement.
- 32.2 The Company may also disclose personal information about the Customer where disclosure is:
- (a) required to verify the creditworthiness of the Customer or for the purposes of recovering any amounts owed by the Customer under this agreement; or,
  - (b) required for the Company to carry out its obligations or exercise its rights under this agreement.

### 33 Notices

- 33.1 Notices under this agreement must be in writing and given by hand or sent by email to the email addresses specified in this agreement. Any change in the address or notice details of a party must be advised in writing to the other party.
- 33.2 A notice sent in accordance with this clause will be deemed received by the recipient:
- (a) in the case of delivery by hand, on the date of delivery; or
  - (b) in the case of email, the date when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- 33.3 The Company may, by notice to the Customer, nominate an electronic platform for giving notices, provided that the platform is readily accessible via internet connection and provides for the exchange of text-based communications. If the Company nominates a platform, then notices under this agreement must be in writing and given via the platform.

### 34 Assignment

- 34.1 The Customer may only assign its rights and obligations under this agreement with the Company's prior written consent. The Company may require that reasonable conditions be met before providing its consent.
- 34.2 The Customer hereby grants its unconditional consent to the assignment by the Company of any or all of its rights or obligations (including a novation of all of the Company's rights and obligations) under this agreement. The Customer agrees to sign any documentation necessary or convenient to give

effect to this transfer or novation.

- 34.3 The Company may assign the rights and obligations under this agreement by providing written notice to the Customer thirty (30) days prior to the date of assignment and the Customer agrees to consent to such assignment provided that the terms of this agreement is not materially changed.

### 35 Laws

- 35.1 The laws in force in New South Wales govern this agreement and each party submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales.
- 35.2 The parties acknowledge that the laws of a Jurisdiction may impose certain requirements on the form or content of agreements within the Jurisdiction. To the extent that this agreement is inconsistent with such laws, the terms of this agreement will be deemed amended to the extent necessary to comply with those laws.
- 35.3 This agreement is covered by the Australian Consumer Laws and is separate to the Customer's contract with their electricity retailer and distributor which are covered under the National Energy Retail Law. For further information about your consumer rights please go to <https://consumerlaw.gov.au/consumers-and-acl>

### 36 Complaints

- 36.1 The Customer may make a complaint relating to the SGU, installation or matters arising out of this agreement by contacting us via the telephone number set out in the Quote or give us written notice by post, email or facsimile.
- 36.2 Where the Company agreed to be bound by the CEC Solar Retailer Code of Conduct, then these procedures will comply with that Code, and the Australian Standard on Complaints Handling AS ISO 10002-2006.
- 36.3 If the Customer is not satisfied with the outcome of the complaint, the Customer can refer the complaint to with the relevant Fair Trading or Consumer Affairs office in the Customer's state, as follows:

NSW: Fair Trading  
Phone: 13 32 20

Qld: Office of Fair Trading  
Phone: 13 74 68

### 37 Consumer Credit

- 37.1 This arrangement is not regulated by the *National Consumer Credit Protection Act 2009 (Cth)* ("the NCCP Act"). As a result:
- (a) if you have a complaint about the arrangement, you may not have access to the services of an external dispute resolution scheme that has been approved by ASIC. This means that you may have to go to court to resolve a dispute with the provider;



- (b) if you have trouble paying the periodic payments required under the arrangement:
- (i) you may not have the right to ask the provider for a hardship variation to help you get through your financial difficulty.
- (ii) The provider may take action against you for non-payment without giving you an opportunity to remedy the default."

### **38 Interpretation**

38.1 In this agreement a reference to:

- (a) any law will be read as a reference to that law as amended, consolidated, supplemented or replaced and any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
- (b) a document includes any variation or replacement of it;
- (c) a person, includes an individual, firm, body corporate, an unincorporated association or an authority; and
- (d) the words "include", "includes" and "including" means "including without limitation".
- (e) If a provision of this agreement is invalid or unenforceable in a Jurisdiction:
  - (i) it is to be read down or severed in that Jurisdiction to the extent of the invalidity or unenforced ability; and
  - (ii) it does not affect the validity or enforceability of that provision in any other Jurisdiction or of the remaining provisions.
- (f) A waiver by a party of a provision or a right under this agreement is binding on that party only if it is given in writing. A failure by a party to exercise a right, or a delay in exercising a right, does not operate as a waiver of that right or otherwise prevent the party exercising that right.
- (g) This agreement may be executed in counterparts. All counterparts together will be taken to constitute one

instrument.

- (h) This agreement, together with the Schedule(s), and any documents referred to in this agreement, is the entire agreement of the parties about the subject matter of this agreement and supersedes any prior representations, negotiations, arrangements,
- (i) understandings or agreements and all other communications.
- (j) The Schedule(s) will prevail over these terms and conditions to the extent of any inconsistency.
- (k) Any words used in this agreement and not otherwise defined will bear their normal meaning in the context they are used.

### **39 Changing this Agreement**

39.1 The Company reserves the right to revise, update, change, modify, add to, supplement, or delete any terms and conditions of this agreement for any reason in the Company's absolute discretion.

39.2 The Company will give the Customer 14 days' notice of any change to the terms and conditions of this agreement. You can also always find the most up-to-date version on our website.

39.3 If the Customer does not terminate this agreement by the date which is 14 days after the date the Company sends the notice under clause 39.2, the Customer will be deemed to have accepted all changes under that notice and will be bound by the new terms and conditions.

### **40 Glossary**

40.1 The definitions contained in Schedule 5 - Glossary form part of this Agreement.

## Schedule 1 – Direct Debit

### Authorisation

- I. The Customer acknowledges and agree that by signing the Quote:
  - they have provided the Company with a valid instruction and authorisation (Direct Debit Request – DDR) to arrange for funds to be debited from their account, the details of which were provided in the Quote, an amount (determined in accordance with the confirmation letter the Customer received with this agreement) which the Company [(User ID Q.23279)] may debit or charge the Customer through the PAYWAY until the end of the Power Purchase Agreement but subject to the terms and conditions contained in this Schedule.
  - the Customer has verified that the details of the nominated bank account it provided to the Company are correct and complete.
  - the Customer has granted consent to allow the Company to contact the Financial Institution to release information allowing the Company to verify the Customer's bank account details.
  - this authorisation is to remain in force in accordance with these terms and conditions
  - this agreement will supersede any prior payment arrangements the Customer may have entered into with the Company.

### Our commitment to you

- II. The Company:
  - will provide you with at least 14 days written notice if any terms of the payment arrangement are to change.
  - where the direct debit due date falls on a non-banking day, we may direct the Financial Institution to debit the Nominated Account on the following banking day.
  - will keep all information about the Customer's Nominated Account private and confidential, only to be disclosed at the request of the Customer, or their Financial Institution in connection with a claim made to an alleged incorrect or wrongful debit. By signing the Quote the Customer gives the Company consent to use the Personal Information (as defined by the Privacy Act 1988) for any purpose in connection with this agreement.
  - will deduct payment, to a maximum of the amount due on the Customer's account, at the

due date of their direct debit unless otherwise specified.

- if there is an amount outstanding on the account on the date the DDR starts, the Company will deduct that amount on or after that date, which may be before the first due date of the direct debit, unless otherwise agreed with the Customer.
- will cancel the DDR if the Customer is no longer a customer of the Company after the final bill has been deducted. The Company may also cancel the DDR by written notice.

### Your rights

- III. The Customer:
  - may terminate the DDR at any time by calling or writing to notify the Company at least 4 business days prior to the next payment date and the Company will cease to rely on the DDR. If the Customer notifies the Company of the termination of the DDR, the Company will use its reasonable endeavours to notify the Customer's Financial Institution as soon as the Company can after the cancellation.
  - may stop a particular payment or change the amount and/or frequency of the payment schedule by calling or writing to notify the Company at least 10 business days prior to the date the next payment is due.
- IV. Where the Customer considers a payment has been initiated incorrectly, or there is a discrepancy in a payment amount, they must contact the Company immediately so the Company can address the query.
- V. If at any time the Customer wishes to change their Nominated Account or personal details, please advise the Company in writing at least 10 business days prior to the date the next payment is due.

### Your commitment to us

- VI. The Customer:
  - must ensure the Nominated Account information supplied is correct and that sufficient funds are available in the Nominated Account. The Company may charge a dishonor fee if there are insufficient funds in the Nominated Account to cover the payment of the

debit amount.

- must advise the Company in writing if the Nominated Account, is transferred, closed or altered in such a way that it will hinder an electronic funds transaction. If the Nominated Account is transferred, terminated or altered in such a way that it will hinder an electronic funds transaction the Customer will be required to complete and return a new DDR.
- must ensure the Nominated Account can accept direct debits through the PAYWAY. Direct debit through PAYWAY is not available on all financial institution accounts. (It is recommended that you discuss the concept of direct debits with your Financial Institution or an appropriate adviser if

you have any queries regarding the process).

- The Customer must arrange a suitable alternate payment method should the DDR be cancelled. In the event of an unsubstantiated or inappropriate chargeback for payment, the Customer may be charged a fee by the Company.
- VII. If the Customer terminates the DDR by notification to their Financial Institution, the Customer must use its best endeavours to notify the Company as soon as possible after the cancellation.

#### **Contact us**

If you have any enquiries regarding stops, cancellations, or require payment assistance, please don't hesitate to contact us on [customer@powow.com.au](mailto:customer@powow.com.au)

## Schedule 2 – Licence

### Grant of Licence

- (b) The Licensor grants and the Company accepts, from the Start Date, a Licence of the Area for the Licence Term on the following terms and conditions.
- (c) The parties acknowledge and agree that:
- the Company owns the SGU;
  - the Licensor must not purport to sell or grant security over the SGU; and
  - the Licensor consents to the Company taking steps to protect its ownership, including placing notices at or near the SGU and noting its interest or corporate or property registers.

### Building Works

- (d) The Licensor:
- agrees to sign all documents and consents necessary to enable the Company to install and operate the SGU.
  - consents to the Company and any persons authorised by the Company to enter the Land for the purpose of installing, maintaining and repairing the SGU.
  - acknowledges that the Company must run such above or below ground cabling, wiring, piping, earthing straps, conduit and support structures over the Land or within or upon the Area as are necessary from the SGU to the electricity box installed on the Land (the cabling area), but in doing so the Company must not cause any material damage to the Land or material interference with the Licensor.
  - acknowledges that the Company may install and operate associated infrastructure including fencing, CCTV, metering and inverters and will permit such associated infrastructure to remain at all times during the Licence Term.
  - agrees to sign any documents necessary to enable the Company to grant a security interest over the SGU for the Licence Term.
- (e) The Company:
- agrees that in the event that the cabling or associated infrastructure referred to in clause (c) is damaged in any way by the Company, the Company must promptly repair and make good all damage. The Licensor agrees that in the event that the cabling or associated infrastructure referred to in clause (c) is damaged in any way by the Licensor, the Licensor must promptly repair

and make good all damage.

### Renewable Energy Certificates

- (f) The Licensor acknowledges that it does not intend to create Renewable Energy Certificates under the *Renewable Energy (Electricity) Act 2000*, and unconditionally undertakes to assign, and is deemed to have assigned to the Company (or at the Company's direction), its rights (if any) to create any Renewable Energy Certificates in relation to the SGU constructed in accordance with this Licence.

### Use of Area

- (g) The Company will use the Area for the purpose of installing, maintaining and operating the SGU.
- (h) The Company must comply promptly with any Statute in respect of the Company's use of the Area and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Area or the use of the Area. The Company accepts no liability for structural alterations unless caused or contributed to by the Company's use or occupation of the Area.

### Access to the Area

- (i) The Licensor consents to the Company and persons authorised by the Company with or without materials, plant and other apparatus and vehicles entering the Land for the purpose of maintaining and repairing the SGU and the cabling and exercising its rights under this Licence during the Term, upon the Company giving the Licensor forty eight (48) hours' notice.
- (j) The Company:
- will when gaining any access to the Area comply with the proper and reasonable directions of the Licensor.
  - must use all reasonable endeavours to maintain the Licensor's security arrangements in respect of the Land and must observe the Access Arrangements and all reasonable directions issued by the Licensor in respect of the security of the Land outside normal business hours.

### Fee

- (k) The Licensor grants the Licence in consideration of a Licence Fee the receipt of which is acknowledged and in consideration of the Company's obligations under this Licence.

## Maintenance and Insurance

### (l) The Company:

- must, during the term of the Licence, effect public risk insurance and industrial special risk insurance in relation to the SGU, the details of which are set out in the terms of the Licence.
- discloses that the insurance effected pursuant to this clause does not include damage to the SGU by hail or flooding and the maximum amount the Company will be required to contribute towards any rectification of the SGU due to hail or flooding damage is \$5,000. The Company may elect at its discretion to contribute more towards rectification of the SGU. Further, if a hail or flooding event occurs which results in rectification works being required, then, the Company reserves the right to terminate this Licence.
- may remotely monitor the SGU and will from time to time inspect the SGU. The Licensor agrees to give all reasonable assistance required by the Company to enable it to diagnose or resolve any technical failures which may occur in the SGU.

### (m) The Licensor:

- must use best endeavours to notify the Company within twenty four (24) hours of becoming aware of any damage to the SGU to enable the Company to repair such damage.
- shall be liable for any direct or indirect losses caused by, or arising from, any act or omission of the Licensor.
- owes a duty of care to the Company and warrants that it shall use its best endeavours to ensure that any Development relating to the Land does not adversely affect the performance of the SGU during the term of this Licence. For purpose of this clause the term Development shall have the same meaning as defined in the *Environmental Planning and Assessment Act 1979 (NSW)*.

### (n) Where the Licensor requires removal and/ or re-installation of the SGU to facilitate repair or refurbishment to any premises, building, structure or property located in the Area, then it shall cause written notice to be sent to the Company prior to any removal or and/ or re-installation of the SGU. Any costs associated with the removal and/or re-

installation of the SGU shall be borne by the Licensor.

## Sale of the land and assignment of this licence

### (o) The Licensor:

- must immediately notify the Company if the Licensor enters into any agreement relating to the transfer or sale of the Land.
- agrees that it will not sell transfer or otherwise dispose of the Land without making reasonable endeavours to require any Purchaser to enter into a covenant that it will execute a deed of novation to this Licence in the terms agreed between the parties.

### (p) In the event that no consent is obtained, the Licensor will be in default of this Licence and, as a consequence, the Company will have the right to terminate the Licence and remove the SGU from the Land.

### (q) The Company shall have the right to assign its right title and interest in this Licence with the prior written consent of Licensor such consent not to be unreasonably withheld.

## Depreciation

### (r) The Company discloses that it intends to depreciate the SGU in accordance with the Income Tax Assessment Act during the term of the Licence.

## Right for Company to remove SGU

### (s) The SGU remains owned by the Company and is not intended to be a fixture. The Company shall during the term of the Licence (and at any other time) have the right to remove the SGU whereupon the Licence shall terminate.

## Personal Property Securities

### (t) If the Company determines that this Licence (or a transaction in connection with it) contains or gives rise to a registrable security interest for the purposes of the PPSA, the Company may, make a registration under the PPSA for whatever collateral class the Company thinks fit. The Licensor consents to any such registration or notification.

## No Partnership

### (u) Notwithstanding any other provision contained in this Licence or any implication which might otherwise arise but for this clause, the relationship between the parties is not one of Partnership.

## Independent Advice

### (v) Each party agrees that it has obtained its own independent legal, accounting and taxation advice in

relation to this Licence.

### Goods and Services Tax

- (w) All monies to be paid for the supplies of goods and services under this Licence include GST.
- (x) The party receiving the goods or services has no obligation to reimburse the other party for any GST liability arising from the payment for such goods and services.
- (y) The party making the supply will deliver tax invoices to the other party in a form that complies with the GST legislation to enable that party to claim input tax credits for the taxable supply.

### Dispute Resolution

- (z) If a dispute arises out of or relates to this Licence a party may not commence any court proceedings relating to the dispute unless it has complied with this clause except where the party seeks urgent interlocutory relief.
- (aa) A party claiming that a dispute ("the dispute") has arisen under or in relation to this Licence must give written notice to the other party specifying the nature of the dispute.
- (bb) On receipt of that notice by the other party, the party must endeavour to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- (cc) If the parties do not agree within seven (7) days of receipt of the notice referred to in clause (ee) (or such further period as agreed in writing by them) as to the:
  - dispute resolution technique and procedures to be adopted.
  - timetable for all steps in the proceedings; and
  - selection and compensation of the independent person required for such technique.
- (dd) The parties must mediate the dispute in accordance with the Commercial Arbitration Act and the nominee of the National President of the Institute of Chartered Accountants in Australia will select the mediator and determine the mediator's compensation. The costs of the mediation will be paid equally by the parties.

### Termination

- (ee) If this Licence is terminated for any reason, the Company is entitled to remove the SGU within 12 months and the Licensor must provide all reasonable

assistance to the Company in the removal.

### Notices

- (ff) A notice or other communication required or permitted to be given by one party to another must be in writing and:
  - delivered personally; or
  - sent by pre-paid mail or by email to the address of the addressee specified in this Licence.
- (gg) A notice or other communication is taken to have been given (unless otherwise proved):
  - if mailed, on the second Business Day after posting; or
  - if sent by email before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (hh) A party may change its address for service by giving notice of that change in writing to the other parties.

### Waiver or Variation

- (ii) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (jj) The exercise of a power or right does not preclude:
  - Its future exercise; or
  - The exercise of any other power or right.
- (kk) The variation or waiver of a provision of this Licence or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

### Governing Law and Jurisdiction

- (ll) This Licence is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

### Counterparts

- (mm) This Licence may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Licence will be the date on which it is executed by the last party.

### Whole Agreement

- (nn) In relation to the subject matter, this Licence is the whole agreement between the parties and supersedes all oral and written communications by or

on behalf of any of the parties.

#### **No reliance on warranties and representations**

(oo) In entering into this Licence, each party has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Licence made by any person; and has relied entirely on its own enquiries in relation to the subject matter of this Licence. This clause does not apply to warranties and representations that this Licence expressly sets out.

#### **Trust Provisions**

(pp) If this Licence applies to a Trust, the Licensor represents and warrants that:

- the Trust is duly constituted and has not terminated, nor has the date or any event occurred for the vesting of the assets of the Trust;
- it is the sole Trustee of that Trust, it has not given a notice of resignation and no action has been taken to remove it or appoint an additional Trustee of that Trust;
- as Trustee of that Trust, it has full legal capacity and power under the constituent documents of that Trust to: own the assets of that Trust and carry on the business of that Trust as it is now being conducted; become bound by this Licence; and, hold the Premises.
- all action necessary under the constituent documents of that Trust or at law has been taken to: authorise the Licensor to enter into this Licence and grant the Licence; ensure that this Licence is legal, valid and binding on the Licensor as Trustee of that Trust and admissible in evidence against the Licensor in that capacity; and enable the Licensor to properly carry out the business of that Trust,
- it is becoming bound by this Licence as part of the proper administration of that Trust, for the commercial benefit of that Trust and for the benefit of the beneficiaries of that Trust;
- it has the right to be fully indemnified out of the assets of that Trust in relation to this Licence and that right has not been modified, released or diminished in any way, except to the extent such indemnity may be reduced or limited by law; and
- it enters this Licence both in its capacity as Trustee of the Trust and in its own right.

#### **Interpretation**

(qq) In this Licence, unless otherwise indicated by the

context:

- words importing the singular include the plural and vice versa;
- headings are for convenience only and do not affect interpretation of this Licence;
- a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Licence;
- where any word or phrase is given a definite meaning in this Licence, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
- a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;
- a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally; and
- a reference to a body, whether statutory or not; which ceases to exist; or whose powers or functions are transferred to another body; is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

(rr) The definitions contained in Schedule 5- Glossary form part of this Licence

### Schedule 3 – Safety and Maintenance Documents/ SGU Design

This Schedule should include the following documentation:

- Safety/ operational manuals and instructions
- Customer maintenance guidance/ advice
- Full specifications relating to the SGU equipment/ components including an itemised list of the goods to be installed.
- SGU design/ installation plan
- Site plan indicated licenced “Area” and “Land” details
- The SGU’s site-specific estimated energy yield, i.e. average daily performance estimate/ Site-Specific Performance Estimate for the SGU



#### **Schedule 4 - Special Terms & Conditions**

##### **General**

Where these Special Terms and Conditions are inconsistent with the terms and conditions of the PPA, Schedules 1-2, or the Quote then these Special Terms and Conditions shall prevail to the extent of the inconsistency.

##### **Battery Installation**

Where the SGU includes the installation of a battery or energy storage device, the Customer agrees and acknowledges that the installation of that battery/ energy storage device may occur up to 12 months from the Start Date and that the Target Date will be set accordingly.

Where the SGU includes the installation of a battery or energy storage device, the Company warrants that it will use its best endeavours to install the battery/ energy storage device within 12 months from the Start Date.

Notwithstanding the provisions of clause 11(d) of the PPA terms and conditions, the Customer agrees and acknowledges that the Company may substitute the battery/energy storage device specified in the Quote for another battery/ energy storage with an equivalent or similar specification after the Company gives the Customer at least 14 days' prior notice of the proposed substitution.

##### **Fixed Energy Charges**

If the Company elects to offer the Customer a Fixed Energy Charge, the Company may vary that Fixed Energy Charge during the term of the agreement in accordance with the minimum and maximum Fixed Energy Charges specified in the Quote. An increase to the Fixed Energy Charge under this clause shall not be classified as an Increased Cost Event.

##### **Pre-installation cancellation fees**

Where a Customer wishes to withdraw from this agreement prior to the Installation Date, the Company shall be entitled to charge the Customer for all reasonable costs incurred by the Company.

##### **Clean Energy Council (CEC)**

The Company warrants that it is an approved retailer with the Clean Energy Council (CEC) and must comply with the Solar Retailer Code of Conduct (Oct 2015) ("Code").

Where the terms and conditions of this agreement are inconsistent with the relevant provisions of the Code, then those provisions of the Code shall prevail to the extent of the inconsistency.

### **National Consumer Credit Protection Act, 2009 (Cth)**

This arrangement is not regulated by the *National Consumer Credit Protection Act 2009 (Cth)* (“the NCCP Act”). As a result:

- (a) if you have a complaint about the arrangement, you may not have access to the services of an external dispute resolution scheme that has been approved by ASIC. This means that you may have to go to court to resolve a dispute with the provider.
- (b) if you have trouble paying the periodic payments required under the arrangement:
  - (i) you may not have the right to ask the provider for a hardship variation to help you get through your financial difficulty.
  - (ii) The provider may take action against you for non-payment without giving you an opportunity to remedy the default.”

### **Consumer Protection Law**

This agreement is covered by the Australian Consumer Laws and is separate to the Customer’s contract with their electricity retailer and distributor which are covered under the National Energy Retail Law. For further information about your consumer rights please go to <https://consumerlaw.gov.au/consumers-and-acl>

### **Energy Charges**

The Customer must pay the Energy Charges nominated in the Quote for the whole term of the agreement. The Energy Charges may not reflect the market price or be competitive with the price of electricity from other sources.

### **Grid Connection**

The Customer must obtain grid connection approval from their electricity distributor prior to Installation.

## Schedule 5 – Glossary

**Access Arrangements** means those arrangements as specified in the Quote;

**Account** means the bank account opened for the collection of revenue as specified in this Agreement.

**Affected Party** has the meaning given by clause 30.1.

**Agreement** means those documents as defined by clause 1.1.

**Applicable Law** means laws and any other instruments or subordinate legislation having the force of law in Australia. For the avoidance of doubt, Applicable Law shall include any applicable statute, ordinance, decree, regulation, or by-law or any rule, circular, directive or any licenses, consent, permit, authorisation, concession or other approval issued by any authority which has appropriate jurisdiction.

**Area** means the area being part of the land area where the SGU is located and as marked on the annexed plan contained in Schedule 3;

**Assignment Form** means the documentation required to assign the right to create environmental certificates in relation to the SGU.

**Australian Consumer Laws** means that law as is set out in Schedule 2 of the Competition and Consumer Act 2010.

**Australian Standards** means a standard published by the Standards Association of Australia.

**Body Corporate** has the same meaning as defined by the Corporations Act.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in the capital city of any Jurisdiction.

**Buy-Out Charge** means, for the relevant year in which the agreement is terminated (with the first year from the Installation Date being referred to as Year 1), the amount specified in the Quote and includes the costs associated with the installation of the SGU plus, if required but not limited to, any costs for recovery, including legal or collection agencies, and any unpaid amounts.

**Change of Law** means the coming into effect after the date of this agreement of an Applicable Law; or any applicable judgment of a relevant court of law which changes the interpretation of the Applicable Law and is a binding precedent which directly and adversely affects the Company's performance under the agreement in a material way.

**Charges** means the amounts payable by the Customer as defined under clause 17.

**Company** means GTL Renewable Pty. Ltd. its successors, its executors, administrators and assigns and its employees, agents and contractors.

**Company Notice Details** means the address of the Company as described in the Quote.

**Confidential Information** means all information (regardless of its form) disclosed to a party (or to its Related Body Corporate or Representative), under or in connection with this agreement. The term does not include information which:

- (a) is in the public domain other than through breach of this agreement or an obligation of confidence owed to the discloser or any Related Body Corporate of the discloser;
- (b) was already known to the receiver at the time of that disclosure (unless that knowledge arose from a breach of an obligation of confidentiality); or
- (c) the receiver acquires from a source other than the discloser (or any Related Body Corporate or Representative of the discloser), where that source is entitled to disclose it.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Credit Card Processing Fee** means fees specified in the Quote applicable for payments made by credit card.

**Customer Connection Point** means the point at which the Premises are connected to the Network to facilitate electricity supply to or from the Customer from the Network.

**Customer Satisfaction Sheet** means the documents evidencing satisfactory completion of the SGU including its installation and connection to the Network in compliance with Australian Standards and required laws.

**Direct Debit Dishonour Payment Fee** means the fees specified in the Quote applicable where a direct debit transaction

for any payment under this agreement is dishonoured.

**Distributor** means the third-party responsible for the generation or carriage of energy to the Premises.

**Economic Loss** means loss other than damage to physical property of the Customer, and includes corruption of data losses, business interruption losses, loss of revenue and loss of profits.

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit à prendre, easement or other security arrangement or any other arrangement having the same effect.

**End Date** has the meaning given to it in the Quote.

**Energy Generation** means the actual or estimated quantity of solar electricity generation produced by the SGU (kWh) measured in accordance with clause 15.3.

**Energy Generation Charge** means the amount of money charged to the Customer calculated in accordance with clause 17 of the PPA terms and conditions.

**Energy Generation Rate** means either:

- (a) the Energy Generation Rate specified in the Quote (as increased in accordance with this Agreement); or
- (b) the rate calculated as follows:

*the Fixed Energy Charge per month/actual energy units generated by the SGU in that month*

**Energy Retailer** means any person or business who sells energy to another person for use at premises and has either a retailer authorisation under the National Energy Retail Law.

**Expiry Date** means the date as specified in the Quote.

**Fixed Energy Charge** means the amount of money charged to the Customer as specified in the Quote.

**Fixed Review Rate** means the rate specified in the Quote.

**Force Majeure Event** means an event beyond the reasonable control of the Affected Party and not reasonably capable of being prevented by the Affected Party and includes a Change of Law and a pandemic.

**Government Agency** means any government or any governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

**GST** has the meaning set out in the GST Act.

**GST Act** means the *A New Tax SGU (Goods and Services Tax) Act 1999 (Cth)*.

**Increased Cost Event** means any event that increases the costs of the Company and includes:

- (a) any law, regulation, rule, code or sub-code being introduced, amended or repealed in whole or in part after the date of the agreement that cannot be reasonably expected at the time of the agreement;
- (b) any new or increased tax, fee or charge imposed on the Company after the date of the agreement in relation to the sale of Energy Generated by the SGU for sale to the Customer or the purchase by the Customer of Energy Generated or any other goods or services from the Company;
- (c) any new or increased tax, fee or charge, fee or charge imposed on any other person after the date of agreement and having the effect of increasing the cost of installation or Energy Generated by the SGU and/or any other goods or services purchased by the Company for sale to the Customer,
- (d) the imposition of any tax or change in the rate or way any tax is calculated which results in the Company being required to pay an amount that it would not otherwise be required to pay, or a change in the amount that the Company is required to pay under the law that applied at the date of the agreement; or
- (e) any law, or mandatory or voluntary scheme being introduced, amended or repealed in whole or in part after the date of this agreement which relates to the generation of electricity from 'renewable' or 'green' energy sources and imposes costs from those sources.

**Initial Term** means a term commencing on the Start Date and ending on the End Date

**Insolvent** means any event or circumstance where a person:

- (a) is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the party's financier); or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of(a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act; or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to
  - (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Installation** means the installation of the SGU at the Premises as described in the relevant terms and conditions, in accordance with the manufacturers' guidelines and includes:

- (a) the delivery of the SGU to the Premises on the day of installation;
- (b) the supply and installation of a suitable mounting base for the SGU;
- (c) the supply and installation of tilt frames (if required);
- (d) the supply of up to 30 metres of electrical cabling between the solar panels, inverter and switchboard;
- (e) testing and commissioning of the SGU after Installation;
- (f) the provision of a certificate of electrical safety (or equivalent); and
- (g) the provision of instruction on the basic operation of the SGU.

**Installation Date** means the date the photovoltaic components of the SGU are commissioned and energised. Where the SGU is connected to a Network, then Installation Date means the date, as notified to the Customer and as specified in the Customer Satisfaction Sheet.

**Jurisdiction** means the State or Territory of Australia in which the Premises is situated.

**Land** means the whole of the Premises and land as described in the Quote comprising the Certificate of title folio identifiers as specified in the Quote or in Schedule 3;

**Late Payment Fee** means the fees specified in the Quote payable by customer for a payment made after the due date of an invoice.

**Liability** means a liability under contract, tort (including negligence) or any other basis, including where caused by that party's negligent or wilful act or omission.

**Licence** means the consent granted by the owner of the Premises to the Company and its agents, contractors, employees or assigns required to install, maintain and operate the SGU in the form set out in Schedule 2.

**Licence Fee** means the amount as specified in Quote.

**Licence Covenants** means the covenants and agreements contained or implied in the Licence to be observed and performed by the Land Owner.

**Licence Term** means the term of the Licence and as calculated from the Start Date to the End Date (inclusive), and as otherwise specified in the Quote;

**Licensor** means the person described in the Quote, its successors and assigns or, if the Licensor is a natural person, its executors administrators and assigns and in either case its employees, agents and contractors;

**Licensor Notice Details** means the address of the Licensor as described in the Quote.

**Loss** includes any and all damages, losses (including loss of reputation), actions, claims, suits, liabilities, compensation, expenses, diminution in value or deficiencies of any kind or character (including all interest and other amounts payable to third parties), Costs, fines, penalties, liabilities, injuries or death incurred by the person concerned, all liabilities on account of taxes and all legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions and all amounts paid in settlement of claims or actions, however they arise and whether present or future, fixed or unascertained, actual or contingent and whether or not resulting in any liability.

**National Energy Retail Law** means the National Electricity (South Australia) Act 1996 and each subsequent act as has been adopted by each of the participating jurisdictions and the Rules,

**Network** means an electricity distribution network.

**Network Operator** means the person owning or controlling the Network to which the Premises are connected.

**Operational Term** means an equivalent period of time from the Installation Date to the End Date.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*.

**Premises** means the premises described in the Quote.

**Quote** means the document containing the price and specifications provided by the Company for the goods and services specified.

**Related Body Corporate** has the same meaning as defined in the *Corporations Act 2001(Cth)*.

**Renewable Energy Certificates** means any renewable energy certificate created which is recognised under the *Renewable Energy (Electricity) Act 2001 (Cth)*.

**Representative** of a party means an employee, agent, officer, director, auditor, adviser, partner, associate, consultant, joint venture partner or sub-contractor of that party or of a Related Body Corporate of that party.

**Rules** means the regulatory framework for market operations, power system security, network connections and access, pricing for network services in the national electricity market and national transmission planning.

**Safety and Maintenance Documents** means those documents set out in Schedule 3 of this agreement

**Schedule** means each document attached to the agreement, titled "Schedule".

**Solar Generation Unit or SGU** means the solar installation comprising the principal components described in the Quote, installed, commissioned and, where relevant, connected to the Network.

**SGU Connection Point** means the point which is situated at the output terminal at the SGU.

**SGU Design** includes the SGU design and specifications, proposed roof plan, SGU orientation and tilt, expected efficiency and the Site-Specific Performance Estimate calculations, as set out in Schedule 3.

**SGU Metering Device** means all devices, installed on the Premises, as well as any online portals and includes monitoring devices, control devices, inverters, third party devices which are connected to the internet and/or the Network and monitor and communicate Energy Generation of the SGU.

**SGU Metering Point** means the point which is situated at the output terminal at the SGU Metering Device.

**Site-Specific Performance Estimate** means our site-specific estimate of the average daily energy yield of the SGU for each month, in kWh, as set out in the SGU System Design.

**Statute** means any statute, regulation, proclamation, ordinance or by-law of the Commonwealth of Australia or the State of New South Wales and includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and all regulations, proclamations, ordinances and by-laws issued under that statute.

**Start Date** has the meaning given to it in the Quote.

**STCs** means small scale technology certificates under the *Renewable Energy (Electricity) Act 2000 (Cth)*.

**STC Incentive** means the amount specified as such in the Quote.

**Target Date** means the date specified as such in the Quote, subject to any variation of that date in accordance with clause 11 of the PPA terms and conditions.



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**Tax Invoice** has the meaning set out in the GST Act.

**Taxable Supply** has the meaning set out in the GST Act.

**Term** means the term of this agreement as defined in clause 3 of the PPA terms and conditions.

**Trust** means any superannuation fund (whether self-managed or otherwise), managed investment scheme or custodial arrangement where the Trustee enters into this Agreement as trustee of a trust.

**Trustee** means in relation to any Trust, the licensor in its capacity as the trustee, responsible entity, custodian or nominee of that Trust.