

Terms & Conditions

GREEN ENERGY SYSTEM LEASE AND LICENCE AGREEMENT

The Owner is the owner of the Premises. The Owner wishes to engage the Seller to supply, install and maintain the Green Energy System at the Premises for the purpose of providing Energy to the Owner. In consideration for the installation of the Green Energy System, the Owner will pay the System Charges to the Seller on the terms set out in this Agreement.

The Parties

This is an Agreement between the Seller and the Owner.

1. Definitions and Interpretation

Where applicable, capitalised terms in this Agreement are defined in clause 18.

1.1 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, Item or Annexure is a reference to a clause of, or an Item or Annexure to, this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any

- certificate, notice, instrument and document of any kind.
- (l) A reference to dollars and \$ is to Australian currency.
- (m) The meaning of general words is not limited by specific examples introduced by includes, including, or for example, or similar expressions.
- (n) References to time are references to Melbourne time.
- (o) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it.

2. Term

This Agreement commences on the Execution Date and continues until the Expiry Date, unless:

- (a) terminated earlier in accordance with its terms; or
- (b) extended by written agreement of the parties, (the **Term**).

3. Installation of the Green Energy System

3.1 Owner's obligations

- (a) The Owner authorises the Seller to:
 - (i) attend the Premises to undertake a pre-installation inspection (if required) to determine the location of the Green Energy System; and
 - (ii) undertake the Installation in accordance with this Agreement.
- (b) The Owner warrants that it has obtained all consents and approvals required for the Seller to undertake the Installation in accordance with this Agreement.
- (c) Without limiting the Owner's obligations under clause 5, the Owner will:
 - (i) do all things necessary to provide the Seller with access to the Premises to undertake the Installation; and
 - (ii) if required by the Seller, execute whatever documents are necessary to enable the Seller to undertake the Installation.

3.2 Seller's obligations

- (a) The Seller will use reasonable endeavours to undertake the Installation as soon as reasonably practicable after the date on which this Agreement is executed, unless otherwise agreed by the parties.
- (b) In undertaking the Installation, the Seller will:
 - (i) design the Green Energy System;
 - (ii) deliver the Green Energy System components to the Premises;
 - (iii) install the Green Energy System at the Premises;
 - (iv) arrange for any necessary configuration or alterations to the metering equipment which forms part of the Green Energy System;
 - (v) test the Green Energy System to ensure it is fully operational; and
 - (vi) procure from applicable Government Agencies any approvals or certificates of

compliance required to certify that the Green Energy System has been installed in accordance with applicable Laws, in each case, in accordance with Good Industry Practice.

3.3 Exclusions

The Installation does not include any obligations on the Seller with respect to:

- (a) obtaining any approvals, consents or permits from any person unless otherwise stated in this Agreement;
- (b) installing or upgrading a meter panel board;
- (c) any trenching or excavation work;
- (d) the removal of asbestos or the costs of an investigation to determine whether asbestos is present;
- (e) the rectification of any deficiencies in existing electrical supply or any other work, whether before or after the Installation of the Green Energy System, to ensure that the existing electricity infrastructure at the Premises complies with applicable standards imposed by Law; or
- (f) installing or upgrading any other equipment other than the components of the Green Energy System specified in the Contract Details.

3.4 Guarantees and warranties

- (a) The Seller guarantees that the Installation will be performed in accordance with Good Industry Practice and all applicable Laws.
- (b) The Seller will rectify any defect in workmanship on the Installation, at no further cost to the Owner, provided:
 - (i) the Owner notifies the Seller of the defect during the Term; and
 - (ii) the defect was not caused or contributed to by any work or activities on or near the Green Energy System undertaken by any person unless expressly authorised by the Seller (including work or activities undertaken by the Owner, any occupant residing at the Premises, or any of their respective employees, agents or subcontractors).
- (c) The Green Energy System come with guarantees that cannot be excluded under the Australian Consumer Law, including that:
 - (i) the Owner is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage; and
 - (ii) the Owner is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (d) The Seller is committed to the New Energy Tech Consumer Code that defines the standards required to protect the consumer and the industry. The Seller will always act in a manner consistent with the New Energy Tech Consumer Code.

4. Supply Services

4.1 Owner's obligations

- (a) Without limiting the Owner's obligations under this Agreement, the Owner will:
 - (i) pay the System Charges by the due date for payment;
 - (ii) do all things necessary to provide the Seller with access to the Premises in order to provide the Supply Services; and
 - (iii) notify the Seller as soon as practicable of any information which is likely to affect the performance of either party's obligations under this Agreement, including (to the extent permitted by Law) if the Owner is intending to sell the Premises or otherwise no longer resides at the Premises.
- (b) Notwithstanding anything else in this Agreement, if the Green Energy System is in a safe and reliable operating state such that the Owner is able to consume Green Energy from the Green Energy System, the Owner must pay the System Charges by the due date for payment.
- (c) The Owner must keep any building on the Premises in good structural repair and wind and water tight, and must promptly carry out all necessary repairs to the building (including by carrying out capital and structural works as required) to maintain the building in this condition.
- (d) The Seller will not be responsible for any failure to provide the Supply Services to the extent the performance of the Green Energy System is affected by any act or omission of the Owner or any occupant at the Premises.
- (e) The Owner represents and warrants to the Seller that, on and from the Execution Date, it is the owner of the Premises. Without prejudice to the Owner's obligations under clause 4.1(a)(iii), the Owner must immediately notify the Seller if, at any time during the Term, this representation and warranty is no longer correct.

4.2 Seller's obligations

On and from the date on which the Seller has satisfied each of its obligations in clause 3.2(b) (the **Supply Commencement Date**), the Seller will:

- (a) determine the Lease Charges payable by the Owner and render invoices in accordance with the terms of this Agreement; and
- (b) maintain the Green Energy System in accordance with clause 4.3, (together, the **Supply Services**).

4.3 Maintenance of the Green Energy System

- (a) On and from the Supply Commencement Date, the Seller will maintain the Green Energy System so as to ensure that:
 - (i) the Green Energy System is maintained in a safe and reliable operating state in accordance with all applicable Laws and Good Industry Practice; and
 - (ii) upon expiry or termination of this Agreement, the Green Energy System is in good working order and in a fit state to continue operation until the end of its Design Life.

- (b) The Seller will repair and make good any damage to the Premises caused by the any works, repairs, or maintenance undertaken by the Seller.

4.4 Guarantees and warranties

The Seller guarantees that the Supply Services will be provided in accordance with Good Industry Practice and all applicable Laws.

4.5 Feed-in Tariff

- (a) The value of any Feed-in Tariff for the Green Energy exported to the electricity grid will be paid to the Owner through the Owners contract with their licenced electricity retailer.
- (b) The Owner acknowledges that the applicable price for any Feed-in Tariff under this Agreement is determined by the terms of any retail agreement between the Owner and their licenced electricity retailer.

5. Access to the Premises

5.1 Licence to access

The Owner grants the Seller and its employees, agents, and subcontractors a non-exclusive licence to access the Premises for the purposes of performing its obligations under this Agreement, including the Installation of the Green Energy System, the provision of Supply Services, and any disconnection or dismantling of the Green Energy System, if required, following termination of this Agreement.

5.2 Compliance with Laws

- (a) Each party must comply with all Laws, including any directions from a Government Agency, to the extent that they concern either party's obligations under this Agreement.
- (b) Each party must notify the other party in writing as soon as practicable after it becomes aware of any actual or reasonably anticipated breach of any Laws in connection with its obligations under this Agreement.
- (c) Each party must hold (or procure that its applicable agents, employees, and subcontractors hold), and continue to hold throughout the Term, all approvals and authorisations necessary to enable the party to comply with its obligations under this Agreement.

5.3 Insurance

- (a) Without prejudice to clause 10, during the Term:
 - (i) the Seller must effect and maintain the Seller Insurances; and
 - (ii) the Owner must effect and maintain the Owner Insurances.
- (b) The Owner must, as soon as practicable after the Execution Date, ensure that the Green Energy System is added to the Owner's Insurances for the Premises, noting the Seller's interest in the Green Energy System.
- (c) If requested in writing by a party, the other party must provide satisfactory evidence (which may be by way of a certificate of currency) that insurance has been effected and is maintained in accordance with this clause 5.3.

6. Billing and payment

6.1 System Charges

- (a) On and from the Supply Commencement Date, the Seller will invoice the Owner on the fourth Business Day of each month for:
 - (i) the Lease Fee
- (b) The Owner must pay the invoice for the System Charges and Energy Charge within [7] Business Days after the date of the invoice.

6.2 Method of payment

All payments to be made under this Agreement must be made by transfer of cleared funds in Australian Dollars to the other party's nominated bank account, or such other payment method as may be set out in the invoice issued to the Owner under clause 6.1.

7. Title, risk, and ownership

7.1 Green Energy System

- (a) The Seller will retain title to and ownership of the Green Energy System during the Term of this Agreement.
- (b) The Green Energy System must not be subject to any security interest, and the Owner acknowledges it has no right to:
 - (i) create, grant, or reserve an interest in the Green Energy System; or
 - (ii) purchase, sell, gift, transfer, remove or tamper with the Green Energy System, at any time during the Term of this Agreement.

7.2 Green Energy Certificates

The Seller has all right and title to any Green Energy Certificates and any other right, credit, certified emissions reduction unit, off-set, tradeable unit, allowance, concession, permit or benefit, that may be generated or derived from the Green Energy System.

8. Subcontracting

The Seller may delegate or subcontract any or all of its obligations under this Agreement to another person without the prior written consent of the Owner.

9. Termination

9.1 Automatic termination of this Agreement

- (a) This Agreement will automatically terminate on the Expiry Date unless terminated earlier in accordance with clauses 9.2 or 9.3.
- (b) Subject to clause 9.5(d), title to the Green Energy System, but not to the Green Energy System IP, will pass to the Owner on the Expiry Date.

9.2 Termination Events

- (a) The following events constitute **Termination Events**:
 - (i) except as provided in paragraph (ii) below, a party commits a material breach of this Agreement (unless the breach is capable of remedy, in which case if the party fails to remedy the breach within a specified cure period notified to the party in writing);
 - (ii) a party fails to pay any amount due to the other party under this Agreement within [10] Business Days after receipt of written notice from the other party of such failure;
 - (iii) the Owner sells or ceases to reside at the Premises;
 - (iv) an Event of Force Majeure prevents a party from performing its obligations under this

Agreement for greater than 3 months in accordance with clause 13.3; or

- (v) a Change in Law occurs and the parties are unable to reach agreement in accordance with clause 12.1(c).

(b) In the event of:

- (i) a Termination Event under clauses 9.2(a)(i) or 9.2(a)(ii), the non-defaulting party may terminate this Agreement immediately by written notice; and
- (ii) a Termination Event under clauses **Error! Reference source not found.**, 9.2(a)(iii), 9.2(a)(iv) or 9.2(a)(v), the Seller may terminate this Agreement immediately by written notice

9.3 Termination by Owner

Without prejudice to any accrued rights of the parties under this Agreement, the Owner may terminate this Agreement by giving 20 Business Days' written notice to the Seller.

9.4 Consequences of Termination prior to the Supply Commencement Date

If the Agreement is terminated prior to the Supply Commencement Date for any reason, the Owner must:

- (a) reimburse the Seller for all costs incurred in preparing for and undertaking the Installation of the Green Energy System; and
- (b) any costs associated with disconnection or dismantling of any components of the Green Energy System which have been installed as at the date of termination under this clause 9.4.

9.5 Consequences of Termination after the Supply Commencement Date

- (a) Subject to clause 9.4, if this Agreement is terminated prior to the Expiry Date:
 - (i) by the Seller under clause 9.2(b)(i) or 9.2(b)(ii); or
 - (ii) by the Owner under clause 9.3; orthe Owner must pay the Buy-Out Amount.
- (b) Subject to clause 9.4, if this Agreement is terminated by the Owner prior to the Expiry Date under clause 9.2(b)(i), the Owner must elect to either:
 - (i) pay the Buy-Out Amount; or
 - (ii) request the Seller to disconnect, dismantle and remove the Green Energy System from the Premises.
- (c) Except as provided for in clause 9.1(b), title to the Green Energy System, but not to the Green Energy System IP, will pass to the Owner on the date that the Owner pays the Buy-Out Amount to the Seller.
- (d) With effect from the Transfer Date and subject to clause 14, the Seller grants to the Owner a non-exclusive licence to use the Green Energy System IP solely for the purpose of, and to the extent necessary for, operating, maintaining or repairing the Green Energy System at the Premises, and such licence:
 - (i) is not transferable, except to a purchaser of the Premises (including the Common Areas); and

- (ii) is not sub-licensable, except that the Seller may grant a sub-licence to a service provider to the extent necessary for that service provider to provide operation, maintenance or repair services to the Owner in respect of the Green Energy System at the Premises.

- (e) If the Owner elects for the Seller to dismantle the Green Energy System under clause 9.5(b)(ii), the Owner must do all things necessary to allow the Seller to disconnect, dismantle, and remove the Green Energy System from the Premises.
- (f) Expiry or termination of this Agreement does not affect any accrued rights or remedies of either party.

9.6 Survival

Unless the context otherwise requires, the rights and obligations of the parties capable of taking effect after expiration or Termination (for any reason) of this Agreement will do so.

10. Liability

10.1 Limits on Liability

- (a) Notwithstanding any other provisions of this Agreement:
 - (i) the maximum aggregate liability of either party under this Agreement is limited as set out in Item 7 of the Contract Details; and
 - (ii) no party shall be liable for any indirect or consequential loss or damage suffered in relation to this Agreement.
- (b) The limitation of liability set out in clause 10.1(a) does not apply in relation to:
 - (i) fines, penalties, and other costs incurred as a result of a breach of a Law by a party; and
 - (ii) ombudsman costs, reimbursements, refunds and credits incurred by a party as a result of that party's failure to comply with this Agreement,except to the extent that such liability is caused or contributed to by the other party.

10.2 Release and indemnity

- (a) The Owner releases the Seller from liability for any damage, loss, injury or death in connection with the Green Energy System, except to the extent that this was caused or contributed to by a negligent act or omission of the Seller, its agents, contractors or employees or a breach of this Agreement by the Seller.
- (b) Subject to clause 10.2(c), the Owner indemnifies the Seller against any damage, loss, action or demand suffered or incurred by the Seller to the extent caused by the wrongful act or omission or negligence of the Owner, an occupant at the Premises, their respective agents, contractors or employees, or a breach of this Agreement by the Owner.
- (c) The Owner's indemnity under this Agreement does not apply to the extent that the damage, loss, action or demand was caused or contributed to by the wrongful act or omission or negligence of the Seller, its agents, contractors or employees or the breach by the Seller of this Agreement.

11. Dispute resolution

11.1 Negotiation

If there is a dispute or difference (*Dispute*) between the parties arising out of or in connection with this Agreement, then within 14 Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

11.2 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.

11.3 Continuation of rights and obligations

Despite the existence of a dispute or difference, each party must continue to perform this Agreement.

12. Change in Law

12.1 Change in Law

- (a) In the event of a Change in Law which:
- (i) renders it impossible or unlawful to give effect to this Agreement; or
 - (ii) causes the provisions of this Agreement to become inconsistent with any Law (including where any word or expression defined in this Agreement is defined by reference to its meaning in any Law),
- then either party may serve a notice to the other party requesting that the parties meet to discuss.
- (b) Promptly after receipt of a valid notice issued by either party under clause 12.1(a), and in any event within 5 Business Days, both parties must meet to discuss such circumstances and, in good faith, seek to agree the amendments to this Agreement that are necessary to continue the performance of this Agreement.
- (c) If, within 20 Business Days of the meeting in clause 12.1(b), the parties have not agreed on how to continue the performance of this Agreement, the Seller will have the right to terminate this Agreement as set out in clause 9 without prejudice to any of the rights of either party accrued prior to the date of termination.

12.2 No liability

- (a) Without prejudice to the other provisions of this clause 12, the parties acknowledge that neither party shall be liable to the other party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law.
- (b) A Change in Law does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does a Change in Law affect an obligation of a party in respect of the payment of any amount due and payable to the other party pursuant to this agreement prior to the occurrence of the Change in Law.

13. Force Majeure

- (a) If, as a result of an Event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this

agreement or is delayed in performing those obligations:

- (i) the affected party must immediately give notice to the other party setting out details of the relevant Event of Force Majeure, the affected obligations of the party, and the reasons preventing or delaying that party from performing those affected obligations;
 - (ii) the affected obligations identified in the notice issued by the affected party pursuant to clause 13(a)(i) will be suspended, but only to the extent, and for so long as, the performance of those obligations are affected by the Event of Force Majeure; and
 - (iii) the affected party must use all reasonable endeavours to overcome or mitigate the effects of the Event of Force Majeure.
- (b) Upon completion of, or the cessation of the effects of, the Event of Force Majeure, the affected party must recommence the performance of the affected obligations as soon as reasonably practicable and give notice to the other party of such commencement.

13.2 No liability

- (a) Without prejudice to the other provisions of this clause 13, the parties acknowledge that neither party shall be liable to the other party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of an Event of Force Majeure.
- (b) An Event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does an Event of Force Majeure affect an obligation of a party in respect of the payment of any amount due and payable to the other party pursuant to this agreement prior to the occurrence of the Event of Force Majeure.

13.3 Termination for extended Force Majeure

If a party is prevented from carrying out its obligations under this Agreement as a result of an Event of Force Majeure for a period of 3 months, the Seller will have the right to terminate this Agreement as set out in clause 9 without prejudice to any of the rights of either party accrued prior to the date of termination.

14. Intellectual Property

14.1 Ownership of Intellectual Property Rights

- (a) Each party agrees that nothing in this Agreement assigns or transfers ownership of any Intellectual Property Rights (including Intellectual Property Rights in or to data assets) owned by the other party as at the Execution Date.
- (b) The Owner acknowledges and agrees that:
- (i) the Seller owns, and will continue to own all Green Energy System IP;
 - (ii) the Seller will own all Intellectual Property Rights in any materials developed by the Seller or the Owner that relates to the Green Energy System (the *New Green Energy System IP*), including in the course of:
 - (A) undertaking the Installation, operation, maintenance or dismantling of the Green Energy System; and

- (B) providing the Supply Services; and
- (iii) except as expressly set out in this Agreement, no licences are granted to the Owner to use any Green Energy System IP.
- (c) The Owner hereby assigns to the Seller all of its existing and future right, title and interest in and to the New Green Energy System IP.

14.2 Covenants

- (a) Neither party shall use, or allow or assist any third party to the use any of the other party's Intellectual Property Rights, other than to the extent expressly permitted under this Agreement.
- (b) Without limiting paragraph (a), the Owner must not allow or assist any third party to test, dismantle, remove, experiment with, reverse engineer or replicate the Green Energy System, without the express written permission of the Seller.

15. Personal Information

- (a) The Seller will collect information from the Owner for the purposes of providing the Supply Services under this Agreement. Where required, the Seller may disclose or exchange the Owner's Personal Information to or with the Seller's agents and contractors, or in accordance with applicable Laws, to fulfil the Seller's obligations under this Agreement or for any other purpose authorised by Law.
- (b) The Seller will comply with all relevant privacy legislation in relation to the Owner's Personal Information.
- (c) The Owner:
 - (i) consents to the collection, use and disclosure of its Personal Information in accordance with this Agreement
 - (ii) must give the Seller all information reasonably required to enable the Seller fulfil its obligations under this Agreement.

16. GST

16.1 Amounts exclusive of GST

Unless expressly stated to the contrary, all amounts in this Agreement are stated exclusive of GST.

16.2 Recovery of GST

If GST is payable, or notionally payable, on a payment made under or in connection with this Agreement, the party providing the consideration for that payment must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that payment (the GST Amount). Subject to the prior receipt of a tax invoice, the GST Amount is payable on or before the expiry of 15 Business Days after the date of issue of a valid tax invoice, or within such other time as the parties agree in writing. This clause does not apply to the extent that the consideration for the payment is expressly stated to be GST inclusive or the payment is subject to reverse charge.

16.3 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or

other liability.

16.4 Definitions

Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST law (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) shall have the same meaning in this clause.

17. General

17.1 Variation

No variation of this Agreement is effective unless executed by the parties in writing.

17.2 Severance

If any part of this Agreement for any reason becomes invalid or unenforceable, the remainder continues to be valid and enforceable and the invalid or unenforceable part is severed without affecting the remainder.

17.3 Waiver

No waiver by a party of any breach or Default by the other party or any delay in the exercise of any power or remedy operates as a waiver of any other breach or Default, whether of a similar character or otherwise.

17.4 No partnership

Nothing in or arising out of this Agreement will, for any purpose, constitute or be deemed to constitute a partnership between the parties, or create a trust in favour of a party, or cause a party to be responsible for the debts of another party.

17.5 Governing law

This Agreement is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

17.6 Costs

Each party must bear its own costs in relation to the negotiation, preparation and execution of this Agreement.

17.7 Stamp duty

All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Agreement and any instrument executed under this Agreement must be borne by the Owner.

17.8 Execution and counterparts

This Agreement may be executed electronically and may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

17.9 Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

18. Definitions

In this Agreement, unless the context otherwise requires:

Aggregate Energy Consumption Threshold has the meaning given in Item 6 of the Contract Details.

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as applied in Victoria.

Business Day means a day which is not a Saturday or

Sunday, or a public holiday in Victoria.

Buy-Out Amount means the amount payable by the Owner if this Agreement terminates after the Supply Commencement Date but before the Expiry Date, as determined in accordance with Item 16 of the Contract Details.

Change in Law means:

- (a) the introduction of a new Law or Tax;
- (b) the repeal of, or a material change in, an existing Law or Tax; and
- (c) a material change in the terms, interpretation or application of any Law or Tax resulting from a decision of a Government Agency,

occurring after the date of this Agreement.

Design Life means the design life applicable for each component of the Green Energy System, as specified in Item 9 of the Contract Details.

Dispute has the meaning given in clause 11.1.

Energy means Grid Energy and Green Energy (as applicable).

Energy Charge means the amount payable by the Owner for the supply of energy under the Green Energy System PPA.

Event of Force Majeure means an event or circumstances which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable care and diligence, the party affected was unable to prevent or overcome, provided that event or circumstances is limited to the following:

- (a) terrorism, act of war, invasion, act of foreign enemies, hostilities (whether declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government Agency;
- (b) fire, storm, flood, earthquake, cyclone, tempest, tornado, hurricane, lightning, explosion or landslide; and
- (c) strikes or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers, but excluding any industrial dispute which is specific to the Premises or the performance of this agreement.

Execution Date means the date on which this Agreement is executed by both parties.

Expiry Date has the meaning given in Item 4 of the Contract Details.

Feed-in Tariff means any tariff paid to the Owner by the Owner's licenced electricity retailer for the export of excess Green Energy from the Premises to the electricity grid.

Good Industry Practice means the exercise of a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator acting in good faith and carrying out the same type of activity under conditions comparable to those applicable to the party and which is consistent with all relevant standards, and in particular, Australian retail energy general practice.

Government Agency means a government or a governmental, semi-governmental or judicial entity or authority and includes the Australian Energy Market Commission, the Australian Energy Market Operator,

Essential Services Commission of Victoria, and Energy Safe Victoria (and any equivalent agencies).

Green Energy means the electricity sourced from the Green Energy System and supplied to the Owner by the Seller under the Green Energy System PPA.

Green Energy Certificates means a Small-scale Technology Certificate, claimable under the federal government's Small-scale Renewable Energy Scheme on installation of an eligible PV System, or VEECs under the VEU guidelines.

Green Energy System means the system components identified in the Contract Details to be installed at the Premises by the Seller in accordance with this Agreement and used for the supply of electricity to the Owner.

Green Energy System IP means the Seller's right, title and interest (including all Intellectual Property Rights) in and to the Green Energy System, including all New Green Energy System IP.

GST means the tax that is the subject of the GST Act, and includes any additional tax, penalty tax, fine, interest or other charge relating thereto.

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

Installation means the installation of the Green Energy System at the Premises in accordance with this Agreement.

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by Law anywhere in the world, including:

- (a) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks (including any goodwill associated with them), know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any registrations of anything in paragraph (a) above, any applications for such registrations, and the right to apply for any such applications;
- (c) all renewals and extensions of these rights; and
- (d) any rights of action against any person in connection with paragraphs (a)–(c) above, including the right to sue for any infringement occurring prior to the date of this Agreement and the right to recover damages and any other relief for that infringement.

Law means all applicable laws, including rules of common law, principles of equity, statutes, regulations, orders, rules, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation, mandatory codes of conduct and standards, writs, orders, injunctions and judgments.

Lease Fee has the meaning given in Item 5 of the Contract Details.

New Green Energy System IP has the meaning given in clause 14.1(b)(ii).

Owner Insurances has the meaning given in Item 11 of the Contract Details.

Personal Information has the same meaning as it does in the *Privacy Act 1988* (Cth).

Premises means the location at which the Seller will

install the Green Energy System, as specified in Item 2 of the Contract Details.

Seller Insurances has the meaning given in Item 10 of the Contract Details.

Supply Commencement Date means the date on which the Seller will commence providing the Supply Services, as specified in clause 4.2.

Supply Services has the meaning given in clause 4.2.

System Charges has the meaning given in clause 6.1(a), as calculated in accordance with Item 15 of the Contract Details.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty, interest or other amount payable in connection with any failure to pay or any delay in paying any of the same).

Term has the meaning given in clause 2.

Termination Events has the meaning given in clause 9.2(a).

Transfer Date means the date on which the title to the Green Energy System, but not the Green Energy System IP, passes to the Owner in accordance with either clause 9.1(b) or 9.5(c).