

**SMALL USE CUSTOMER INFORMATION PACK**

# **Schedule to Electricity Supply Agreement: Standard Terms and Conditions (Small Use)**

**NON-STANDARD FORM CONTRACT**

## THANK YOU FOR CHOOSING PERTH ENERGY.

The Small Use Customer Information Pack is intended to provide you and your business important information regarding your choice of energy supply. Please keep this in a safe place so you can refer to it whenever you need. If you require a copy of your contract or more details regarding Perth Energy's tariffs, fees and charges, or would like to make an enquiry or complaint please contact us in one of the following ways:

**Phone:** (08) 9420 0300  
**Fax:** (08) 9474 9900  
**Email:** [info@perthenergy.com.au](mailto:info@perthenergy.com.au)  
**Mail:** PO Box 7971, Cloisters Square, WA 6850

**For Interpreter Services** - Please call TIS National on 13 14 50 and ask to be connected to 08 9420 0300

**Customers who have a hearing or speech impairment can call us through the [National Relay Service](#)**

**TTY** users phone 133 677 then ask for 08 9420 0300  
**Speak and Listen** users phone 1300 555 727 then ask for 08 9420 0300  
**Internet relay** users connect to the NRS ([www.relayservice.com.au](http://www.relayservice.com.au)) then ask for 08 9420 0300

## Important Information for Small Use Customers

Your business is considered a „Small Use Customer“ if it uses less than 160 megawatt hours of electricity per year, and the *Code of Conduct for the Supply of Electricity to Small Use Customers* will apply. As a licensed electricity retailer, Perth Energy complies with this code. If you would like a copy of the Code, please visit the Perth Energy website [www.perthenergy.com.au](http://www.perthenergy.com.au), or the ERA website [www.erawa.com.au/electricity](http://www.erawa.com.au/electricity).

Small Use Customers can choose to be supplied electricity either under a Standard Form Contract as approved by the ERA, or under a Non-Standard Form Contract (attached herein), which is an individual agreement negotiated with specific terms between Perth Energy and the Small Use Customer. We advise that you conduct your own assessment of the terms and, if necessary, seek independent advice. The Standard Form Contract is available upon request or from the Perth Energy website or ERA website.

Electricity supplied under Perth Energy's Standard Form Contract is charged the Standard Continuing Tariff currently in effect as published on our website ([www.perthenergy.com.au/SCT](http://www.perthenergy.com.au/SCT)). The Standard Continuing Tariff is a flat rate that applies to all electricity consumption irrespective of time of day or day of week. Additionally, applicable charges under the Standard Form Contract include a \$500 connection fee as well as the costs associated with upgrading the electricity meter. Under the Standard Form Contract, a 10-day cooling off period applies from the date of signing the contract, and the Customer can terminate the service agreement with or without notice to Perth Energy. Perth Energy will however provide at least 10 business days" notice for the termination of the supply agreement.

The Standard Form Contract applies to instances where (for example);

1. A Customer uses electricity from a connection point registered by the network operator (presently Western Power) to Perth Energy, without entering a Non-Standard Form Contract (see section on „Information regarding Non-Standard Form Contract“).
  - a. This may occur in situations where there is a tenant at a property with a current or expired contract for the supply of electricity by Perth Energy, without the tenant transferring the supply of electricity to another. In this case, a landlord may be left using electricity which, by legalisation, is deemed to be provided under a Standard Form Contract. This typically occurs when a tenant vacates a property and there is not replacement tenant.



2. Similarly, if a new tenant or occupier moves in to premises where Perth Energy is the last registered electricity retailer, and commences using electricity without having first entered a contract with Perth Energy, then the Standard Form Contract will be deemed, by legislation, to apply.

Even if a Customer uses electricity supplied from Perth Energy for a very short duration before entering a contract with a new retailer, the Standard Form Contract will apply for the short duration, and the Customer will be liable to pay Perth Energy for that electricity at the rates as per the Standard Continuing Tariff.

The Non-Standard Form Contract is an individual agreement negotiated between Perth Energy and the Customer. The entire Agreement, including the pricing and terms and conditions specified in the Non-Standard Form Contract, is confidential and should not be disclosed to any third party unless required to do so by law, or to an energy consultant appointed for the sole purpose of analysing suitability of the service (and who themselves are bound by similar non-disclosure restrictions). A 10-day cooling off period also applies, and any charges incurred will be passed through at cost.

As per the attached Standard Terms and Conditions, Perth Energy will issue invoices based on metering data provided by the network operator (Western Power) on a monthly basis. If the metering data is not available for any reason, the network operator will estimate the missing data in accordance with the regulations, and the bills will be based on those estimates. Perth Energy will not change the metering data under any circumstances.

In the event that the Customer experiences a financial difficulty that either will or reasonably could impede it in paying for its electricity as and when payment falls due, the Customer must to inform Perth Energy as soon as it reasonably can. The Customer further agrees to cooperate with Perth Energy in agreeing to a plan, in accordance with the Code, to prevent the Customer from defaulting on its obligations to Perth Energy or unnecessarily incurring Fees for Non-Standard Services as specified in the Contract. Nothing in this paragraph permits the Customer to avoid paying for electricity it has used or to use electricity it reasonably knows it cannot pay for.

Perth Energy accepts a range of payment methods, including electronic funds transfer, cheque, BPay, direct debit or credit card. To learn more, please visit our website at [www.perthenergy.com.au/payment-methods](http://www.perthenergy.com.au/payment-methods). It is also important to note that the Standard Continuing Tariff will apply in instances where a Non-Standard Form Contract expires, and Perth Energy has not provided the Customer with a renewal offer.

Perth Energy has a Complaints Decision Process that is compliant with ASO ISO 10002-2006, and Customers have the right to have their complaint considered by a senior Perth Energy employee. Further information concerning Perth Energy's Complaints Decision Process is available at [www.perthenergy.com.au/help/complaints](http://www.perthenergy.com.au/help/complaints), and in both forms of contract.

If you require a copy of your contract or more details regarding Perth Energy's tariffs, fees and charges, or would like to make any other enquiry please contact us on (08) 9420 0300.

## Electrical Safety

Please be reminded on the need to use electricity safely to avoid harm. Keep appliances away from known hazards, such as keeping electricity away from water. Damaged switches, power points, light fittings and appliances are dangerous and must be replaced or repaired by a licensed electrical contractor. Where possible, install circuit breakers and use surge protectors to keep protect appliances and electrical infrastructure.

For more information on Electricity Safety, please visit [www.energysafety.wa.gov.au](http://www.energysafety.wa.gov.au) or call (08) 9422 5200.

If you have experienced a power interruption or have an electricity emergency, please call Western Power's fault line on 13 13 51.



## **SCHEDULE TO ELECTRICITY SUPPLY AGREEMENT: STANDARD TERMS AND CONDITIONS (SMALL USE)**

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## 1. Interpretation

### 1.1 Definitions

In this Agreement, unless inconsistent with the context:

**Access Law** means the Laws governing third party connection and access to the Network from time to time including, Part 8 of the *Electricity Industry Act 2004 (WA)*, the *Electricity Networks Access Code*, and any precursor or successor Laws and the Technical Rules.

**Adjustment Date** is defined in clause 6.

**Affected Obligation** is defined in clause 14.1(a).

**Affected Party** is defined in the definition of Force Majeure.

**Agreement** means the agreement between Perth Energy and the Buyer comprising the Commercial Terms (and any Special Conditions) and these Standard Terms and Conditions.

**Ancillary Service Charge** for each Billing Period is the Buyer's proportion (based on the quantity of electricity supplied to the Buyer) of Perth Energy's Cost for Ancillary Services, as defined in the Market Rules, that Perth Energy reasonably estimates using the relevant historical data from the Market Operator and applying the methodology set out in section 9.9 of the Market Rules and is expressed in \$/kWh.

**Approved Payment Method** is the method set out in the Commercial Terms.

**Associate** for the purposes of the definition of "Control", has the same meaning as 'associate' in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this Agreement and the Buyer was the designated body.

**Assumed Electricity Consumption** means, for a Contract Year:

- (a) in relation to the minimum amount of consumption during the Off Peak Period, the Off Peak Minimum Annual Electricity Consumption;
- (b) in relation to the minimum amount of consumption during the Peak Period, the Peak Minimum Annual Electricity Consumption;
- (c) in relation to the maximum amount of consumption during the Off Peak Period, the Off Peak Maximum Annual Electricity Consumption; and
- (d) in relation to the maximum amount of consumption during the Peak Period, the Peak Maximum Annual Electricity Consumption.

**Billing Period** means, for each Site, the period within the Supply Period for which the Contract Charge for the Site is invoiced by Perth Energy to the Buyer, generally being one calendar month measured from on or around the 25<sup>th</sup> day of each month, but actually determined by the availability of Meter Data for the site from the Meter or Network Operator as the case may be.

**Bundled** in respect of a charge, means that the Commercial Terms indicate that the charge is included within the Electricity Price.

**Business Day** means a day when trading banks are open for business in Western Australia excluding a Saturday, Sunday or Public Holiday.

**Buyback Charge** means the amount payable during a Billing Period by applying the Buyback Price to the Surplus Electricity.

**Buyback Price** means the price per kWh agreed between the Parties under clause 3.6(a), and pending agreement is zero.



**Buyer** means the Party named as such in the Commercial Terms.

**Buyer's Facilities** means any Facilities and Equipment at a Site which is not part of the Network, regardless of whether it is owned or operated by the Buyer or another person.

**Buyer's Users** means each of the Buyer's customers, tenants, Related Bodies Corporate, Workers, Visitors or contractors residing at or otherwise using electricity at a Site.

**Capacity Charge** is determined under clause 5.5.

**Change in Law** is defined in clause 10.1.

**Change in Law Notice** is defined in clause 10.2.

**Change in REC Price Notice** is defined in clause 5.6(b).

**Change in Regulatory Charge** is defined in clause 7(b).

**Change of Control** of an entity means where, at any time any person alone or together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of the entity.

**Claim** includes any allegation, debt, cause of action, claim, proceeding, suit or demand of any nature however arising and whether arising in the past, present or future, whether fixed or unascertained, or actual or contingent, and whether at Law or otherwise.

**CMD ("Contract Maximum Demand")** means, in respect of a Site, the maximum permitted average Demand for electricity supplied by Perth Energy to the Buyer under this Agreement over a 30-minute period as specified in the Commercial Terms (as distinct from any maximum Demand or similar arrangement agreed between the Buyer and the Network Operator).

**Commercial Terms** means the terms of the document executed by the Parties and headed "Perth Energy Electricity Supply Agreement: Application and Commercial Terms".

**Confidential Information** means the terms of this Agreement, any communications arising in relation to this Agreement and all confidential information, material and technology disclosed or provided in any form by Perth Energy to the Buyer, which Perth Energy has identified as being commercially sensitive or confidential or which a commercially experienced and astute party receiving that information ought reasonably to know that the information is the confidential information of another party.

**Connection Point** means, in respect of a Site, the point connecting the Network and the Site as described in the Commercial Terms (as distinct from any point of interconnection between the Site and any Onsite Generation).

**Contract Charge** for a Billing Period means the charges payable under clause 5 for the Billing Period as determined under the Commercial Terms.

**Contract End Date** means the date specified as such in the Commercial Terms.

**Contract Start Date** means the date specified as such in the Commercial Terms.

**Contract Year** means a 12-month period commencing on the Contract Start Date and thereafter, a 12-month period commencing on each anniversary of the Contract Start Date, except that if the Contract End Date falls on a day which is less than 12 months following the Contract Start Date, or an anniversary of the Contract Start Date (as the case requires), then that Contract Year will be the period from the Contract Start Date, or the anniversary of the Contract Start Date (as the case requires) until the Contract End Date.



**Control** means:

- (a) control or influence of, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, in relation to the financial and operating policies;
- (b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting; or
- (c) having a relevant interest (as defined in section 608 of the Corporations Act) in more than 20% of the securities (as defined in the Corporations Act),

of an entity (whether alone or together with any Associates).

**Controller** means, in relation to a Change of Control of the Buyer, the person or body corporate to whom Control will pass.

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

**Cost** includes any expense, charge, tax, duty, impost, fee, rate, withholding, fine, penalty, levy or other cost.

**CPI** means the Consumer Price Index (All Groups for the City of Perth) published quarterly by the Australian Bureau of Statistics or if that index is no longer published or the way it is calculated materially changes, such substitute index as determined in accordance with clause 1.3.

**Customer Complaints Policy** means the policy describing the process followed by Perth Energy in responding to a complaint raised by the Buyer which and which is available upon request from Perth Energy or from the Perth Energy website at <https://www.perthenergy.com.au/help/complaints>.

**Daily Supply Charge** means the price per day per Meter specified as such in the Commercial Terms and escalated under clause 6.

**Demand** means the rate of Electricity Consumption (in kW) at a Connection Point as measured by the Network Operator's Metering Equipment at the Site.

**Direct Liability** means all Liability other than any Indirect Liability.

**Dispute Notice** is defined in clause 15.2(a).

**Electricity Charge** is defined in clause 5.2.

**Electricity Consumption** means the quantity of electricity consumed (in kWh) at a Site, as measured by the Network Operator's Metering Equipment at the Site, multiplied by the Site's Loss Adjustment Factor, if applicable.

**Electricity Price** means the price specified as such in the Commercial Terms as applicable to Electricity Consumption at a Site during the Peak Period and the Off Peak Period and escalated under clause 6.

**Energy Data** means a measurement of electricity consumed at a Connection Point over a period of time, and includes Estimated Data or Substituted Data.

**Estimated Data** means Energy Data which has been estimated by the Network Operator in accordance with the *Electricity Industry Metering Code 2012* (WA).

**Excess Demand Charge** is defined in clause 5.7.

**Excess Demand Price** means the price per kW specified as such in the Commercial Terms and escalated under clause 6.

**Excess Electricity Charge** for a Contract Year is determined under clause 5.8(a).





**Excess Electricity Price** means the price per kWh specified as such in the Commercial Terms and escalated under clause 6.

**Facilities and Equipment** means, in relation to a Connection Point, the apparatus, equipment, plant and buildings used for or in relation to generating, consuming and transporting electricity at the Connection Point.

**Financial Adjustment** means an adjustment to the prices stated in the Commercial Terms or otherwise in the amounts payable by the Buyer to Perth Energy under this Agreement, or a lump sum payment as compensation or some other form of adjustment.

**Financial Default** means the failure of the Buyer to:

- (a) pay the Contract Charge, or any other amount payable by the Buyer to Perth Energy under this Agreement, by the Payment Due Date; or
- (b) perform one or more of its obligations under clause 20 in relation to any security required by Perth Energy.

**Force Majeure** means, subject to clause 14, an event or circumstance which wholly or partially prevents, delays or hinders a Party ("**Affected Party**") in performing an obligation under this Agreement, the cause of which is beyond the Affected Party's reasonable control and which, by the exercise of due diligence, the Affected Party is not able to avoid or overcome, but a Party's lack of, or inability or unwillingness to use funds for any purpose is not Force Majeure.

**Good Electricity Industry Practice** means the exercise of that degree of skill, diligence, prudence and foresight that a person skilled and experienced in the electricity industry would reasonably and ordinarily exercise under comparable conditions and circumstances, complying with applicable Laws and applicable recognised codes, standards and guidelines.

**Included Cost** means any Cost that is not normally billed to the Buyer at cost on a pass through basis.

**Indirect Liability** means any loss of (or loss of anticipated) use, production, revenue, income, profits, goodwill, contract, business and savings or business interruption, and whether or not foreseeable.

**Late Payment Administration Charge** is defined in clause 9.4.

**Law** means the laws in force in Western Australia from time to time including any Western Australian or Commonwealth statute, regulations, ordinance, code, clause, licences, rules, permits, registrations, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment, determination or order and includes the common law and equity.

**LGC ("Large-scale Generation Certificate")** means a certificate created under Part 2, Division 4, Subdivision A of the Renewable Energy Act.

**LGC Price** is the price per kWh or the price per LGC (as the case may be) as specified in the Commercial Terms as may be varied by Perth Energy under clause 5.6(b) and escalated under clause 6.

**Liability** includes all liabilities (whether actual, contingent or prospective), losses, harm, damages, Claims and Costs of whatever nature or description irrespective of when the act or event giving rise to the liability occurred, and Costs associated with or arising from the collection of amounts due under this Agreement, including, for the avoidance of doubt, legal Costs on a full indemnity basis.

**Life Support Equipment** means the equipment designated under the Western Australian government's Life Support Equipment Electricity Subsidy Scheme.

**Loss Adjustment Factor** for a Site, means the factor calculated using data published on the Market Operator's website from time to time to define the annual average marginal network loss between any given node and the reference node (including transmission and distribution losses), where the loss factor at the reference node is 1.

**Market Charge** is defined in clause 5.4.

**Market Customer** is defined in the Market Rules.





**Market Fee** means the Market Operator's "Market Fee" as determined under section 2.24 of the Market Rules, expressed in \$/kWh.

**Market Operator** means the operator of the Wholesale Electricity Market from time to time in accordance with the Market Rules.

**Market Rules** means the Wholesale Electricity Market Rules published under the *Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WA)*, and the provisions of the *Electricity Industry Act 2004 (WA)*, and subsidiary legislation made under the *Electricity Industry Act 2004 (WA)*, relating to the Wholesale Electricity Market, as amended from time to time.

**Material Adverse Event** means any one or more acts, events or circumstances which increases Perth Energy's direct or indirect Included Costs of performing its obligations under this Agreement by 5% or greater.

**Maximum Annual Electricity Consumption** means either or both of a Peak Maximum Annual Electricity Consumption and Off Peak Maximum Annual Electricity Consumption.

**Meter** means, for a Site, the electricity meter operated and maintained by the Network Operator to measure the electricity transferred at the Connection Point for the Site.

**Metering Data** means the Standing Data and Energy Data for a Connection Point held by the Network Operator in its metering database.

**Metering Equipment** means the Meter and associated equipment used to measure and record electricity transferred to or from the Network at a Connection Point.

**Minimum Annual Electricity Consumption** means either or both of a Peak Minimum Annual Electricity Consumption and Off Peak Minimum Annual Electricity Consumption.

**New Offer** is defined in clause 21(a)(ii).

**Network** means the parts of the South West Interconnected System that are operated by the Network Operator and to which access is given to Perth Energy under the Network Access Contract.

**Network Access Contract** means the contract or other arrangements in effect from time to time between the Network Operator and either or both of Perth Energy and the Buyer which grants Perth Energy access to the Network so that electricity may be transmitted into, across and out of the Network.

**Network Charge** is defined in clause 0.

**Network Operator** means the operator of the Network, which at the time this Agreement was entered into was Electricity Network Corporation (ABN 18 540 492 861) trading as "Western Power".

**Network Outage** means any partial or total interruption, disturbance or fluctuation in the supply or quality of electricity to a Site as a result of any Network event, including any significant plant or equipment failure or load shedding.

**Non Financial Default** means a breach of this Agreement by either Party or the failure of a Party to perform any of its obligations under this Agreement or to comply with this Agreement, and which is not a Financial Default.

**Notice Period** means any date which is after the Contract End Date specified in the Commercial Terms (which date cannot be any date later than 6 months following the Contract End Date). If no Notice Period is specified in the Commercial Terms in compliance with the foregoing sentence, then the Notice Period is deemed to be the date that is six months following the Contract End Date.

**Off Peak Combined Consumption** means the combined total of Electricity Consumption for [all] Sites during the Off Peak Period only.

**Off Peak Maximum Annual Electricity Consumption** means the value (if any) specified as such in the Commercial Terms.



**Off Peak Minimum Annual Electricity Consumption** means the value (if any) specified as such in the Commercial Terms.

**Off Peak Period** means any period of time outside the Peak Period.

**Onsite Generation** means, with respect to a Site, renewable or other electricity generation equipment (including any battery or other storage equipment capable of re-supplying electricity) connected or to be connected to Buyer's Facilities at the Site.

**Other Charges** means any charge, other than the Capacity Charge, Market Fee, Balancing or Ancillary Service Charge that Perth Energy reasonably estimates using the relevant historical data from the Market Operator and applying the methodology set out in section 9.11 of the Market Rules and is expressed in \$/kWh in respect to a Billing Period.

**Other Regulatory Charges** means any Cost imposed by any government, or any governmental, semi-governmental or other regulatory or supervisory agency, organisation or body authorised by a Law including the Market Operator, which is specific to the electricity industry and is imposed on Perth Energy relating to the generation, purchase, transmission, delivery, supply or sale of electricity under this Agreement, or the acquisition or Cost of goods, services, or materials used in relation to this Agreement, other than the Network Charge, Market Charge, Capacity Charge and REC Charge:

- (a) including any payments, charges, levies, credits or refunds payable under any Law; but
- (b) not including income tax, capital gains tax or fringe benefits tax.

**Payment Due Date**, for a Tax Invoice, means the date by which the Buyer must pay the Tax Invoice, as specified in the Tax Invoice in accordance with the Commercial Terms.

**Peak Combined Consumption** means the combined total of Electricity Consumption for all Sites during the Peak Period only.

**Peak Maximum Annual Electricity Consumption** means the value (if any) specified as such in the Commercial Terms.

**Peak Minimum Annual Electricity Consumption** means the value (if any) specified as such in the Commercial Terms.

**Peak Period** means the period specified as such in the Commercial Terms or where none is specified, from 08:00 to 22:00 Monday to Friday inclusive.

**PPSA** means:

- (a) the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under that Act, including the *Personal Property Securities Regulations 2010* (Cth); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a) of this definition.

**Price** means each of the Electricity Price, the Daily Supply Charge, the Excess Demand Price, the Shortfall Electricity Price, the Excess Electricity Price, the LGC Price and the STC Price.

**Price Review Base Date** means the date specified as such in the Commercial Terms, and if no date is specified means the Contract Start Date.

**Price Review Period** means the period specified as such in the Commercial Terms, and if no date is specified means each anniversary of the Contract Start Date.

**REC Charge** means the charge payable by the Buyer in satisfaction of Perth Energy's obligations to purchase and surrender LGCs and STCs under the Renewable Energy Act calculated by reference to the renewable energy certificate market price of LGCs and STCs.



**Related Body Corporate** has the same meaning as in the Corporations Act.

**Regulatory Charges** means the:

- (a) Network Charge;
- (b) Market Charge;
- (c) Capacity Charge;
- (d) REC Charge; and
- (e) Other Regulatory Charges.

**Renewable Energy Act** means the Renewable Energy (Electricity) Act 2000 (Cth).

**RPP** means, in any year, the Renewable Power Percentage for the year specified in the *Renewable Energy (Electricity) Regulations 2001* (Cth).

**Security** means the security, if any, to be provided by the Buyer under clause 20 in the form, type and amount acceptable to Perth Energy.

**Shortfall Electricity Price** is the price per kWh specified as such in the Commercial Terms and escalated under clause 6.

**Site** means the premises to which electricity is supplied by Perth Energy under this Agreement at a single Connection Point, as described in the Commercial Terms.

**Small Use Customer** has the meaning of "customer" as defined in section 47 of the *Electricity Industry Act 2004* (WA).

**Special Conditions** means the "Special Conditions" (if any) set out in the Commercial Terms.

**Standard Terms and Conditions** means the terms and conditions set out in this schedule.

**Standing Data** means the reference details used by the Network Operator to identify, locate, characterise, access and measure the Energy Data at a Connection Point.

**STC ("Small-scale Technology Certificate")** means a certificate created under Part 2, Division 4, Subdivision BA of the Renewable Energy Act.

**STC Price** is the price per kWh or the price per STC (as the case may be) as specified in the Commercial Terms as may be varied by Perth Energy under clause 5.6(b) and escalated under clause 6.

**STP** means the Small-scale Technology Percentage for the relevant year specified in the *Renewable Energy (Electricity) Regulations 2001* (Cth).

**Substituted Data** means Energy Data which has been substituted by the Network Operator in accordance with the *Electricity Industry Metering Code 2005* (WA).

**Supply Period** for a Site means the agreed period during which Perth Energy will supply electricity to the Site, as specified in the Commercial Terms, except as otherwise provided in this Agreement.

**Surplus Electricity** means electricity generated by Onsite Generation and exported to the Network.

**System Operator** means the person who:

- (a) operates and controls the system operation control centre for the Network; or
- (b) where there is no system operation control centre, is responsible for the control of the Network through monitoring, switching and dispatch; or



- (c) where the system operation control centre and another party are both responsible for the control of the Network through monitoring, switching and dispatch, performs the tasks described in either or both of paragraphs (a) and (b).

**Tax Invoice** means an invoice issued under clause 9.1.

**Technical Rules** means the technical standards and rules that apply to the Network under the Access Law.

**Wholesale Electricity Market** means the market established under section 122 of the *Electricity Industry Act 2004* (WA).

**Workers** in relation to a Party means that Party's directors, officers, servants, employees, agents and contractors.

**Variance** means:

- (a) in relation to either the Off Peak Minimum Annual Electricity Consumption or the Peak Minimum Annual Electricity Consumption, an amount which is greater than 10% less than the amount set out in the Commercial Terms (as the case requires); and
- (b) in relation to either the Off Peak Maximum Annual Electricity Consumption or the Peak Maximum Annual Electricity Consumption, an amount which is greater than 10% more than the amount set out in the Commercial Terms (as the case requires).

**Visitors** in relation to a Party means that Party's customers, invitees, licensees and visitors.

## 1.2 Interpretation

In this Agreement unless inconsistent with the context:

- (a) the singular includes the plural and vice versa;
- (b) any gender includes the other genders;
- (c) a reference to any thing is to the whole or any part of it and a reference to a group of things or persons is to any one or more of them;
- (d) a reference to a person includes an individual, firm, partnership, government or public body, company, association or unincorporated body;
- (e) a reference to a person includes the person's executors, administrators, successors, permitted substitutes (including persons taking by novation), appointed agents and representatives and permitted assigns;
- (f) a reference to a clause is to a clause in the Standard Terms and Conditions of this Agreement;
- (g) headings are for reference purposes only and do not affect the interpretation of this Agreement;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a reference to any document (including this Agreement) includes any variation, extension, novation or replacement of it;
- (j) the words "include", "includes", "including", "for example" and "such as" are not words of limitation and are deemed to be followed by the phrase "without limitation";
- (k) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (l) general words are not to be given a restrictive interpretation by reason of their being preceded or followed by



words indicating a particular class of acts, matters or things;

- (m) “**under**” includes by, by virtue of, pursuant to, and in accordance with;
- (n) “**maintain**” includes repair, renew and replace;
- (o) the phrase “**in relation to**” or “**in respect of**” has the widest possible import and encompasses the phrases “in connection with”, “in respect of”, “arising out of”, “caused by” and “resulting from”;
- (p) a reference to a right includes a benefit, remedy, discretion or power;
- (q) a reference to a monetary amount means that amount in Australian currency;
- (r) a reference to a month is a reference to a calendar month and a reference to a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that date;
- (t) if a day stipulated for payment is not a Business Day, the payment must be made on the next Business Day;
- (u) a reference to “writing” or “written” includes any electronic transmission or communication by facsimile;
- (v) whenever the approval, consent, certification, notification or agreement of any person is required, it must be in writing or be given or obtained by electronic communication in accordance with the *Electronic Transactions Act 2011* (WA) and obtained before implementing the action to which it relates; and
- (w) nothing in this Agreement is to be interpreted against a Party solely because that Party put forward, or seeks to rely on, this Agreement or any part of it.

### 1.3 New references

Where under this Agreement, any matter, determination or calculation is to be referred to or carried out having regard to any index, publication or quotation issued by any regulatory body or other third party (including any Loss Adjustment Factor) (“**Reference**”), and if that Reference ceases to be published or otherwise ceases to be available, or if there has been a material change in the basis on which the Reference is set, such as to affect the appropriateness of the Reference for the purposes of this Agreement (for example, to rely on it would not preserve the commercial effect of this Agreement), then:

- (a) the Parties will adopt a new Reference, or will amend as appropriate the basis on which they apply the existing Reference;
- (b) if one Party gives notice to the other that there is a need to adopt a new Reference, or to amend the basis on which an existing Reference is applied, then the Parties will negotiate in good faith with a view to reaching agreement on whether there is a need to adopt a new Reference, or amend the basis on which the existing Reference is applied; and
- (c) if within 20 Business Days the Parties are unable to agree on these matters, then these matters will be referred to an Expert for determination in accordance with clause 16,

so as to preserve the commercial effect of this Agreement by application of the new Reference.

## 2. Term of Agreement & prior agreements

### 2.1 Term

This Agreement starts on the date that Perth Energy executes the Commercial Terms, and ends on the Contract End Date, unless it ends earlier under the terms of the Agreement.



## 2.2 Termination of prior agreements

- (a) Subject to clause 2.2(a), each existing agreement between the Parties in respect of the Site that is in force (whether wholly or in part) on the day immediately prior to the Contract Start Date ("**Prior Agreement**"), whether or not specified as a Prior Agreement in the Commercial Terms, ends on the Contract Start Date.
- (b) Clause 2.2(a) does not affect any rights and obligations which, under the Prior Agreement, survive the end of that Prior Agreement.

## 2.3 Termination by the Buyer

- (a) The Buyer may terminate this Agreement:
  - (i) within 10 days of entering into this Agreement by notice to Perth Energy; or
  - (ii) at any time, subject to notifying Perth Energy in writing of such termination not less than 20 days before the termination is to take effect.
- (b) If the Buyer terminates this Agreement because it enters into a new agreement with Perth Energy for the supply of electricity, this Agreement will end on the expiration of 10 days after the new agreement is entered into.
- (c) If the Buyer terminates this Agreement because it enters into a new agreement with another retailer for the supply of electricity, this Agreement will not end until the supply of electricity to the Buyer is transferred to the other retailer in accordance with the *Electricity Industry Customer Transfer Code 2004*.
- (d) If the Buyer terminates this Agreement before the end of the Supply Period, the Buyer may have to pay certain charges under clause 5.8(d) or clause 19.5.

## 3. Electricity Supply

### 3.1 Sale and Purchase

From 08:00 hours on the Contract Start Date the Buyer will buy and Perth Energy will supply to the Buyer, electricity at the Connection Point on the terms set out in this Agreement.

### 3.2 Title to Electricity

Title to and risk in electricity supplied under this Agreement passes from Perth Energy to the Buyer at the Connection Point.

### 3.3 Supply Period

- (a) The Supply Period for a Site commences on the later of:
  - (i) the Contract Start Date; and
  - (ii) the last to occur of:
    - A. the date the Meter for the Site is energised;
    - B. the date the Meter for the site is replaced or reconfigured; and
    - C. the date the transfer request transferring the Site from another electricity retailer to Perth Energy becomes effective.
- (b) Perth Energy may, with no less than 10 Business Day's written notice to the Buyer, terminate this Agreement if:
  - (i) no Meter for a Site is energised within 10 Business Days of the Contract Start Date;



- (ii) where a Meter is required to be replaced or reconfigured in order to allow Perth Energy to supply any electricity to the Buyer at a Site and this has for any reason not occurred within 10 Business Days of the Contract Start Date; or
  - (iii) a transfer request transferring each Site from another electricity retailer to Perth Energy does not become effective within 10 Business Days of the Contract Start Date.
- (c) Perth Energy must not supply electricity to the Buyer at the Connection Point for a period of 10 days after the Parties entered into this Agreement, unless the Buyer requests supply during that period..
  - (d) The Buyer must pay the Contract Charge if Perth Energy supplies electricity at the Buyer's request under clause 3.3(c) and the Buyer terminates this Agreement under clause 2.3(a)(i)."

### **3.4 Electricity Consumption**

- (a) The Buyer agrees that the Electricity Prices and the Contract Charges in this Agreement are based on the:
  - (i) historical Electricity Consumption (including the timing of that Electricity Consumption); and
  - (ii) representations (including any representations made by or on behalf of the Buyer) concerning the future Electricity Consumption (including the timing of that Electricity Consumption),at the Site.
- (b) If at any time Perth Energy reasonably forms the view that there is, has been or may in future be, any Variance in the Assumed Electricity Consumption at a Site, for example, the installation of any Onsite Generation or the installation of any electricity consuming device, Perth Energy may by notice to the Buyer increase the Electricity Price and the Contract Charges to preserve the commercial effect of this Agreement.
- (c) The Buyer must notify Perth Energy in writing as soon as practicable if it anticipates or becomes aware of any, or any likely future change in its Electricity Consumption which might become a Variance in the Assumed Electricity Consumption at a Site.

### **3.5 Onsite Generation**

- (a) The Buyer may install Onsite Generation or implement energy efficiency measures at any time during the Supply Period, but must first:
  - (i) obtain (and comply with) all necessary approvals from the Network Operator; and
  - (ii) notify Perth Energy in writing detailing the proposed Onsite Generation at least 40 Business Days prior to the date the Buyer intends to commence installing the Onsite Generation.
- (b) The Buyer must ensure that all Onsite Generation and Surplus Electricity complies with this Agreement, all Laws including the Access Law, Market Rules and Technical Rules, each Network Access Contract and any direction or requirement of the Network Operator given or made under any Law or Network Access Contract.
- (c) The Buyer must pay all Costs in respect of any proposal to connect, and any installation, connection, operation or maintenance of, Onsite Generation and must reimburse to Perth Energy all Costs incurred or paid by Perth Energy. Including but not limited to Perth Energy's reasonable costs of administration, in respect of any of these things.
- (d) Perth Energy accepts no Liability and the Buyer holds harmless and releases Perth Energy from any Liability or responsibility in respect of the Onsite Generation's operation or performance or the export of (including the capacity of the Buyer to export any) Surplus Electricity to the Network.

### **3.6 Sale and purchase of Surplus Electricity**

- (a) The terms on which Perth Energy may agree to purchase any Surplus Electricity, including but not limited to





- (i) the amount of any Buyback Price;
- (ii) Costs under clause 3.5(c); and
- (iii) the increase, if any, to the Electricity Price due to of a change in consumption arising from the use of the Onsite Generation,

are to be agreed between the Parties acting in good faith, and incorporated as a variation to this Agreement.

- (b) In the event that the Parties are unable or unwilling to agree terms under clause 3.6(a) then;
- (c) The Parties must submit the resolution of the terms under clause 3.6(a) for determination under clause 16; and
- (d) The Buyer must not transport electricity beyond the Connection Point until the terms are resolved under clause 16 and the Buyer otherwise has the right to transport electricity beyond the Connection Point.

## **4. The Network and the Network Operator**

### **4.1 Responsibility for Delivery of Electricity**

- (a) The Network Operator, not Perth Energy, operates, maintains and controls the Network and the Connection Point.
- (b) The electricity supplied under this Agreement is transported to the Connection Point by the Network Operator, under the Network Access Contract. To the maximum extent permitted by law, Perth Energy gives no warranty that the electricity supplied under this Agreement will be of any particular quality, supplied at a particular rate, or free of interruptions or surges.
- (c) The Buyer acknowledges and agrees that:
  - (i) the Network Operator may from time to time interrupt or limit the supply of electricity at the Connection Point for any operational, maintenance or safety reason;
  - (ii) Perth Energy, acting reasonably, may interrupt or limit the supply of electricity to the Buyer at the Connection Point for any operational, maintenance or safety reason; and
  - (iii) where this Agreement states that Perth Energy must or may do something, the Network Operator may do it either under the terms of the Network Access Contract or at Perth Energy's request.

### **4.2 Back Up Supply**

It is the Buyer's responsibility to consider whether the Buyer or any of the Buyer's Users require a continuous supply of electricity at a Site and, if so, to make appropriate arrangements for back-up supply, for example to deal with situations in which:

- (a) the Network Operator interrupts or limits the supply of electricity at the Connection Point; or
- (b) Force Majeure affects Perth Energy's ability to supply electricity.

### **4.3 Life Support Equipment**

- (a) The Buyer must immediately notify Perth Energy of any or any change to the following information:
  - (i) each Site at which there is or will be a person who is from time to time, dependent upon Life Support Equipment (a "**Life Support Equipment Site**");
  - (ii) the name, postal address and street address of the responsible person at the Life Support Equipment Site for Network Outage notification purposes;



- (iii) the telephone number to enable the Network Operator to contact the responsible person at the Life Support Equipment Site; and
  - (iv) confirmation from an appropriately qualified medical practitioner that the person requires Life Support Equipment.
- (b) If the Buyer has notified Perth Energy under clause 4.3(a), the Buyer must notify Perth Energy in writing within 5 Business Days after becoming aware that the Site is no longer a Life Support Equipment Site.

#### **4.4 Parties to comply with all Laws**

The Parties must comply with all applicable Laws, including Access Laws, Market Rules and Technical Rules, and all directives from the Network Operator, the System Operator and the Market Operator to either Party made under any Law or the Network Access Contract.

#### **4.5 Buyer not to cause breach of Network Access Contract**

The Buyer must not, and must ensure that the Buyer's Users do not, do anything which causes:

- (a) Perth Energy to breach, or incur any Liability under or in respect of, the Network Access Contract; or
- (b) the Network Operator to suffer a Liability for which Perth Energy has or will have any Liability to the Network Operator under any Law or the Network Access Contract.

#### **4.6 The Network Operator's Access to Sites**

The Buyer must allow or procure for the Network Operator reasonable access to each Site:

- (a) to read the Meter;
- (b) to construct, install, connect, operate, inspect, maintain, disconnect and remove the Metering Equipment and any of the Network Operator's other Facilities and Equipment; and
- (c) for any other reasonable purpose connected with this Agreement, the Network Access Contract or any applicable Law.

#### **4.7 Non-Interference with Network Equipment**

The Buyer must not and must ensure that the Buyer's Users do not tamper with, circumvent, bypass or otherwise interfere with the Metering Equipment or any of the Network Operator's other Facilities and Equipment, or allow any other person to do so.

#### **4.8 Maintenance of Buyer's Equipment**

- (a) The Buyer must maintain the Sites and the Buyer's Facilities in accordance with Good Electricity Industry Practice.
- (b) The Buyer is responsible for protecting the Buyer's Facilities and all of its other property from damage resulting from the quality and nature of the electricity supplied by Perth Energy.
- (c) The Buyer must notify Perth Energy in advance of any changes to the Buyer's Facilities.
- (d) The Buyer must ensure that to the extent any other person must do anything in order for the Buyer to comply with clause 4.8(a) to clause 4.8(c) (inclusive), the Buyer will ensure that it procures that assistance to comply with this clause 4.8.



#### **4.9 Network Access Contract**

- (a) If Perth Energy enters into a new or amended Network Access Contract or other agreement with the Network Operator that changes either the Buyer's or Perth Energy's obligations for use of the Network then Perth Energy must use reasonable endeavours in accordance with Good Electricity Industry Practice to minimise any adverse impact of the new or amended agreement and may amend this clause 4 by written notice to the Buyer to reasonably reflect the new or amended Network Access Contract.
- (b) Any amendments notified under clause 4.9(a) will be binding on Perth Energy and the Buyer and Perth Energy will use reasonable endeavours to procure from the Network Operator a reasonable period for the Buyer to comply with the amendments.

#### **4.10 Reporting**

Either Party may report any supply faults to the Network Operator and request remedial action either in accordance with the Network Access Contract or otherwise.

#### **4.11 Indemnities in relation to the Network**

The Buyer indemnifies Perth Energy against any Liability that Perth Energy incurs to the Network Operator in respect of:

- (a) any:
  - (i) Liability suffered by the Network Operator; or
  - (ii) Liability that the Network Operator incurs to a third party in respect of any Liability suffered by that third party,to the extent that such Liability results from or is in relation to the negligence or breach of this Agreement by the Buyer, the Buyer's Users or anyone acting under the control or direction of the Buyer; and
- (b) any Liability that the Network Operator may incur to the Buyer or the Buyer's Users in respect of any Liability suffered by the Buyer or the Buyer's Users, in relation to the Network Operator's provision of or failure to provide Network services.

{Note: At the time of entering into this Agreement, Perth Energy would not be liable to the Network Operator under clause 4.11(b) to the extent that such Liability is caused by, consequent upon, or arises out of the Network Operator's negligence or breach of the Network Access Contract.}

### **5. Contract Charge**

#### **5.1 Buyer must pay the Contract Charge**

- (a) Each Billing Period, the Buyer must pay to Perth Energy:
  - (i) the Contract Charge for each Site, being the aggregate of each of the following charges:
    - A. the Electricity Charge;
    - B. the Network Charge (unless Bundled into the Electricity Price);
    - C. the Market Charge (unless Bundled into the Electricity Price);
    - D. the Capacity Charge (unless Bundled into the Electricity Price);
    - E. the REC Charge (unless Bundled into the Electricity Price);



- F. any Other Regulatory Charges (unless Bundled into the Electricity Price);
- G. the Excess Demand Charge (if applicable);
- H. any Excess Electricity Charge for a Contract Year (if applicable); and
- I. any Shortfall Electricity Charge for a Contract Year (if applicable); and

(ii) any other amounts owing to Perth Energy under this Agreement.

(b) The Buyer acknowledges and agrees that each Contract Charge and any other amount payable under this Agreement will be that charge as may be adjusted, escalated, added to and otherwise changed or amended as expressly set out in this Agreement.

## 5.2 Calculation of Electricity Charge

The Electricity Charge for a Site is equal to:

$$EC = (EP \times E) + (DC \times D \times M)$$

where:

EC	=	the Electricity Charge payable under this clause 5.2.
EP	=	the Electricity Price, taking into account Peak Periods and Off Peak Periods.
E	=	the Electricity Consumption for the Site during the relevant Billing Period, taking into account the Electricity Consumption during the Peak Periods and Off Peak Periods.
DC	=	the Daily Supply Charge.
D	=	the number of days in the relevant Billing Period.
M	=	the number of Meters for the Site.

On request, Perth Energy will supply reasonable information about its Electricity Prices, including any alternative Electricity Prices that may be available to the Buyer, within 8 Business Days of receiving the Buyer's request.

## 5.3 Calculation of Network Charge (if not Bundled)

Unless it is Bundled into the Electricity Price, the Network Charge for a Site for a Billing Period is the sum of all charges, including charges incurred by Perth Energy under the Network Access Contract or the Market Rules due to a breach by the Buyer or the Buyer's Users of the Buyer's obligations under this Agreement, and other amounts payable or otherwise incurred by Perth Energy from time to time under the Network Access Contract in respect of the Site.

## 5.4 Calculation of Market Charge (if not Bundled)

(a) Unless it is Bundled into the Electricity Price, the Market Charge for a Site is equal to:

$$MC = (E \times MF) + ASC + OC$$

where:



MC	=	the Market Charge payable under this clause 5.4.
E	=	the Electricity Consumption for the Site during the relevant Billing Period.
MF	=	the applicable Market Fee.
ASC	=	Ancillary Service Charge payable to the Market Operator by Perth Energy attributable to the Site during or in respect of the relevant Billing Period
OC	=	the amount of any Other Charges, payable to the Market Operator by Perth Energy attributable to the Site during or in respect of the relevant Billing Period.

### 5.5 Calculation of Capacity Charge (if not Bundled)

Unless it is Bundled into the Electricity Price, the Capacity Charge for a Site for a Billing Period is the amount reasonably estimated by Perth Energy to be the Buyer's proportionate share (determined by reference to the Buyer's proportionate contribution to Perth Energy's "Individual Reserve Capacity Requirement" of the "Targeted Reserve Capacity Cost" and "Shared Reserve Capacity Cost" (each as defined in and determined under the Market Rules)) that Perth Energy reasonably estimates (using any relevant information published by the Market Operator) that the Market Operator will allocate to it under the Market Rules.

### 5.6 Calculation of REC Charge (if not Bundled)

(a) Unless it is Bundled into the Electricity Price, the REC Charge for a Site is equal to:

(i) where the LGC Price and STC Price are expressed in cents/kWh in the Commercial Terms,

$$\text{REC Charge} = (\text{LGC Price} + \text{STC Price}) \times E$$

or

(ii) where the LGC Price and STC Price are expressed in a \$/LGC and \$/STC in the Commercial Terms,

$$\text{REC Charge} = [(\text{LGC Price} \times \text{RPP} \times E) + (\text{STC Price} \times \text{STP} \times E)]$$

where:

E = the Electricity Consumption for the Site during the relevant Billing Period.

- (b) If there is an increase or a decrease in the renewable energy certificate market price of LGCs or STCs at any time, Perth Energy may give the Buyer a written notice ("**Change in REC Price Notice**") providing reasonable information about the nature of the change and setting out the amount of the corresponding change to the LGC Price or the STC Price (as the case may be).
- (c) If Perth Energy gives the Buyer a Change in REC Price Notice, the LGC Price or the STC Price (as the case may be) will be changed with effect from the date specified in the Change in REC Price Notice.
- (d) The Buyer may, following no less than 20 Business Days written notice to Perth Energy, subject to Perth Energy's prior written consent, which consent can be given or withheld in accordance with the requirements of



clause 5.6(b), meet its obligation to pay the REC Charge for a Site by transferring to Perth Energy, with all legal and beneficial title free and clear of any encumbrance:

(i) a number of LGCs equal to:

- A. the applicable RPP; *multiplied by*
- B. the Electricity Consumption for the Site in the Billing Period; and

(ii) a number of STCs equal to:

- A. the applicable STP; *multiplied by*
- B. the Electricity Consumption for the Site in the Billing Period.

(e) Perth Energy will not unreasonably withhold or delay its consent where to consent will not cause Perth Energy to incur at any time any Cost associated with Perth Energy acquitting its obligations associated with the Renewable Energy Act.

### 5.7 Calculation of Excess Demand Charge (if applicable)

- (a) The Buyer must use best endeavours in accordance with Good Electricity Industry Practice to ensure that the rate of electricity transfer into and out of the Network at a Site does not exceed CMD.
- (b) If the CMD at a Site is exceeded at any time during a Billing Period, then the Buyer must pay the Excess Demand Charge for the Site which, for a Billing Period, is equal to:

$$EDCharge = (EDPrice \times ED) + ENC$$

where:

- ED Charge = the Excess Demand Charge payable under this clause 5.7.
- ED Price = the Excess Demand Price.
- ED = excess Demand, namely any Demand that is in excess of CMD during the Billing Period.
- ENC = the excess network user charge payable by Perth Energy to the Network Operator if Demand exceeds any maximum demand or similar arrangement agreed between the Buyer and the Network Operator during or in respect of the relevant Billing Period, which charge Perth Energy will pass through to the Buyer on a full pass-through at cost basis.

### 5.8 Calculation of Excess Electricity Charge and Shortfall Electricity Charge (if applicable)

- (a) At the end of the final Billing Period for each Contract Year, Perth Energy will calculate:
  - (i) the Peak Combined Consumption; and
  - (ii) the Off Peak Combined Consumption,



for the Contract Year.

- (b) If the Commercial Terms specify a Maximum Annual Electricity Consumption, then the Excess Electricity Charge for a Contract Year is calculated as follows:

$$EECharge = EE Price \times (EE Consumption_{off-peak} + EE Consumption_{peak})$$

where:

EE Charge = the Excess Electricity Charge payable for the Contract Year.

EE Price = the Excess Electricity Price.

EE Consumption<sub>Off-Peak</sub> = the amount (if any) by which the Off Peak Combined Consumption for the Contract Year exceeds the Off Peak Maximum Annual Electricity Consumption (if any) specified in the Commercial Terms for the Contract Year; and

EE Consumption<sub>Peak</sub> = the amount (if any) by which the Peak Combined Consumption for the Contract Year exceeds the Peak Maximum Annual Electricity Consumption (if any) specified in the Commercial Terms for the Contract Year.

- (c) If the Commercial Terms specify a Minimum Annual Electricity Consumption, then the Shortfall Electricity Charge for a Contract Year is calculated as follows:

$$SE Charge = SE Price \times (SE Quantity_{off-peak} + SE Quantity_{peak})$$

where:

SE Charge = the Shortfall Electricity Charge payable for the Contract Year.

SE Price = the Shortfall Electricity Price.

SE Quantity<sub>Off-Peak</sub> = the amount (if any, and expressed as a positive number) by which the Off Peak Combined Consumption for the Contract Year is less than the Off Peak Minimum Annual Electricity Consumption (if any) specified in the Commercial Terms for the Contract Year; and





SE  
Quantity<sub>Peak</sub> = the amount (if any, and expressed as a positive number)  
by which the Peak Combined Consumption for the  
Contract Year is less than the Peak Minimum Annual  
Electricity Consumption (if any) specified in the  
Commercial Terms for the Contract Year.

- (d) If this Agreement terminates before the end of the Supply Period other than under clause 19 for Perth Energy's Non Financial Default, Perth Energy will invoice to the Buyer, and the Buyer must pay to Perth Energy the Shortfall Electricity Charge for each Contract Year remaining in the Supply Period (or part thereof).

## 5.9 Material Adverse Event

- (a) If at any time, there is a Material Adverse Event, then Perth Energy may give the Buyer a notice:
- (i) advising the Buyer that there has been a Material Adverse Event including, if requested by the Buyer, reasonable information in relation to:
    - A. the Material Adverse Event; and
    - B. the effect of the Material Adverse Event on Perth Energy;
  - (ii) proposing an adjustment or adjustments to any one or more of the Contract Charges (including any Prices as inputs to those charges), which adjustment or adjustments must be no more than is necessary to, by the Contract End Date, put Perth Energy in a position as if its costs of performing its obligations under this Agreement had not been subject to a Material Adverse Event ("**Material Adverse Event Adjustment**"); and
  - (iii) specifying a date (which must be at least one month after the date of the notice give under this clause 5.9(a)) on which the Material Adverse Event Adjustment is to take effect ("**Material Adverse Event Adjustment Date**").
- (b) The Buyer must within [10] Business Days after the date of the notice given under clause 5.9(a) notify Perth Energy whether the Buyer:
- (i) accepts the Material Adverse Event Adjustment; or
  - (ii) does not accept the Material Adverse Event Adjustment.
- (c) If the Buyer gives Perth Energy a notice under clause 5.9(b)(i), then the terms of this Agreement will be adjusted in accordance with Material Adverse Event Adjustment and those adjustments will take effect on and from the Material Adverse Event Adjustment Date.
- (d) If the Buyer gives Perth Energy a notice under clause 5.9(b)(ii), or the Buyer does not respond within the time set out under clause 5.9(b), then the Buyer is deemed to have elected to terminate this Agreement and this Agreement will terminate with effect on and from the Material Adverse Event Adjustment Date, and:
- (i) Perth Energy will have no Liability to the Buyer in connection with the election to terminate (including, to avoid doubt, in connection with the Buyer's Cost of obtaining any supply of electricity after termination); and
  - (ii) clause 5.8 and clause 19.4 will not apply in relation to termination under this clause.
- (e) Any Costs used in the calculation of a Material Adverse Event Adjustment must not be recovered under any clause of this Agreement other than this clause 5.9.



## 6. Price Escalation

Where the Commercial Terms specify that Price escalation is to be determined in accordance with this clause 6, Perth Energy may increase the Electricity Price, the Daily Supply Charge, the Excess Demand Price, the Shortfall Electricity Price, the Excess Electricity Price, the LGC Price and the STC Price (under this clause 6, each a “**Price**”) at the end of each Price Review Period of the Supply Period (“**Adjustment Date**”) in accordance with the following formula:

$$A = B \times \frac{CPI_n}{CPI_b}$$

where:

- A = the Price payable from and including the relevant Adjustment Date.
- B = the Price specified in the Commercial Terms
- CPI<sub>n</sub> = the CPI for the quarter ending immediately before the Adjustment Date.
- CPI<sub>b</sub> = the CPI applying on the Price Review Base Date specified in the Commercial Terms.

## 7. Change in Regulatory Charges

- (a) The Parties agree that if the Commercial Terms specify that a Regulatory Charge is Bundled into the Electricity Price:
  - (i) the Electricity Price is calculated to reflect the value of the relevant Regulatory Charge at the time Perth Energy provided to the Buyer the pricing proposal upon which the prices in this Agreement are based; and
  - (ii) subject to clause 7(b), no additional amount is payable in respect of the relevant Regulatory Charge.
- (b) If a Regulatory Charge is Bundled into the Electricity Price and at any time there is:
  - (i) any increase in the Regulatory Charge ; or
  - (ii) any increase in a component by reference to which that Regulatory Charge is calculated,

when compared with the Regulatory Charge at the time Perth Energy provided to the Buyer the pricing proposal upon which the prices in this Agreement are based (“**Change in Regulatory Charge**”), then Perth Energy may adjust the Electricity Price to pass through to the Buyer, on a full pass-through at Cost basis, the net Cost increase to Perth Energy in respect of the Change in Regulatory Charge, on and from the date that the Change in Regulatory Charge takes effect.

- (c) Subject to clause 7(d), if the Network Charge is Bundled into the Electricity Price as calculated at the time Perth Energy provided to the Buyer the pricing proposal upon which the prices in this Agreement are based and at any time a fixed daily charge component of the Network Charge increases, then Perth Energy may adjust the Daily Supply Charge to pass through to the Buyer, on a full pass-through at Cost basis, the net Cost increase to Perth Energy in respect of the increase in the Network Charge, from the date that the increase in the Network Charge takes effect.



- (d) To the extent an increase in the Network Charge has been taken into account in any adjustment made to the Electricity Price under clause 7(b), it must not also be taken into account in calculating any increase to the Daily Supply Charge under clause 7(c).
- (e) Perth Energy will provide the Buyer with reasonable information as to any Change in Regulatory Charge if requested by the Buyer.

## 8. Liquid Fuel Events

### 8.1 Definition

In this clause, “**Liquid Fuel Event**” means any event or circumstance in which the System Operator orders the dispatch of “Facilities” (as defined in the Market Rules) that are able to be operated using “Liquid Fuels” (as defined in the Market Rules) under the Market Rules for any reason.

### 8.2 Process if Liquid Fuel Event Occurs

- (a) As soon as practicable after a Liquid Fuel Event occurs, Perth Energy will notify the Buyer in writing of:
  - (i) details of the Liquid Fuel Event that are known to Perth Energy;
  - (ii) Perth Energy’s reasonable estimate of Liquid Fuel Event’s duration; and
  - (iii) the price at which Perth Energy offers to supply electricity to the Buyer during the Liquid Fuel Event (“**Adjustment Price**”).
- (b) The Buyer must, within 12 hours after receiving the notice referred to in clause 8.2(a), notify Perth Energy in writing as to whether the Buyer wishes to:
  - (i) continue accepting electricity from Perth Energy, in which case, from the start of the 48th Trading Interval (as defined in the Market Rules) after the start of the Liquid Fuel Event, the Contract Charges applicable during the Liquid Fuel Event will be the Adjustment Price; or
  - (ii) stop accepting electricity from Perth Energy for the duration of the Liquid Fuel Event, in which case clause 8.2(e) will apply.
- (c) If the Buyer does not give notice under clause 8.2(b) within the specified time, it is deemed to have made the election in clause 8.2(b)(ii) to stop accepting electricity during the Liquid Fuel Event.
- (d) The Buyer may, by written notice to Perth Energy, change its election under clause 8.2(b) at any time during a Liquid Fuel Event, but may do so only once per Liquid Fuel Event, in which case the changed election takes effect from the start of the first Trading Day to start one clear Trading Day after Perth Energy receives notice of the change of election.
- (e) If the Buyer elects to stop accepting electricity during a Liquid Fuel Event, then it must stop accepting electricity from Perth Energy during the Liquid Fuel Event and:
  - (i) the Peak Minimum Annual Electricity Consumption for the relevant Contract Year is reduced by the proportion that the number of Trading Intervals in the Peak Period during which electricity is not supplied bears to the total number of Trading Intervals in Peak Periods in the Contract Year; and
  - (ii) the Off Peak Minimum Annual Electricity Consumption for the relevant Contract Year is reduced by the proportion that the number of Trading Intervals in the Off Peak Period during which electricity is not supplied bears to the total number of Trading Intervals in Off Peak Periods in the Contract Year.
- (f) Perth Energy must notify the Buyer as soon as practicable after a Liquid Fuel Event ends, and:
  - (i) if the Buyer elected to continue accepting electricity during the Liquid Fuel Event, the Electricity Price will



revert to the Electricity Price otherwise payable under the Agreement from the start of the next Trading Day (as defined in the Market Rules); and

- (ii) if the Buyer elected to stop accepting electricity during the Liquid Fuel Event, the Buyer must, by no later than the start of the Trading Day which is one clear Trading Day after the notice is received, recommence acceptance of electricity from Perth Energy under this Agreement.

(g) The Parties may agree in writing to alter any time period set out in this clause 8.2.

## **9. Invoices and Payment**

### **9.1 Tax Invoice**

- (a) Subject to clause 12.3(c), Perth Energy will, within 10 Business Days after the end of a Billing Period, issue to the Buyer a Tax Invoice for all Sites for the Billing Period.
- (b) The Buyer may request Perth Energy to issue a separate Tax Invoice for Electricity Consumption at any one or more Sites and, subject to the Parties agreeing any necessary amendments to this Agreement (including any Costs associated with Perth Energy issuing such separate Tax Invoices), Perth Energy will issue Tax Invoices in relation to those Sites in accordance with that agreement.
- (c) Notwithstanding any agreement to issue separate invoices under clause 9.1(b), the Buyer remains responsible to pay each invoice in accordance with its terms.

### **9.2 Content**

Each Tax Invoice will show the following, together with any reasonable supporting details:

- (a) the Contract Charges, together with any other amount payable by the Buyer to Perth Energy under this Agreement for the Billing Period;
- (b) any Buyback Charge payable for the Billing Period;
- (c) any reimbursement payable to Perth Energy under clause 3.5(c) that has not already been reimbursed by the Buyer;
- (d) any outstanding amounts as at the end of the Billing Period, including any Late Payment Administration Charge and interest due;
- (e) any adjustments required under clause 9.6 or clause 9.7;
- (f) any GST payable; and
- (g) the Payment Due Date.

### **9.3 Payment**

The Buyer must pay the total amount shown on each Tax Invoice using an Approved Payment Method, as specified in the Commercial Terms, such that payment is received by Perth Energy in cleared funds on or before the Payment Due Date.

### **9.4 Late Payment**

If the Buyer does not comply with clause 9.3, Perth Energy may, subject to any Law, charge the Buyer a fee for the extra service provided by Perth Energy of administering the late payment, the fee being equal to the greater of \$50 and 2.5% of the amount of the total of the Tax Invoice that is still outstanding ("**Late Payment Administration Charge**").



## 9.5 Interest

A Late Payment Administration Charge and the outstanding amount of a Tax Invoice constitute a debt owed by the Buyer to Perth Energy and attract interest at 18% per annum calculated daily from the Payment Due Date until paid in full.

## 9.6 Adjustments for Error

- (a) Each Party must inform the other if it finds an error in a Tax Invoice.
- (b) If Perth Energy, acting reasonably, determines that there has been an error in the Tax Invoice, Perth Energy will correct the error by adjusting the next Tax Invoice accordingly.

## 9.7 Other Adjustments

- (a) The Parties acknowledge that Tax Invoices issued and paid may not always be equal to the actual amount due from the Buyer under this Agreement, for example, the Network Operator or the Market Operator may impose on Perth Energy adjustments to the applicable Network Charges for a Billing Period after a Tax Invoice has been issued to the Buyer owing to revised Metering Data.
- (b) The Parties must cooperate in good faith to ensure that any imbalances between actual amounts due and amounts paid are settled at the earliest opportunity.

## 9.8 Final Invoice

If:

- (a) the Network Operator provides Energy Data for a Connection Point within twelve months after the end date of the Supply Period; and
- (b) the Metering Data differs from any Estimated Data used in preparing a Tax Invoice,

Perth Energy will issue a further Tax Invoice to the Buyer, either requesting additional payment or refunding an overpayment, as applicable.

## 9.9 Disputed Invoices

Any dispute regarding a Tax Invoice:

- (a) will not suspend or otherwise modify or affect the Buyer's obligation to pay the Tax Invoice in full on the Payment Due Date; and
- (b) must be referred for resolution by negotiation in accordance with clause 15, and if the dispute cannot be resolved by negotiation, either Party may commence litigation in relation to the dispute.

## 9.10 Application to Contract Charge

Clause 9.6, clause 9.7 and clause 9.8 apply to all charges forming part of the Contract Charge, including the Regulatory Charges any other amount payable by the Buyer to Perth Energy under this Agreement.

## 10. Change in Law

### 10.1 Change Events

- (a) For the purpose of this clause 10, Law:
  - A. includes any and all Law which, directly or indirectly, in whole or in part:



- B. proposes to in any way and to any extent, address climate change;
- C. promotes or supports renewable, low-emission, zero-emission or new or alternative forms of energy;
- D. imposes any obligation in relation to energy efficiency;
- E. is intended to have the effect of reducing greenhouse gas emissions from any source whether by an absolute amount or proportion or as an intensity value;
- F. provides for carbon pricing, trading or taxation,
- G. relates to the supply of electricity by any properly authorised body;
- H. relates to the pricing of electricity supply by any properly authorised body; or;
- I. relates to the governance, structure or operation of the Wholesale Electricity Market; but

(ii) excludes a law relating to income tax or capital gains tax.

(b) If at any time after the execution of this Agreement there occurs:

- (i) a change in any existing Law; or
- (ii) the enactment of any new Law;

which directly or indirectly results in an increase in Perth Energy's Cost of supplying electricity under this Agreement or in the Buyback Charge, as calculated at the time Perth Energy provided to the Buyer the pricing proposal upon which the prices in this Agreement are based, other than through a change in any Regulatory Charge ("**Change in Law**"), Perth Energy will be entitled to receive a Financial Adjustment from the Buyer based on the net financial effect on Perth Energy of the Change in Law, in all cases being sufficient to put Perth Energy into the position it would have been in had it not been for the Change in Law.

## 10.2 Perth Energy's Notice

- (a) If there is a Change in Law, Perth Energy will give the Buyer a written notice ("**Change in Law Notice**") setting out:
  - (i) the date of the Change in Law;
  - (ii) an estimate of the net financial effect on Perth Energy of the Change in Law in comparison to the position Perth Energy would have been in had it not been for the Change in Law; and
  - (iii) any proposed Financial Adjustment, including when the Financial Adjustment will take effect and the form of the Financial Adjustment.
- (b) The Parties acknowledge and agree that the Financial Adjustment takes effect from the date specified in the Change of Law Notice.
- (c) The Buyer must pay to Perth Energy the Financial Adjustment in accordance with its terms.

## 10.3 Parties to Cooperate

- (a) Subject to clause 10.1, the Parties will cooperate to minimise any adverse financial impacts of a Change in Law.
- (b) If Perth Energy becomes aware that any matter or estimate contained in a Change in Law Notice may be incorrect, Perth Energy will promptly amend that matter or estimate and give a copy of the amended Change in Law Notice to the Buyer.



## 10.4 Disputes of Change in Law

Any dispute regarding a Change in Law:

- (a) must be referred for resolution by negotiation in accordance with clause 15, and if the dispute cannot be resolved by negotiation, by expert determination in accordance with clause 16; and
- (b) will not suspend or otherwise modify or affect the Buyer's obligation to make payment in accordance with any Financial Adjustment made under clause 10.2.

## 11. GST

### 11.1 Definitions

Unless the context indicates otherwise, any reference in this clause 11 to a term defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is a reference to that term as defined or used in the Act.

### 11.2 Consideration is GST Exclusive

All amounts payable and other consideration under this Agreement are exclusive of GST unless expressly stated to be inclusive of GST.

### 11.3 GST payable on Taxable Supply

- (a) If a supply made under this Agreement is a taxable supply, the recipient of that taxable supply ("**Recipient**") must, in addition to any other consideration, pay to the Party making the taxable supply ("**Supplier**") the amount of GST in respect of the taxable supply, subject to the Supplier issuing a tax invoice.
- (b) In respect of any taxable supply made under this Agreement, the Recipient must pay to the Supplier the amount equal to the GST liability on that taxable supply at the same time as the Recipient is required to pay the consideration for that taxable supply to the Supplier under this Agreement.
- (c) If there is an adjustment to a taxable supply made under this Agreement then the Supplier must provide an adjustment note to the Recipient.
- (d) A Party's entitlement under this Agreement to recovery or compensation from the other Party for any Liabilities is reduced by the amount of any input tax credits to which that Party is entitled in respect of those Liabilities.

## 12. Meter Readings

### 12.1 Metering Equipment

The amounts of electricity:

- (a) supplied by Perth Energy to each Site; and
- (b) exported to the Network as Surplus Electricity from any Onsite Generation at the Site,

are measured by the Metering Equipment situated at the Site.

### 12.2 Metering Data

- (a) The Buyer acknowledges that Perth Energy calculates the Contract Charge (including the Regulatory Charges) and the Buyback Charge using the Metering Data.
- (b) The Buyer consents to Perth Energy requesting the Network Operator to release the Metering Data to Perth Energy.





- (c) Where the release of the Metering Data requires consent of any Buyer's Users, then the Buyer must obtain such consent and provide it to Perth Energy in sufficient time as to allow both Parties to comply with their obligations under this Agreement.

### **12.3 Estimated or Substituted Data**

- (a) The Buyer acknowledges that the Contract Charge (including the Regulatory Charges) and the Buyback Charge may be calculated using Energy Data based on estimated Data or Substituted Data provided to Perth Energy by the Network Operator.
- (b) If, after Perth Energy issues a Tax Invoice, the Network Operator replaces the Energy Data used to calculate the charges in the Tax Invoice with better quality Energy Data, the charges must be adjusted under clause 9.7 or clause 9.8, as applicable.
- (c) If the Network Operator fails to provide the Metering Data for a Connection Point for a Billing Period such that Perth Energy is unable to calculate the applicable charges and issue a Tax Invoice within the time prescribed by clause 9.1, Perth Energy may delay the issue of a Tax Invoice for that Billing Period for a further 5 Business Days or until such time as Perth Energy receives the Metering Data.

### **12.4 Metering Errors and Verification**

- (a) At the Buyer's request, Perth Energy will request the Network Operator to provide Energy Data verifications for a Connection Point. The Buyer must reimburse Perth Energy for any Cost payable by Perth Energy for the verification.
- (b) If following verification the Energy Data for a Billing Period is replaced with better quality Energy Data, the appropriate adjustment must be made for the Billing Period under clause 9.7.

### **12.5 Maintenance of Metering Equipment**

- (a) The Buyer acknowledges that the Network Operator is responsible for installing, operating, upgrading and maintaining the Metering Equipment.
- (b) The Buyer must notify the Network Operator if the Metering Equipment requires any maintenance for any reason, and the Buyer must send a copy of the notice to Perth Energy.
- (c) The Buyer must provide Perth Energy with sufficient notice of any planned maintenance to or upgrade of the Metering Equipment by the Network Operator and the date on which and the time proposed for the maintenance or upgrade.
- (d) During any maintenance or upgrade of Metering Equipment Perth Energy will continue to calculate the Contract Charge (including the Regulatory Charges) and the Buyback Charge in accordance with the Metering Data supplied to Perth Energy by the Network Operator.

### **12.6 Cost of Meter and Meter Upgrades**

The Party specified in the Commercial Terms must pay for any Metering Equipment upgrades charged by the Network Operator. If no Party is specified, then the Buyer must pay for any Metering Equipment upgrades charged by the Network Operator.

## **13. Liability and Indemnities**

THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

### **13.1 No Several Liability**

If the Buyer constitutes more than one Party, then all Parties constituting the Buyer are liable under this Agreement jointly or jointly and severally but not severally.



### 13.2 Liability for Direct Liability

Except where a Party is expressed to be liable for all or any Liability under this Agreement, a Party who:

- (a) is negligent; or
- (b) breaches this Agreement,

is liable to the other Party for, and indemnifies the other Party against, any Direct Liability suffered by the other Party to the extent that the Direct Liability results from or is in relation to the first-mentioned Party's negligence or breach.

### 13.3 Buyer's Indemnities

In addition to the indemnities set out in clause 4, the Buyer indemnifies Perth Energy for any Liability incurred to a third party in respect of any Liability suffered by that third party to the extent that such Liability results from or is in relation to:

- (a) the negligence or breach of this Agreement by the Buyer, the Buyer's Users or anyone acting under the control or direction of the Buyer;
- (b) any expectation on the part of the third party as to the continuity, reliability or quality of the supply of electricity to the Buyer by Perth Energy; or
- (c) the existence of this Agreement.

### 13.4 Exclusion of Indirect Liability

To the maximum extent permitted by Law, except where a Party is expressed to be liable for all or any Liability under this Agreement a Party has no Liability to the other Party for any Indirect Liability, except where such Liability results from:

- (a) the other Party's fraud or wilful default;
- (b) an obligation on the Buyer under clause 5.8(c) to pay shortfall charges, or under clause 19.5 to pay liquidated damages to Perth Energy; or
- (c) any cause, circumstance or condition addressed in clause 4.11, clause 13.3 and any breach by a Party of clause 23.7.

### 13.5 Apportionment of Liability

- (a) Subject to clause 13 and except as expressly provided in this clause 13, any Liability of Perth Energy under this Agreement is limited to the proportion of damage suffered by any other party as a consequence of the Perth Energy's breach of this Agreement or negligence.
- (b) Except as provided in clause 13.5(a), to the extent permitted by Law, Part 1F of the *Civil Liability Act 2002* (WA) has no operation in relation to this Agreement.

### 13.6 Mitigation of Loss

Each Party must use its reasonable endeavours to mitigate any Liability suffered by it as a result of any breach or negligence by the other Party in relation to this Agreement.

### 13.7 Limitation of Liability

To the extent permitted by Law, Perth Energy's Liability to the Buyer in relation to this Agreement is limited, at Perth Energy's election, to either the supply of electricity or payment of the cost of supplying electricity at the rates and prices in this Agreement for the duration of this Agreement.



### 13.8 Express Waiver

Perth Energy will not be liable to the Buyer for, and the Buyer hereby unconditionally and irrevocably waives any right to make any Claim against Perth Energy (and releases Perth Energy from any Liability) in respect of:

- (a) any Onsite Generation or Metering Equipment;
- (b) the Network or any part of the Network, or the Network Operator's provision of services; or
- (c) any Liability of the Buyer or the Buyer's Users to any third party except to the extent that such Liability is in relation to Perth Energy's fraud or wilful default.

### 13.9 Legitimate interests

The terms of this clause 13 are reasonably necessary to protect Perth Energy's legitimate interests, including for the reasons stated in clauses 3.5(a) and 4.1, and to reasonably apportion the risks under this Agreement between the Parties so as to minimise the Electricity Charge payable by the Buyer.

### 13.10 Exclusion of warranties

To the extent permitted by Law, all conditions, warranties and guarantees that would be implied by Law, and any representation, condition, warranty or guarantee that is not expressly set out in the Agreement, are excluded.

### 13.11 Consumer Guarantees

If the Buyer is a "Consumer" within the meaning of the Australian Consumer Law, Perth Energy may be taken to have given the Buyer certain consumer guarantees under the Australian Consumer Law about the supply of goods or services to the Buyer. If Perth Energy fails to comply with those consumer guarantees, then the Buyer may have rights against Perth Energy under the Australian Consumer Law that Perth Energy is prohibited by law from excluding, restricting or modifying. However, where any goods (if any) or services supplied under this contract are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Perth Energy's liability for breach of any consumer guarantee applicable to Perth Energy's supply of those goods or, if applicable, services under the Australian Consumer Law, is (to the extent permitted by the Australian Consumer Law) limited to any one or more of the following, as determined by Perth Energy's:

- (a) the supply of equivalent goods or services again; and
- (b) the payment of the cost of acquiring equivalent good or having the services supplied again.

## 14. Force Majeure

### 14.1 Consequences of Force Majeure

- (a) Subject to this clause 14, to the extent that, and for as long as, Force Majeure prevents, delays or hinders the Affected Party in performing an obligation ("**Affected Obligation**") under this Agreement:
  - (i) the Affected Obligation is suspended; and
  - (ii) the Affected Party is not liable for its failure to perform the Affected Obligation.
- (b) For the purpose of this clause 14, Perth Energy is deemed to be prevented or delayed in the performance of its obligations under this Agreement by Force Majeure if any of the following occur:
  - (i) a Network Outage;
  - (ii) a generator outage; or



- (iii) a failure by any third party supplier in its obligations to supply electricity to Perth Energy for any reason (except to the extent the failure is caused by Perth Energy's breach of any relevant obligation to the third party).
- (c) If the Buyer is the Affected Party then Perth Energy's obligations to supply electricity and pay the Buyback Charge under this Agreement are suspended to the extent and for the duration of the Force Majeure.
- (d) If an Affected Obligation is suspended under clause 14.1(a)(i) for more than 3 months, either Party may terminate this Agreement by written notice to the other Party.

#### **14.2 Notification Obligations**

The Affected Party must as soon as practicable upon becoming aware of Force Majeure, and at reasonable times thereafter while the Force Majeure continues, notify the other Party in writing of:

- (a) the occurrence and details of the Force Majeure;
- (b) each Affected Obligation;
- (c) the estimated duration and extent to which its performance of each Affected Obligation is likely to be prevented, delayed or hindered; and
- (d) any change in or cessation of the effects of Force Majeure.

#### **14.3 Reasonable Endeavours**

The Affected Party must use reasonable endeavours having regard to the Cost and effectiveness of available remedies or solutions to overcome the effect of Force Majeure and resume the performance of its obligations as soon as reasonably practicable.

#### **14.4 Obligation to Pay Money**

- (a) Subject to clauses 14.4(b) and 14.4(c), the occurrence of Force Majeure will not relieve a Party from any obligation under this Agreement to pay money when payment falls due and the Buyer's obligation to pay the Contract Charge and any other amount payable under this Agreement is not suspended.
- (b) If the Buyer is the Affected Party, then:
  - (i) to the extent that there is a reduction in the Electricity Consumption at a Site as a result of the Force Majeure Event, there will be a corresponding reduction in the Electricity Charge;
  - (ii) unless one or more Regulatory Charges are Bundled into the Electricity Price, the Buyer must continue to pay all applicable Regulatory Charges that Perth Energy continues to pay during the Force Majeure Event without deduction; and
  - (iii) if one or more Regulatory Charges are Bundled into the Electricity Price and Perth Energy continues to pay any such Regulatory Charges during the Force Majeure Event, the Buyer must pay to Perth Energy the total amount of such Regulatory Charges as reasonably determined by Perth Energy on a full pass-through at Cost basis.
- (c) If Perth Energy is the Affected Party and the Buyer continues to consume electricity at a Site during the Force Majeure Event, then:
  - (i) the Electricity Charge for the Site payable by the Buyer will be calculated using the Balancing Price (as defined in the Market Rules) or the Electricity Price, whichever is greater;
  - (ii) unless one or more Regulatory Charges are Bundled into the Electricity Price, the Buyer must continue to pay all applicable Regulatory Charges that Perth Energy continues to pay during the Force Majeure Event



without deduction; and

- (iii) if one or more of the Regulatory Charges are Bundled into the Electricity Price and Perth Energy continues to pay any such Regulatory Charges during the Force Majeure Event, the Buyer must pay to Perth Energy the total amount of such Regulatory Charges as reasonably determined by Perth Energy on a full pass-through at Cost basis.

## **15. Dispute Resolution**

### **15.1 Parties to Continue to Perform their Obligations**

Notwithstanding the existence of a dispute, the Parties must continue to fulfil their obligations under this Agreement.

### **15.2 Disputes Within the Scope of this Agreement**

If a dispute arises between the Parties in relation to this Agreement:

- (a) either Party may send the other written notice identifying the particulars of the dispute (“**Dispute Notice**”);
- (b) if the Parties fail to resolve the dispute within 15 Business Days after the date of the Dispute Notice, each Party must procure an authorised senior representative to use his or her best endeavours in good faith to negotiate a resolution of the dispute within a further 10 Business Days; and
- (c) if the dispute cannot be resolved within the period prescribed in clause 15.2(b), then:
  - (i) if the dispute is of a technical, scientific or engineering nature, or is expressly required in this Agreement to be referred to an expert, the dispute must be referred for expert determination under clause 16; and
  - (ii) otherwise, unless the Parties agree to another means of resolving the dispute, either Party may commence litigation of the dispute.

### **15.3 Matters Outside Scope of this Agreement**

For all disputes between the Parties that affect either Party’s performance under this Agreement but fall outside the parameters stated in clause 15.2, the Parties must co-operate with a view to resolving the dispute as expeditiously as possible.

### **15.4 Parties Agree to be Bound**

Each Party agrees to be bound and abide by any resolution of a dispute achieved in accordance with this clause 15.

## **16. Expert Determination**

### **16.1 Appointment of Expert**

- (a) Where a dispute under this Agreement is referred for expert determination, the Parties must seek in good faith to agree on an appropriately qualified person to be appointed as the expert within 5 Business Days of the dispute being referred for expert determination.
- (b) The expert:
  - (i) must have no interest or duty which conflicts, or which may conflict, with his or her function as the expert; and
  - (ii) must not be a former or current employee or representative of any Party.
- (c) If:



- (i) the Parties fail to agree on a person to be appointed as the expert within the time specified in this clause 16.1(a); or
- (ii) the person on which the Parties have agreed:
  - A. is unavailable;
  - B. declines to act;
  - C. does not respond within 5 Business Days to a request by one or both Parties to act as the expert; or
  - D. does not make a determination within the time required under any agreement with the Parties,

either Party may apply to the President (for the time being) of the Resolution Institute, or his or her nominee, to appoint an appropriate expert.

- (d) Unless the expert determines otherwise, the expert's costs must be shared equally between the Parties.

## 16.2 Agreement

The Parties must seek in good faith to enter into an expert determination agreement with the appointed expert that provides for the resolution of the dispute on the following terms, unless the Parties agree otherwise:

- (a) the expert:
  - (i) must act as an expert and not as an arbitrator;
  - (ii) will not be bound by the rules of evidence;
  - (iii) subject to observing procedural fairness, will have the power to inform himself or herself independently as to the facts to which the dispute relates and to take such measures as he or she thinks fit to expedite the determination of the dispute;
  - (iv) will be entitled to refer aspects of the dispute to a third person for the purpose of taking advice on a specific matter relating to the dispute and must ensure that any third party, agent or consultant of the expert is subject to the same obligations of confidentiality as set out in clause 16.3;
  - (v) must make his or her determination without delay and in any event within 28 days of being appointed as an expert unless the Parties otherwise agree in writing;
  - (vi) must disclose fully to the Parties, before entering into the expert determination agreement, any interest or duty which may conflict with his or her position; and
  - (vii) must not communicate with one Party without the knowledge of the other; and
- (b) each Party:
  - (i) may be legally represented at any hearing before the expert;
  - (ii) may produce to the expert any materials or evidence which that Party believes is relevant to the dispute;
  - (iii) subject to clause 16.3, must make available to the expert all materials requested by him or her and all other materials which are relevant to his or her determination; and
  - (iv) agrees to be bound and abide by any resolution of a dispute achieved in accordance with this clause 16.



### 16.3 Confidentiality

Subject to any privileges under Law, unless otherwise agreed by the Parties, all material and evidence made available for the purposes of the determination must be kept confidential, unless disclosure by a Party would be permitted under any provisions of this Agreement or the Law.

### 16.4 Determination

The determination of the expert will:

- (a) except in cases of fraud or manifest error by the expert, be final and binding on the Parties; and
- (b) determine what, if any, adjustments may be necessary between the Parties.

### 16.5 Unresolved Dispute

If a dispute is not resolved by expert determination, either Party may commence litigation of the dispute.

## 17. Assignment & novation

### 17.1 Assignment and novation

- (a) The Buyer must not assign its rights, novate its obligations or otherwise transfer any interest under this Agreement (an "**Assignment**") to any other person (a "**Assignee**") without the prior written approval of Perth Energy, which approval will not be unreasonably withheld or delayed.
- (b) It will not be unreasonable for Perth Energy to withhold its approval for an Assignment:
  - (i) if Perth Energy:
    - A. considers, at the time of Assignment, that the Agreement is no longer commercially suitable for Perth Energy to continue the performance of the Agreement with the Assignee;
    - B. expects that it will not, to any extent, be in the same financial position after any proposed Assignment as it is prior to any such proposed Assignment;
    - C. considers that the proposed Assignee does not have the same or better financial standing as the Buyer; or
    - D. requests information relating in any way to the proposed Assignment from the Buyer and/or the proposed Assignee and, within a reasonable period, Perth Energy considers that the information requested has not been provided to the extent required for Perth Energy to make a decision; or
  - (ii) if the Assignment:
    - A. would be to a competitor (or to a Related Body Corporate of a competitor) of Perth Energy; or
    - B. would be to a Party (or a Related Body Corporate of a Party) with which Perth Energy has been in (or considers that it may, in the future, be in) any dispute (whether or not that dispute has led to any, or to any steps to any, formal legal proceedings) in relation to any matter.
- (c) Perth Energy may assign or novate its rights under this Agreement without the prior written consent of the Buyer to an assignee or transferee that is technically and financially capable of undertaking and discharging Perth Energy's obligations to the extent of the proposed assignment or novation.





## **18. Change of Control**

### **18.1 Prohibition**

- (a) Subject to clause 18.1(b) and 18.1(a), the Buyer must not permit a Change of Control of the Buyer without the prior written consent of Perth Energy, which consent will not be unreasonably withheld or delayed.
- (b) If a Change of Control occurs due to the transfers of shares or other interests which are listed on a securities exchange, the consent of Perth Energy may have to be sought after the occurrence of the Change of Control, but if the written consent of Perth Energy is not so obtained, the Buyer must procure that the Controller ceases to have the Control which resulted in the Change of Control within 60 Business Days after receiving notice under clause 18.2 that Perth Energy does not consent to the Change of Control.
- (c) The consent of Perth Energy under clause 18.1(a) or clause 18.1(b) may be withheld where one or more of the factors referred to in clause 18.5 apply.

### **18.2 Notice**

- (a) If a Change of Control of the Buyer is proposed, or has occurred (in the situation to which clause 18.1(b) applies), the Buyer will notify Perth Energy immediately upon becoming aware of that Change of Control or the proposed Change of Control.
- (b) the Buyer will provide to Perth Energy in its notification in clause 18.2(a) details of:
  - (i) the identity of each proposed Controller;
  - (ii) the address of each proposed Controller;
  - (iii) the extent and nature of the proposed Change of Control; and
  - (iv) all other information necessary for the Perth Energy to determine whether to consent, or not to consent, to the Change of Control of the Buyer.

### **18.3 Further Information**

The Buyer will promptly provide such further information as Perth Energy at the time reasonably requires in order to make its decision under clause 18.1 and will obtain such written consents as are required by law and by Perth Energy, to undertake reasonable investigations in relation to each Controller and its Associates.

### **18.4 Response**

Perth Energy will, within a reasonable period, provided it has received sufficient information under clause 18.3, inform the Buyer whether Perth Energy consents to the proposed Change of Control of the Buyer.

### **18.5 Factors to consider**

It will be reasonable for Perth Energy to withhold consent to a Change of Control if it has not been given all of the information required under clauses 18.2 and 18.3 or if Perth Energy is of the reasonable opinion that:

- (a) the Controller is not solvent or reputable;
- (b) the Change of Control is to take effect prior to the end of the first Contract Year;
- (c) the Controller has an interest which conflicts in a material way with the interests of Perth Energy or the Controller is involved in a business or activity which is incompatible or inappropriate in relation to the subject matter of this Agreement;
- (d) the Controller does not have a sufficient level of financial, managerial and technical capacity to perform the



terms of this Agreement than that of the person or entity it is replacing or from whom it is taking Control; or

- (e) the proposed change would cause a Material Adverse Event affecting Perth Energy.

## 19. Default and Termination

### 19.1 Financial Default

- (a) Without prejudice to any other right or remedy of Perth Energy under this Agreement or any Law, if the Buyer commits a Financial Default Perth Energy may send the Buyer written notice requesting the Buyer to remedy the Financial Default within 2 Business Days of the date of the notice.
- (b) If the Financial Default Notice is not remedied within this period, Perth Energy may:
  - (i) revise the frequency for the issuing and payment of the Tax Invoice under clause 9;
  - (ii) interrupt or limit the supply of electricity to the Buyer at the Site;
  - (iii) cause or allow the Buyer's Site to be disconnected from the Network (in which case the Buyer must pay any Costs incurred by Perth Energy in relation to the disconnection of the Buyer's Site from the Network);
  - (iv) refer the debt to a debt collection agency for collection (in which case the Buyer must pay any Costs incurred by Perth Energy in relation to the recovery of the debt, including the debt collection agency's fee and any legal Costs on a full indemnity basis); or
  - (v) whether or not it has exercised all or any of its rights under clauses 19.1(b)(i) to 19.1(b)(iv), immediately terminate this Agreement by written notice to the Buyer.
- (c) If:
  - (i) the Buyer's Site is disconnected from the Network under clause 19.1(b)(iii);
  - (ii) this Agreement has not been terminated; and
  - (iii) the Buyer has remedied the Financial Default,

Perth Energy may cause or allow the Buyer's Site to be reconnected to the Network (in which case the Buyer must pay any Costs incurred by Perth Energy in relation to the reconnection of the Buyer's Site to the Network).

### 19.2 Non Financial Default

- (a) Without prejudice to any other right or remedy of the non-defaulting Party under this Agreement or at Law, if a Party commits a Non Financial Default, the non-defaulting Party may:
  - (i) send a written notice to the defaulting Party requesting the defaulting Party to remedy the Non Financial Default within 10 Business Days of the date of the notice; and
  - (ii) if the defaulting Party fails to remedy the Non Financial Default within this period, or any lesser period if the Non Financial Default is incapable or remedy, by written notice to the defaulting Party either:
    - A. immediately terminate this Agreement; or
    - B. suspend this Agreement, in which case the non-defaulting Party is not obliged to perform its obligations under this Agreement, until the defaulting Party has remedied the Non Financial Default.
- (b) If the Buyer is the defaulting Party, during any suspension period under clause 19.2(a)(ii)B the Buyer must continue to pay the Contract Charge and any other amount payable under this Agreement, provided that the



Electricity Charge for the suspension period will be calculated on the basis of:

- (i) the actual Electricity Consumption; or
- (ii) if that is not available, the Electricity Consumption for the same period in the previous year; or
- (iii) if that is also not available, the average Electricity Consumption of the Buyer based on an aggregate of the Energy Data for the number of days or months, as applicable, in all cases taking into account Peak and Off Peak Periods,

plus, if one or more of the Regulatory Charges are Bundled into the Electricity Price, the total amount of Regulatory Charges which Perth Energy continues to pay during or will pay in relation to the suspension period, as reasonably determined by Perth Energy, on a full pass-through at Cost basis.

- (c) If Perth Energy is the defaulting Party and is for any reason incapable of remedying the Non Financial Default, Perth Energy may, at its discretion, terminate this Agreement by written notice with effect from the date specified in the notice.

### **19.3 Termination on Insolvency**

If:

- (a) a Party goes into liquidation, passes a winding-up resolution, or receives or applies for a deregistration notice under the Corporations Act;
- (b) a petition or other process for winding-up or dissolution is presented or threatened against a Party or circumstances exist which would give rise to such a petition, demand or other similar process;
- (c) a writ of execution is issued against a Party or any property of a Party or there are circumstances which justify such a writ;
- (d) an administrator, receiver, receiver and manager, administrative receiver or controller (as defined in the Corporations Act) or similar officer is appointed or is threatened or expected to be appointed to any part of the undertaking or assets of a Party, or circumstances exist which would justify such an appointment;
- (e) a Party is unable to pay its debts as and when they become due and payable, is taken under the Corporations Act to be unable to pay its debts, stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts, or circumstances exist which would require a court to presume that a Party is insolvent under the Corporations Act;
- (f) a Party enters into or takes steps to enter into any arrangements, compromise or assumption with, or assignment for the benefit, of its creditors or a class of them; or
- (g) the Buyer fails to make any payment under this Agreement by the Payment Due Date for three consecutive Billing Periods (but has otherwise made that failed payment at any time before the commencement of the next immediate Billing Period),

then the other Party (and in the case of clause 19.3(g), Perth Energy) may immediately terminate this Agreement by written notice to the first-mentioned Party (which, in the case of clause 19.3(g), the first-mentioned Party is the Buyer).

### **19.4 Termination if the Buyer becomes a Small Use Customer**

- (a) Where the Buyer is a Small Use Customer then the Buyer may terminate this Agreement in accordance with the requirements for a "non-standard contract" (as defined by the Electricity (Customer Contract) Regulations 2005 (WA)).
- (b) Where the Buyer is not a Small Use Customer then the Buyer may only terminate with no less than the Notice Period specified in the Commercial Terms.



- (c) Nothing in this clause 19.4 is intended to alter the rights and obligations of a Party upon termination of this Agreement.

### **19.5 Liquidated Damages for Early Termination**

- (a) This clause 19.5 does not apply where the Commercial Terms contain values for Peak Minimum Annual Electricity Consumption and Off Peak Minimum Annual Electricity Consumption.
- (b) If this Agreement is terminated:
- (i) owing to a Financial Default or Non Financial Default of the Buyer; or
  - (ii) by Perth Energy under clause 19.3, the Buyer must pay to Perth Energy an amount of liquidated damages calculated using the following formula:

$$LD = M \times (CC \times 0.25)$$

where:

- LD = the amount of liquidated damages payable under this clause 19.5.
- M = the number of months from the date of termination to the end of the Supply Period, rounded up to the nearest number of whole months.
- CC = the amount of the Contract Charges in the most recent Tax Invoice, whether or not the Contract Charges have been paid at the date of termination.

### **19.6 Expiry**

Subject to clauses 19.7 and 21, this Agreement will terminate at the end of the Supply Period unless terminated earlier in accordance with its terms.

### **19.7 Consequences of Termination**

- (a) The Parties' respective rights and obligations under this Agreement will cease immediately upon its termination, except that:
- (i) any rights and obligations under any clause expressed in clause 23.10 to survive termination; and
  - (ii) any right or claim, including any right to receive payment, which arises on or before termination of this Agreement,

will survive and continue after any termination.

- (b) If this Agreement is terminated:
- (i) Perth Energy may arrange for a final Meter reading and for disconnection of a Site from the Network (in which case the Buyer must pay any associated Costs incurred by Perth Energy);
  - (ii) Perth Energy may issue a final Tax Invoice (or Tax Invoices, in the case the Parties have made an agreement in accordance with clause 9.1(b)) to the Buyer; and



- (iii) Perth Energy or the Network Operator may remove the Meter and any other equipment located upstream of the Meter that is used for or in relation to the supply of electricity to the Buyer under this Agreement for which purpose the Buyer must provide safe and unrestricted access to the Site.

## 20. Security

- (a) At Perth Energy's request, the Buyer must, at its own cost:
  - (i) provide and maintain Security up to the amount which Perth Energy estimates will be the Contract Charge payable by the Buyer for the next two (2) Billing Periods; and
  - (ii) enter into such documentation as Perth Energy reasonably requires to record the terms on which the Security is provided and maintained.
- (b) If Perth Energy draws on the Security, the Buyer must increase the undrawn amount of the Security or provide further Security to restore the Security to the amount originally required under clause 20(a), within 14 days of receiving a written request to do so from Perth Energy.
- (c) Perth Energy will return the undrawn amount of any Security within 10 Business Days of the later of the termination of this Agreement and the date the Buyer has paid all amounts owing under this Agreement in full.
- (d) In recognition that the PPSA may apply to the arrangements contemplated by this Agreement or a related agreement ("**Transaction Documents**"), the Buyer acknowledges and agrees that Perth Energy is entitled to register a financing statement on the Personal Property Securities Register against the Buyer in accordance with the PPSA in relation to any security interest or potential security arising from the Transaction Documents.
- (e) The Buyer:
  - (i) must, at its own cost, promptly do anything Perth Energy requires to ensure that any security interest arising under the Transaction Documents is a perfected security interest and has priority over all other security interests;
  - (ii) undertakes not to register a financing change statement or make an amendment demand under section 178 of the PPSA in respect of such registration;
  - (iii) agrees that the following sections of the PPSA will not apply and the Buyer will have no rights under them:
    - A. section 95 (to the extent that it requires the secured party to give notices to the grantor);
    - B. section 121(4);
    - C. section 125;
    - D. sections 129(2) and (3);
    - E. section 132; and
    - F. sections 142 and 143;
  - (iv) agrees to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPSA;
  - (v) waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
  - (vi) agrees that Perth Energy is required to give a notice under the PPSA only if the notice is obligatory and the giving of the notice cannot be excluded under the PPSA, and the Buyer waives any rights to receive any notices unless they are required to be given and cannot be excluded; and



(vii) agrees to notify Perth Energy in writing of any change to the Buyer's details set out in the Commercial Terms within 5 days from the date of such change.

- (f) If Perth Energy requests Security and it is in the form of a cash deposit, Perth Energy will:
- (i) keep the Security in a separate trust account;
  - (ii) separately identify the Security in its accounting records;
  - (iii) pay the Buyer interest at the Bank Bill Rate, accrued daily and capitalised every 90 days unless paid; and
  - (iv) advise the Buyer of the Bank Bill Rate on request.

For the purpose of this clause 20(f), "Bank Bill Rate" means the average rate (rounded up to 4 decimal places) for bank accepted bills having a term equal to or nearest to 90 days as displayed on the "BBSW" page of the Reuters Monitor System at or about 10.30 am Australian Eastern Standard Time on the first day of the relevant 90 day period under clause 20(f)(iii) or, if the rate is not displayed on that day, the rate displayed on the most recent day before that day

## 21. Supply after the Contract End Date

- (a) Prior to the end of the Supply Period, Perth Energy may notify the Buyer in writing of:
- (i) the Contract End Date;
  - (ii) any new electricity supply agreement that Perth Energy is prepared to offer the Buyer, including new prices, terms and conditions ("**New Offer**"); and
  - (iii) the terms and conditions of any other arrangement on which Perth Energy is prepared to supply electricity to the Buyer after the Contract End Date.
- (b) If a New Offer is submitted to and accepted by the Buyer by signing and returning a copy of the New Offer to Perth Energy (and otherwise in accordance with the terms of the New Offer), the terms and conditions of the New Offer, including the Contract Charge and any other amount payable under the New Offer, will apply on and from the first day after the Contract End Date, or any other date that may be specified for such purpose in the New Offer.
- (c) Unless the Parties agree otherwise, after the Contract End Date Perth Energy may, if requested in writing by the Buyer and at Perth Energy's sole discretion, continue to supply electricity to the Buyer. If Perth Energy exercises its discretion to supply electricity to the Buyer then Perth Energy will supply and the Buyer agrees that the Buyer will buy electricity on the same terms and conditions of this Agreement, except that:
- (i) the Contract End Date will be the date at the end of the Notice Period, unless terminated earlier by Perth Energy under this Agreement (including under clause 21(c)(iv)), in which case the Contract End Date will be the date for termination under this Agreement (or the date notified by Perth Energy if it gives notice under clause 21(c)(iv));
  - (ii) if a New Offer was submitted to the Buyer but was not accepted before the Contract End Date, the Contract Charges and any other amount payable under this Agreement after the Contract End Date will be based on those specified in the New Offer;
  - (iii) if no New Offer was submitted to the Buyer, and as consideration for Perth Energy agreeing to continue to supply electricity beyond the Contract End Date specified in the Commercial Terms, the Electricity Price will be the "Standard Continuing Tariff" as published on Perth Energy's website from time to time, effective from the first day after the Contract End Date specified in the Commercial Terms, and will increase by a further 30% on each subsequent anniversary of the Contract End Date specified in the Commercial Terms for as long as Perth Energy continues to supply electricity to the Buyer under this clause 21;



- (iv) continued supply of electricity under this clause 21 is at Perth Energy's sole discretion, and Perth Energy may terminate the continued electricity supply on 30 days' written notice to the Buyer; and
  - (v) Perth Energy will not be required to pay the Buyback Charge for Surplus Electricity exported to the Network after the Contract End Date specified in the Commercial Terms.
- (d) Nothing in this clause 21 operates to extend this Agreement or delay its termination under clause 19.

## **22. Warranties**

The Buyer represents and warrants to Perth Energy that:

- (a) it has full power and authority to enter into and perform its obligations under this Agreement;
- (b) if it is a corporation, it is registered and validly existing under the Corporations Act and has the corporate power to own its assets and to carry on its business as it is now carrying on that business;
- (c) an obligation under this Agreement is legal, valid, binding and enforceable against it; and
- (d) it has taken the action necessary to authorise the execution and performance of this Agreement.

## **23. Miscellaneous**

### **23.1 Nature of Relationship**

This Agreement does not give rise to any partnership, agency or joint venture between the Parties.

### **23.2 Estimates of Anticipated or Actual Loss**

The Parties desire to avoid the difficulties of proof of damages and agree that at the date they entered this Agreement:

- (a) the Late Payment Administration Charge under clause 9.4;
- (b) the interest chargeable under clause 9.5;
- (c) the Excess Electricity Charge under clause 5.8(a);
- (d) the Shortfall Electricity Charge under clause 5.8(c);
- (e) the Shortfall Electricity Charge calculated for the remaining Supply Period under clause 5.8(d); and
- (f) the liquidated damages for early termination under clause 19.4,

each:

- (g) represent a reasonable and genuine estimate of the anticipated or actual loss likely to be suffered by Perth Energy in each of the respective circumstances; and
- (h) are not be out of proportion to any payment that could be made in that context, nor would any such payment be extravagant or unconscionable to any extent.

### **23.3 Legal Costs and Duty**

- (a) Each Party must pay its own legal costs in relation to the preparation and negotiation of this Agreement.
- (b) The Buyer is responsible for all duty payable in relation to this Agreement.





### **23.4 Trusts**

If the Buyer is the trustee of a trust, then:

- (a) the Buyer enters into and is bound by this Agreement both:
  - (i) in its personal capacity; and
  - (ii) in its capacity as trustee of the trust specified in the Commercial Terms (**Trust**); and
- (b) the Buyer warrants to Perth Energy that in respect of the Trust:
  - (i) the Buyer is the only trustee;
  - (ii) no action is proposed to remove the Buyer as trustee;
  - (iii) there is no default under the terms of the Trust;
  - (iv) the Buyer, as trustee, has the power to enter into and perform this Agreement; and
  - (v) the Buyer, as trustee, has a right of indemnity out of the Trust assets for all liabilities incurred by it under this Agreement, and the assets of the Trust are and will be sufficient to satisfy that right.

### **23.5 Notices**

- (a) Any notice or other communication under this Agreement must be in writing and given or served:
  - (i) by hand delivery or prepaid post to the address of the recipient stated in the Commercial Terms;
  - (ii) by facsimile transmission to the facsimile number of the recipient stated in this Agreement; or
  - (iii) by email.
- (b) A Party must notify the other Party promptly of any changes to its address for service.
- (c) Notices are deemed to have been served if delivered to the last notified address of the recipient of the notice:
  - (i) on the day of delivery, if delivered by hand before 5:00p.m. on a Business Day, and otherwise on the next Business Day;
  - (ii) 3 days after posting if within Australia and 7 days after posting if posted to or from a place outside Australia;
  - (iii) on the day of transmission if transmitted by facsimile before 5:00p.m. on a Business Day and otherwise on the next Business Day; or
  - (iv) on the day of sending if sent by email before 5:00p.m. on a Business Day and the sender has not received an automatic communication from the recipient's email system within 30 minutes stating the delivery of the email has been delayed, and otherwise on the next Business Day.
- (d) A printed, facsimile or copied signature will be sufficient for the purpose of sending any notice or other communication under this Agreement.

### **23.6 Governing Law & Jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws of Western Australia. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia, and to any courts that have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.



### **23.7 Confidential Information**

- (a) Subject to this clause 23.7, the Buyer must not disclose Confidential Information and must take all reasonable steps to ensure that Confidential Information is kept confidential.
- (b) The Buyer may reveal Confidential Information:
  - (i) if required by Law or by any stock exchange to disclose the Confidential Information, in which case the Buyer must immediately notify Perth Energy of the requirement and must permit Perth Energy to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;
  - (ii) if the Confidential Information is in or enters the public domain for reasons other than a breach of this Agreement;
  - (iii) if the Confidential Information is disclosed to the Buyer by a third Party legally entitled to disclose that information and who is not under an obligation of confidentiality to Perth Energy; or
  - (iv) to its professional advisers to obtain professional advice.
- (c) For guidance on Perth Energy's personal information handling practices, the Buyer may view Perth Energy's privacy policy, a copy of which is available on Perth Energy's website (<https://www.perthenergy.com.au/privacy-policy>).

### **23.8 Entire Agreement**

- (a) Subject to clause 23.8(b):
  - (i) this Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements arrangements representations or understandings in relation to its subject matter; and
  - (ii) any tender documentation issued by Perth Energy as part of a tender process is superseded by the terms of this Agreement.
- (b) Any pricing proposal upon which the prices in this Agreement are based given by Perth Energy to the Buyer will not be affected by the operation of clause 23.8(a).
- (c) Any amendments to this Agreement must be in writing and executed by both Parties.

### **23.9 Severance**

If a provision of this Agreement is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision is severed from this Agreement and the remaining provisions of this Agreement remain in full force and effect.

### **23.10 Clauses that Survive Termination of this Agreement**

The following clauses survive termination of this Agreement:

- (a) clause 9 (Invoices and Payments);
- (b) clause 13 (Liability and Indemnities);
- (c) clause 15 (Dispute Resolution);
- (d) clause 16 (Expert Determination);
- (e) clause 19.7 (Consequences of Termination);



- (f) clause 21 (Supply Following the Expiry of the Agreement); and
- (g) this clause 23 (Miscellaneous).

### **23.11 Complaints procedure**

- (a) Perth Energy will respond to any complaint made by the Buyer in accordance with the Customer Complaints Policy pursuant to Australian Standard AS ISO 10002-2006.
- (b) Where the Buyer is dissatisfied with Perth Energy's response to a complaint the Buyer may request that the complaint is referred to a senior representative of Perth Energy.

### **23.12 Non-Standard Contract**

The Parties acknowledge and agree that:

- (a) the Buyer is a sophisticated purchaser of electricity and has conducted a process in order to select its electricity supplier for each Site;
- (b) at the date of entering this Agreement the Buyer is not a Small Use Customer;
- (c) if because of the change in Electricity Consumption, the Buyer becomes a Small Use Customer, then this Agreement is a non-standard contract for the purposes of the Electricity Industry Act 2004 (WA);
- (d) the *Electricity (Customer Contract) Regulations 2005 (WA)* and the *Code of Conduct for the Supply of Electricity to Small Use Customers 2016 (WA)* (the "**Code of Conduct**") regulates the conduct of electricity retailers, network operators and electricity marketing agents. The code of conduct is designed to protect the interests of Small Use Customers;
- (e) matters covered by the Code of Conduct include electricity marketing, billing, connection, payment difficulties and financial hardship, disconnection, reconnection, pre-payment meters, information and communication, dispute resolution, record keeping and compensation payments to customers for breaches of the code of conduct;
- (f) subject to Perth Energy's right to terminate this Agreement, Perth Energy will supply electricity to the Buyer under this Agreement in compliance with the Code of Conduct, except where the Code of Conduct does not apply or has been expressly amended by this Agreement. Accordingly, where the Buyer is a Small Use Customer and this Agreement deals with a subject matter that is covered by the Code of Conduct, then Perth Energy will act consistently with the relevant provisions of the Code of Conduct to the extent not amended by this Agreement; and
- (g) notwithstanding clause 19.4, immediately upon the Buyer becoming a Small Use Customer, the Parties will commence negotiation in good faith to attempt to agree terms on which they wish to continue a supply and purchase of electricity beyond the date the Buyer has become a Small Use Customer. If the Parties cannot agree suitable terms within 20 Business Days of commencing negotiation under this clause 23.12(g), then either Party may elect to terminate this Agreement with 20 days' notice to the other Party. Termination under this clause 23.12(g) will not alter any other rights and obligations of a Party upon termination of this Agreement.



## Perth Energy Pty Ltd

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