



Change Energy Electricity Supply Agreement

The Electricity Supply Agreement consists of two documents:

1. The Application and Commercial Terms
2. These Large Use Customer Terms and Conditions

Large Use Customer Terms and Conditions Contents

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Key Items to Note

❖ **The Electricity Supply Agreement**

This document does not contain all the terms of your Electricity Supply Agreement, please read this document together with the Application and Commercial terms in accordance with Clause 1.1

❖ **Defaults**

The most common default is the failure to pay the Tax Invoice by the due date. If there is a default Change Energy may:

- revise the frequency for the issuing and payment of the Tax Invoice under clause 7;
- interrupt or limit the supply of electricity to the Site;
- cause or allow the Site to be disconnected from the Network (in which case the Buyer must pay any costs incurred by Change Energy with respect to the disconnection of the Site from the Network);
- refer the debt to a debt collection agency for collection (in which case the Buyer must pay any costs incurred by Change Energy with respect to the recovery of the debt, including the debt collection agency's fee and legal costs); or
- whether or not it has exercised all or any of its rights under clauses 10.1(b)(i) to 10.1(b)(iv), immediately terminate the Agreement by written notice to the Buyer.

❖ **Solar Installations**

The Buyer may install Renewable Energy Equipment (eg Solar PV panels) during the Agreement, however Clause 2.2, 2.3 and 10.3 will apply.

❖ **Early Termination**

Change Energy is entitled to liquidated damages as set out in Clause 11.3 if the Agreement is terminated prior to the end of the Supply Period.

❖ **Fees and Charges**

Information on Change Energy's standard fees and charges can be found at:

www.changeenergy.com.au

❖ **Payment Difficulties**

If you are having difficulty paying your bill, please contact us as soon as possible to discuss alternative options.

❖ **Queries and Complaints**

If you have a problem, complaint or just some feedback, we would like to hear from you. We are committed to offering the best possible customer service and products. If you have a complaint, everything possible will be done to resolve the matter on your initial contact. If this is not possible, your complaint will be escalated to a Supervisor, Manager or other appropriate person for investigation and response. You will receive a response within 10 business days, provided Change Energy has all the necessary information.

Contact us with your feedback:

Call: 1300 924 140

Email: info@changeenergy.com.au

Write to: Change Energy 10 Milly Court, Malaga WA 6090

To lodge a complaint:

Call: 1300 924 140

Email: complaints@changeenergy.com.au

Write to: Change Energy 10 Milly Court, Malaga WA 6090

1. The Agreement

1.1 The Commercial Terms and these Terms and Conditions

- (a) This Agreement is comprised of the Commercial Terms and these Terms and Conditions.
- (b) The Commercial Terms and these Terms and Conditions, to the extent possible read together
- (c) If there are any inconsistencies between Commercial Terms and these Terms and Conditions, then the Commercial Terms will prevail to the extent of the inconsistency.

1.2 Title to Electricity

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

1.3 Sale and Purchase

On and from the Contract Start Date the Buyer agrees to buy and Change Energy agrees to supply to the Buyer, electricity at the Site on the terms and conditions set out in the Agreement.

1.4 Commencement

This Agreement commences on the Contract Start Date.

1.5 Supply Period

- (a) The Supply Period for a Site commences on:
 - (i) if the Buyer is an existing customer of Change Energy, the start of the next Billing Period immediately after the Contract Start Date;
 - (ii) if the Buyer is not an existing customer of Change Energy, the last to occur of the following, as applicable:
 - 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 Change Energy becomes effective.
- (b) Unless otherwise agreed in writing by the Parties, Change Energy may terminate this Agreement if, by the date which is 30 days after the Contract Start Date, no Supply Period for any Site has commenced under clause 1.5(a).
- (c) This Agreement ends on the Contract End Date, unless terminated earlier in accordance with this Agreement.

1.6 Termination of Prior Agreements

Any Prior Agreements related to the Site(s) listed in this Agreements terminate on the Contract Start Date.

2. Electricity Supply

2.1 Demand

- (a) The Buyer must ensure that Demand does not exceed the CMD without Change Energy's prior consent. Change Energy may take any action it considers necessary to limit the rate at which electricity can be taken at the Connection Point to the CMD.
- (b) If the Buyer takes electricity at a rate that exceeds the CMD, Change Energy may direct the Buyer to reduce its Demand so that it does not exceed the CMD. The Buyer must promptly take all necessary action to comply with such a direction.
- (c) If, in any 12-month period, the peak Demand is more than 15% below the CMD at all times during that period, Change Energy may reduce the CMD by written notice to the Buyer to a quantity not less than 110% of the peak Demand during that period. The reduced CMD will take effect from a date specified by Change Energy, being not less than 30 days from the date of the notice.

2.2 Electricity Consumption

- (a) The Buyer acknowledges and agrees that the Electricity Prices offered in this Agreement are based on the Buyers historical use of electricity at the Site.
- (b) Change Energy may revise the Electricity Price if, in Change Energy's reasonable opinion, there has been Material Change in Electricity Consumption.
- (c) Change Energy will notify the Buyer in writing of any revision to the Electricity Price, and the date it will be effective, required as a result of any Material Change in Electricity Consumption,
- (d) Within 5 Business Days of the date of Change Energy's notice referred to in clause 2.2(c), the Buyer must notify Change Energy as to whether it accepts the revised Electricity Price.
- (e) If the Buyer:
 - (i) notifies Change Energy it accepts the revised Electricity Price; it will apply from the date specified in notice issued under clause 2.2(c);
 - (ii) notifies Change Energy that it does not accept the revised Electricity Price, Change Energy may terminate this Agreement on 10 Business Days' written notice to the Buyer and clause 10.3 will apply;
 - (iii) fails to respond to Change Energy's

notice issued under clause 2.2(c), then the revised Electricity Price will apply from the date specified in the notice.

- (f) The Buyer must notify Change Energy as soon as practicable if it anticipates or becomes aware of any Material Change in Electricity Consumption.

2.3 Renewable Electricity Equipment

- (a) The Buyer may install Renewable Energy Equipment or implement energy efficiency measures at any time during the Supply Period.
- (b) If the Buyer proposes to connect Renewable Electricity Equipment at a Site, it must give Change Energy notice detailing the proposed Renewable Electricity Equipment.
- (c) The Buyer must pay all fees, expenses, charges and other costs related to the preparation, submission, assessment and approval of any proposal to connect proposed Renewable Electricity Equipment and reimburse to Change Energy all fees, expenses, charges and other costs incurred or paid by Change Energy related to the Renewable Energy Equipment.
- (d) Change Energy will not be in any way liable for the operation or performance of the Renewable Electricity Equipment or the export of Surplus Electricity to the Network
- (e) Clause 2.2 will apply if there is a Material Change in Electricity Consumption.

3. Conditions of Network Usage

3.1 Responsibility for Delivery of Electricity

- (a) The Buyer acknowledges and agrees that Change Energy does not control the Network or the Connection Point. The Network Operator operates the Network and the Connection Point and electricity supplied under the Agreement is transported by the Network Operator under the terms of the Access Agreement. Change Energy makes 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.
- (b) 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) Change Energy may, at its absolute discretion, interrupt or limit the supply of electricity to the Buyer at the Connection Point for any operational, maintenance or safety reason.
- (c) Where this Agreement states that Change Energy must or may do something, it may be done by the Network Operator either under the terms of the Access Agreement or at Change Energy's request.

3.2 Back Up Supply and Customer

Information

- (a) The Buyer acknowledges that Change Energy is not required to provide an alternative supply of electricity to the extent that Change Energy's performance of its obligation to supply electricity under the Agreement is affected by a Force Majeure Event.
- (b) It is the Buyer's responsibility to consider whether the Buyer or any of the Buyer's customers or contractors requires a continuous supply of electricity and, if so, to make appropriate arrangements.
- (c) The Buyer must take all reasonable steps to identify whether one or more persons residing at a Site require Life Support Equipment.
- (d) If the Buyer identifies that one or more persons residing at a Site requires Life Support Equipment, the Buyer must immediately, with respect to each identified person, provide Change Energy with written notice of:
- (i) the person's name, postal address and street address for Network Outage notification purposes;
- (ii) the person's telephone number to enable the Network Operator to contact the person; and
- (iii) confirmation received from an appropriately qualified medical practitioner that the person requires Life Support Equipment.
- (e) If the Buyer has provided Change Energy with written notice pursuant to clause 3.2(d) with respect to a person, the Buyer must notify Change Energy in writing within 5 Business Days of becoming aware that the person no longer resides at the Site.

3.3 Parties to comply with Regulations

The Parties must comply with all applicable Laws, Regulations and Technical Rules, and all directives from the Network Operator, the System Operator and the Market Operator made in accordance with the Regulations.

3.4 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, repair, disconnect and remove the Metering Equipment and the Network Operator's Facilities and Equipment at the Sites; and
- (c) for any other reasonable purpose connected with or arising out of this Agreement, the Network Access Agreement or any applicable Law or Regulation.

3.5 Non-Interference with Network

Equipment

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

to the extent that such Liability results or arises from or in connection with, or is otherwise caused by the Buyer’s negligence or breach of this Agreement or the Access Agreement.

3.6 Maintenance of Buyer’s Equipment

- (a) At each Connection Point, the Buyer must use best endeavours in accordance with Good Electricity Industry Practice to ensure that the rate at which electricity is transferred into and out of the Network does not exceed the CMD for that Connection Point.
- (b) The Buyer must maintain the Sites and its Facilities and Equipment in accordance with Good Electricity Industry Practice.
- (c) The Buyer acknowledges that it is responsible for protecting the Buyer’s Equipment and all of its other property from damage resulting from the quality and nature of the electricity supplied by Change Energy.
- (d) The Buyer must notify Change Energy in advance of any changes to the Buyer’s (or any of its contractor’s or customer’s) Facilities and Equipment.
- (e) The Buyer warrants that the Buyer’s customers and contractors have agreed to, or will agree to, comply with the provisions of this clause 3.6.

3.7 Access Agreement and Arrangement

If Change Energy enters into a new or amended Access Agreement or other access arrangement with the Network Operator that changes either the Buyers or Change Energy’s obligations for use of the Network, then Change Energy may amend this Clause 3 by written notice to the Buyer. These amendments will be binding on Change Energy and the Buyer.

3.8 Reporting

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

3.9 Indemnities in relation to the Network

- (a) The Buyer must not cause or permit to cause the Network Operator to suffer a liability for which Change Energy is required to indemnify the Network Operator under the Regulations or Access Agreement except to the extent that the liability results from a failure of Change Energy to comply with its obligations under this Agreement or the Access Agreement.
- (b) Subject to this clause 3, the Buyer indemnifies Change Energy against any liability that Change Energy incurs to the Network Operator in respect of:
 - (i) any direct damage suffered by the Network Operator;
 - (ii) any liability that the Network Operator incurs to a third party in respect of any direct or Indirect Damage suffered by that third party,

4. Contract Charge

Each Billing Period, the Buyer must pay to Change Energy the Contract Charge for each Site, being the aggregate of the following charges, as applicable for the Billing Period under the Commercial Terms:

- (a) the Electricity Charge;
- (b) the Network Charges;
- (c) the Market Charges;
- (d) the Capacity Charge;
- (e) the REC Charge;
- (f) the Excess Demand Charge;
- (g) the Shortfall Charge; and
- (h) any other charges determined in accordance with Clause 5.2

4.2 Electricity Charge

The Electricity Charge for a Site is equal to:

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

where:

- EC = the Electricity Charge.
- EP = the Electricity Price, taking into account Peak and Off Peak Periods.
- E = the Electricity Consumption, taking into account Peak and Off Peak Periods, for the Site during the relevant Billing Period.
- LF = the Loss Factor (equal to 1 (one) if specified as “included” or the Site’s Loss Factor if specified as “excluded” in the Commercial Terms.)
- DC = the Daily Supply Charge.
- D = the number of days in the relevant Billing Period.
- M = the number of NMIs for the Site.

4.3 Network Charge

If specified in the Commercial Terms, the Buyer must pay to Change Energy, any Network Charges including Penalties payable or otherwise incurred by Change Energy attributable to the Site.

4.4 Market Charges

If specified in the Commercial Terms, the Market Charge payable for a Site is equal to:

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

where:

- MC = the Market Charge.
- E = the Electricity Consumption for the Site during the relevant Billing Period.
- MF = the applicable Market Fee.
- LF = the Loss Factor (equal to 1 (one) if specified as "included" or the Site's Loss Factor if specified as "excluded" in the Commercial Terms.
- ASC = Ancillary Service Charge payable to the Market Operator by Change 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 Change Energy attributable to the Site during or in respect of the relevant Billing Period.

4.5 Capacity Charge

If specified in the Commercial Terms, the Buyer must pay the Capacity Charge attributable to the Site.

4.6 REC Charge

- (a) If specified in the Commercial Terms, 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,

$$REC\ Charge = (LGC\ Price + STC\ Price) \times E \times LF$$

or

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

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

where:

- E = the Electricity Consumption for the Site during the relevant Billing Period.
- LF = the Loss Factor (equal to 1 (one) if specified as "included" or the Site's Loss Factor if specified as "excluded" in the Commercial Terms.
- (b) The Buyer may, subject to Change Energy's prior written consent which must not be unreasonably withheld or delayed, meet its obligation to pay the REC Charge for a Site by transferring to Change 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 multiplied by the Loss Factor (equal to 1 (one) if specified as "included" or the Site's Loss Factor if specified as "excluded" in the Commercial Terms 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 multiplied by the Loss Factor (equal to 1 (one) if specified as "included" or the Site's Loss Factor if specified as "excluded" in the Commercial Terms for the Site in the Billing Period.

4.7 Excess Demand Charges

- (a) If specified in the Commercial Terms, the Excess Demand Charge for the Billing Period is the sum of the Excess Demand of all half hours where there is Excess Demand multiplied by the Excess Demand Price.

4.8 Shortfall Charges

- (a) At the end of the final Billing Period for each Contract Year, Change Energy will calculate the Peak Combined Consumption; and the Off Peak Combined Consumption, for that Contract Year
- (b) If the Peak Combined Consumption in a Contract Year is less than the Peak Minimum Annual Electricity Consumption, Change Energy will invoice to the Buyer, and the Buyer must pay to Change Energy, the Peak Shortfall Electricity Charge for the Contract Year.
- (c) If the Off Peak Combined Consumption in a Contract Year is less than the Off Peak Minimum Annual Electricity Consumption, Change Energy will invoice to the Buyer, and the Buyer must pay to Change Energy, the Off Peak Shortfall Electricity Charge for the Contract Year.

5. Changes to Contract Charges

5.1 Changes in CPI

If specified in the Commercial Terms Change Energy may increase the Electricity Price, the Daily Supply Charge, the Excess Demand Price, the Shortfall Electricity Price and 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.

<p>B = the Price specified in the Commercial Terms</p> <p>CPI_n = the CPI for the quarter ending immediately before the Adjustment Date.</p> <p>CPI_b the CPI applying on the Price Review Base Date specified in the Commercial Terms.</p>	<p>charge or other cost payable by Change Energy for the verification.</p> <p>(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 7.6.</p>
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5.2 Adjustments for Change Events

- (a) If a Change Event occurs, Change Energy may adjust any of the Charges or Electricity Prices or add a new Charge to reflect any increase in Change Energy's cost of supplying electricity to the Buyer under this Agreement. Change Energy will notify the Buyer of nature of the Change Event and the date from which the Change Event will apply.
- (b) If Change Energy makes an adjustment under this clause 5.2, it must only do so to the extent necessary to reflect the proportion of the effect of the Change Event that is fairly attributable to the Buyer, as reasonably determined by Change Energy.

6. Meter Readings

6.1 Metering Equipment

The amounts of electricity:

- (a) supplied by Change Energy to each Site; and
- (b) exported to the Network as Surplus Electricity at the Site,

are measured by the Metering Equipment situated at the Site which is owned and operated by the Network Operator.

6.2 Metering Data

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

6.3 Estimated or Substituted Data

- (a) The Buyer acknowledges that the Contract Charge and the Buyback Charge may be calculated using a Deemed Actual Value provided to Change Energy by the Network Operator.
- (b) If, after Change 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 7.6.

6.4 Metering Errors and Verification

- (a) At the Buyer's request, Change Energy will request the Network Operator to provide energy data verifications for a Connection Point. The Buyer must reimburse Change Energy for any

6.5 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 Change Energy.
- (c) The Buyer must provide Change 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 Change Energy will continue to calculate the Contract Charge and the Buyback Charge in accordance with the Metering Data supplied to Change Energy by the Network Operator.

6.6 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.

7. Invoices and Payment

7.1 Tax Invoice

- (a) Change Energy must issue to the Buyer a Tax Invoice for all Sites as soon as practicable after the end of each Billing Period.
- (b) Change Energy may issue a Tax Invoice after the end of a Billing Period or Supply Period for amounts owing by the Buyer, including for any adjustment to Metering Data, Excess Demand Charges, Shortfall Charges, Network Charges, Capacity Charges and REC Charges.

7.2 Content

Each Tax Invoice will show, in sufficient detail for the Buyer to verify its accuracy and correctness:

- (a) the Contract Charges for the Billing Period, together with;
- (b)
- (c) any outstanding amounts as at the end of the Billing Period, including any interest due;
- (d) any adjustments required under clause 7.5 or clause 7.6;
- (e) any GST payable; and

(f) the Payment Date.

Contract Charge payable by the Buyer for the next two (2) Billing Periods if:

7.3 Payment

The Buyer must pay the total amount shown on each Tax Invoice using an Approved Payment Method such that payment is received by Change Energy in cleared funds on or before the Payment Date. Payment must be made in Australian dollars from an account at a bank or financial institution acceptable to Change Energy.

(i) Security is specified in the Commercial Terms; or

(ii) the Buyer has failed to ensure that Change Energy receives the Buyer's payment in cleared funds by the Payment Date in respect of three (3) Tax Invoices in a 12 month period or two (2) consecutive Tax Invoices; or

7.4 Interest

Any outstanding amount of the Tax Invoice constitute a debt owed by the Buyer to Change Energy and attract interest at the Default Rate calculated daily from the Payment Date of the Tax Invoice until the Tax Invoice and any interest that has accrued are paid in full.

(iii) at any time during the Supply Period, Change Energy reasonably determines that the Buyer's financial standing is such that there is a real possibility it would be unable to meet its obligations under this Agreement.

7.5 Adjustments for Error

(a) Each Party must inform the other if it finds an error in a Tax Invoice.

(b) If Change Energy agrees that there has been an error in the Tax Invoice, Change Energy will correct the error by adjusting the next Tax Invoice accordingly.

(b) If the Buyer is in Financial Default or pays an amount under this Agreement that Change Energy is required to disgorge or repay under any Law, Change Energy may exercise its rights under the Security in respect of that amount, and the Buyer must not seek to prevent or hinder any exercise by Change Energy of its rights under the Security.

7.6 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.

(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.

(c) If Change 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 8(a), within 14 days of receiving a written request to do so from Change Energy.

(d) Change 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.

7.7 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 on the Payment Date in full, and to the extent permitted by law, free of any set-off, or counterclaim of any kind and without deduction or withholding of any kind; and

(b) must be referred for resolution by negotiation in accordance with clause 14, and if the dispute cannot be resolved by negotiation, may be referred by either Party to litigation.

(e) If the Buyer provides Security under this clause, then:

(i) Change Energy will keep the Security in a trust account and identify it separately in our accounting records; and

(ii) interest will accrue daily at the bank bill rate (as defined in the Customer Contracts Regulations) and is capitalised every 90 days unless paid. Change Energy will advise the Buyer of the bank bill rate if requested.

7.8 Buyback Charges

Change Energy will provide a statement to the Buyer on an annual basis detailing the Buyback Charges payable by Change Energy to the Buyer. Unless otherwise agreed by the Parties, if the Buyer fails to provide a valid tax invoice to Change Energy for the Buyback Charge within six months of Change Energy providing the Buyback statement, the Buyer agrees to waive any claim to the Buyback Charges for the period of the statement.

(f) Change Energy will require, use and refund any security in a manner consistent with section 62 of the *Energy Operators (Powers) Act 1979 [WA]*. If there is any inconsistency between that section and this clause, this clause will not apply to the extent of the inconsistency.

8. Security

(a) At Change Energy's request, the Buyer must provide and maintain Security up to the amount which Change Energy estimates will be the

9. Supply Interruption

9.1 Interruption in the Supply of Electricity

(a) If for any reason there is an interruption, disturbance, Curtailment or failure (either in whole or in part) in supply, transmission or delivery of electricity into, across or out of the Network, then Change Energy or the Network Operator may immediately suspend, interrupt or curtail the supply of electricity to the Buyer.

(b) Change Energy is not in default of its obligations

under this Agreement and is not liable to the Buyer for any Claim, damage or loss (however arising) suffered or sustained by the Buyer for a failure to supply electricity to the Buyer due to, arising out of or in connection with, a suspension, interruption or Curtailment by Change Energy or the Network Operator pursuant to clause 9.1(a).

9.2 Buyer’s obligation to limit electricity demand

- (a) The Buyer acknowledges that any Supply Interruption Condition may require the Buyer to reduce the quantity of electricity it takes at the Connection Point.
- (b) Change Energy may give notice to the Buyer of a Supply Interruption Condition (**Supply Interruption Notice**) including the nature of the Supply Interruption Condition and the quantity of electricity (if any) that the Buyer is entitled to take at the Connection Point for the duration of the Supply Interruption Condition for any period of time specified in the Supply Interruption Notice (**Supply Interruption Permitted Quantity**). The Buyer must reduce its Demand at the Connection Point to ensure it does not exceed the Supply Interruption Permitted Quantity specified in a Supply Interruption Notice.
- (c) To the extent that the Buyer takes electricity at the Connection Point above the Supply Interruption Permitted Quantity, then, without limiting Change Energy’s rights under this Agreement:
 - (i) that electricity is electricity supplied under this Agreement; and
 - (ii) in any half hourly interval during any such period, the Electricity Price for that electricity will be deemed to be the greater of:
 - A. the Balancing Price applicable in that half hourly interval plus Change Energy’s reasonable estimate of any Network Charges, Market Charges, Capacity Charges and REC Charges, where any of those charges are not already charged to the Buyer; and
 - B. the Electricity Price that would otherwise be applicable in that half hourly interval.
- (d) Change Energy will as soon as practicable notify the Buyer that a Supply Interruption Condition has ended and clauses 9.2(b) and 9.2(c) will cease to apply from that time in respect of the relevant Supply Interruption Condition.

10. Default and Termination

10.1 Financial Default

- (a) Without prejudice to any other right or remedy of Change Energy under this Agreement or any Law, if the Buyer commits a Financial Default Change 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, Change Energy may:
 - (i) revise the frequency for the issuing and payment of the Tax Invoice under clause 7;
 - (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 Change Energy with respect 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 Change Energy with respect to the recovery of the debt, including the debt collection agency’s fee and legal costs); or
 - (v) whether or not it has exercised all or any of its rights under clauses 10.1(b)(i) to 10.1(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 10.1(b)(iii);
 - (ii) this Agreement has not been terminated; and
 - (iii) the Buyer has remedied the Financial Default,

Change 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 Change Energy with respect to the reconnection of the Buyer’s Site to the Network).

10.2 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, 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 10.2(a)(ii)B the Buyer must continue to pay the Contract Charge and any Outage charges which Change Energy continues to pay in relation to this Agreement during the suspension period.
- (c) If Change Energy is the defaulting Party and is for any reason incapable of remedying the Non Financial Default, Change Energy may, at its discretion, terminate this Agreement by written notice with effect from the date specified in the notice.

- (ii) Change Energy may issue a final Tax Invoice to the Buyer; and
- (iii) Change Energy or the Network Operator may remove the Meter and any other equipment located upstream of the Meter that is used for or in connection with the supply of electricity to the Buyer under this Agreement for which purpose the Buyer must provide safe and unrestricted access to the Site.

10.3 Early Termination

- (a) If this Agreement is terminated under:
 - (i) clause 2.1 owing to the Buyer's failure to accept a new Electricity Price reflecting any actual or anticipated Material Change in Electricity Consumption; or
 - (ii) this clause 10 owing to a Financial Default or Non Financial Default on the part of the Buyer,

prior to the end of the Supply Period under this clause 10.3 or otherwise as a result of any default or repudiation by the Buyer, then the Buyer must pay Change Energy liquidated damages of 75% of the Shortfall Charge that would have been payable in respect to all Contract Years remaining between the date of termination and the end of the Supply Period assuming the Buyer takes no electricity under this Agreement during that period and calculated using the Electricity Prices applicable at the date of termination. The Parties agree these liquidated damages represents a reasonable and genuine estimate of the anticipated or actual loss likely to be suffered by Change Energy as a result of termination under this clause 10.3.

10.4 Expiry

Subject to clauses 10.5 and 11, this Agreement will terminate at the end of the Supply Period unless terminated earlier in accordance with this clause 10.

10.5 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 17.10 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) Change 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 Change Energy);

11. Supply Following the Expiry of the Agreement

- (a) Prior to the end of the Supply Period, Change Energy may notify the Buyer in writing of:
 - (i) the Contract End Date;
 - (ii) a new electricity supply agreement that Change Energy is prepared to offer the Buyer, including new prices and terms and conditions ("**New Offer**");
- (b) If a New Offer is submitted to and accepted by the Buyer by signing and returning a copy of the New Offer to Change Energy, the terms and conditions of the New Offer, including the Electricity Price, will apply in accordance with clause 1.5(a), or any other date that may be specified in the New Offer.
- (c) Unless the Parties agree otherwise, after the Contract End Date, Change Energy may, at its sole discretion, continue to supply electricity to the Buyer on the same terms and conditions as this Agreement, except that:
 - (i) the Contract End Date will not apply;
 - (ii) if a New Offer was submitted to the Buyer but was not accepted before the Contract End Date, the Electricity Price after the Contract End Date will be the applicable price specified in the New Offer plus 10% and will increase by a further 10% on each subsequent anniversary of the Contract End Date for as long as Change Energy continues to supply electricity to the Buyer under this clause 11. Change Energy may revise the New Offer at any time;
 - (iii) if no New Offer was submitted to the Buyer, the Electricity Price will increase by 30% from that specified in this Agreement effective from the first day after the Contract End Date, and will increase by a further 30% on each subsequent anniversary of the Contract End Date for as long as Change Energy continues to supply electricity to the Buyer under this clause 11;
 - (iv) such continued supply of electricity is at Change Energy's sole discretion, and Change Energy may terminate the continued electricity supply on 30 days' written notice to the Buyer; and
- (d) Nothing in this clause 11 operates to extend this Agreement or delay its termination under clause 10.

12. Force Majeure

12.1 Consequences of Force Majeure Event

- (a) Subject to this clause 12.1, to the extent that, and for as long as, a Party (the "**Affected Party**") is prevented or delayed in its performance of an obligation under this Agreement by a Force Majeure Event ("**Affected Obligation**"):
 - (i) the Affected Party's obligation to perform the Affected Obligation is suspended; and
 - (ii) the Affected Party will have no Liability for its failure to perform the Affected Obligation.
- (b) A Force Majeure Event will not suspend the obligation to pay any amount owing under this Agreement, including any Outage Charges.
- (c) If the Affected Party's obligation to perform the Affected Obligation is suspended for a period greater than 3 months, either Party may terminate this Agreement by written notice to the other Party.

12.2 Actions During Force Majeure

The Affected Party must as soon as practicable upon becoming aware of a Force Majeure Event:

- (a) notify the other Party in writing of the occurrence and details of the Force Majeure Event; each Affected Obligation; the estimated duration and extent to which its performance of each Affected Obligation is likely to be prevented or hindered;
- (b) use its reasonable endeavours having regard to the cost and effectiveness of available remedies or solutions to overcome the effect of the Force Majeure Event and resume the performance of its obligations as soon as reasonably practicable; and
- (c) notify the other Party of and any change in or cessation of the effects of the Force Majeure Event

13. Liability

13.1 Exclusion of Liability for Change Energy

To the full extent permitted by Law, Change Energy will not be liable to the Buyer for any Liability (whether in negligence or otherwise) in connection with:

- (a) Change Energy's act or omission in connections with the Agreement;
- (b) Change Energy's default, performance or non-performance of an obligation under the Agreement (including failure to supply electricity or interruption or fluctuation in the supply of electricity); or
- (c) damage to or destruction or property, or personal injury or death of, any person, except as expressly provided for in this Agreement or due to fraudulent acts of Change Energy.

13.2 Exclusion of Indirect Damage

Without limiting clause 13.1, except as expressly provided in this Agreement, neither Party is in any circumstance liable to the other Party for any Indirect Damage, whether arising under a Law, in contract, tort, equity or otherwise.

13.3 Exclusion of warranties

- (a) To the full extent permitted by Law, all conditions, warranties and guarantees that would be implied (by statute, general law, customs or otherwise) are expressly excluded. However, nothing in this Agreement excludes, restricts or limits a condition, warranty or guarantee that is implied under the Australian Consumer Law (or other applicable legislation) that cannot be excluded.
- (b) Subject to clause 13.4, Change Energy gives no guarantee, warranty or undertaking, and makes and has made no representation in relation to the condition or suitability of the goods or services provided to the Buyer under this Agreement.

13.4 Implied Terms

If any condition, warranty or guarantee is implied into this Agreement under the Australian Consumer Law (or any other applicable legislation) that cannot be excluded, then, to the extent permitted by the Australian Consumer Law (or any other applicable legislation), Change Energy's Liability is limited, at Change Energy's election, to:

- (a) In the case of goods:
 - (i) The replacement, or the payment of replacement, of the goods or supply of equivalent goods;
 - (ii) The repair, or payment of repair, of the goods; or
- (b) In the case of services:
 - (i) The supplying, or the payment of supplying, of the services again.

14. Dispute Resolution

14.1 Parties to Continue to Perform their Obligations

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

14.2 Disputes Within the Scope of this Agreement

If a dispute arises between the Parties in connection with 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 14.2(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 14.4; and
- (ii) otherwise, unless the Parties agree to another means of resolving the dispute, either Party may commence litigation of the dispute.

14.3 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 14.

14.4 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 10 Business Days of the dispute being referred for expert determination.
- (b) If the Parties fail to agree on a person to be appointed as the expert within the time specified in this clause 14.4(a) either Party may apply to the President (for the time being) of the Institute of Arbitrators & Mediators Australia, or his or her nominee, to appoint an appropriate expert.
- (c) Unless the expert determines otherwise, the costs of the expert must be shared equally between the Parties.

14.5 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 14.6;

- (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 14.6, 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 14.5.

14.6 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.

14.7 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.

14.8 Unresolved Dispute

If a dispute is not resolved by expert determination as set out in this clause 14, either Party may commence litigation of the dispute.

15. Assignment

- (a) The Buyer must not assign its rights or novate its obligations under this Agreement without the prior written approval of Change Energy, which approval will not be unreasonably withheld.
- (b) Change Energy may assign its rights under this Agreement without the prior written consent of the Buyer.

16. GST

Change Energy in each of the respective circumstances.

16.1 Definitions

Unless the context indicates otherwise, any reference in this clause 16 to a term defined in the GST Law is a reference to that term as defined or used in the GST Law.

16.2 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.

16.3 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 costs, expenses, losses, damages or Liabilities is reduced by the amount of any input tax credits to which that Party is entitled in respect of those costs, expenses, losses, damages or liabilities.

17. Miscellaneous

17.1 Nature of Relationship

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

17.2 Estimates of Anticipated or Actual Loss

The Parties desire to avoid the difficulties of proof of damages and agree that:

- (a) the interest chargeable at the Default Rate under clause 7.4;
- (b) the Excess Demand Charge under clause 4.7;
- (c) the Peak Shortfall Electricity Charge under clause 4.8(b); and
- (d) the Off Peak Shortfall Electricity Charge under clause 4.8(c); and
- (e) any liquidated damages under clause 10.3;

each represent a reasonable and genuine estimate of the anticipated or actual loss likely to be suffered by

17.3 Legal Costs and Stamp Duty

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

17.4 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) if logged by the addressee’s email system as having been received as an email before 5:00p.m. on a Business Day, on that Business Day, 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.

17.5 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.

17.6 Confidential Information

- (a) Subject to this clause 17.6, each Party must not disclose Confidential Information and must take all reasonable steps to ensure that Confidential Information is kept confidential.

- (b) A Party ("**Information Recipient**") may reveal Confidential Information of another Party ("**Provider**"):
- (i) if required by Law or by any stock exchange to disclose the Confidential Information, in which case the Information Recipient must immediately notify the Provider of the requirement and must permit the Provider 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 Information Recipient by a third Party legally entitled to disclose that information and who is not under an obligation of confidentiality to the Provider; or
 - (iv) to its professional advisers to obtain professional advice.
- (c) For guidance on Change Energy's personal information handling practices, the Buyer may view Change Energy's privacy policy, a copy of which is available on Change Energy's website (<http://www.changeenergy.com.au/>).

17.7 Entire Agreement

- (a) This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements arrangements representations or understandings in relation to its subject matter.
- (b) Any tender documentation issued by Change Energy as part of a tender process is superseded by the terms of this Agreement.
- (c) Except under clause 3.7, any amendments to this Agreement must be in writing and signed by both Parties.

17.8 Waiver of Rights

If Change Energy does not enforce any right under this Agreement, then this must not be construed as a waiver of those rights under the Agreement.

17.9 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.

17.10 Clauses that Survive Termination of this Agreement

The following clauses survive termination of this Agreement:

- (a) clause 7 (Invoices and Payments);
- (b) clause 13 (Liability);
- (c) clause 14 (Dispute Resolution);

- (d) clause 14.4 (Expert Determination);
- (e) clause 10.5 (Consequences of Termination);
- (f) clause 11 (Supply Following the Expiry of the Agreement); and
- (g) clause 17 (Miscellaneous).

17.11 Non-Standard Contract

The Parties acknowledge that:

- (a) for the purposes of the *Electricity Industry Act 2004 (WA)*, this Agreement is a non-standard contract;
- (b) the *Electricity (Customer Contract) Regulations 2005 (WA)* and the *Code of Conduct for the Supply of Electricity to Small Use Customers 2012 (WA)* protect small use customers from exploitation. "Small Use Customers" are defined as customers who consume less than 160,000kWh per year; and
- (c) the Buyer is a sophisticated purchaser of electricity and has conducted a process in order to select its electricity supplier for each Site.

18. Interpretation

18.1 Definitions

In this Agreement, unless inconsistent with the context:

Access Agreement means an agreement between Change Energy and the Network Operator that provides access to the Network so that electricity may be transmitted into, across and out of the Network

Access Arrangement means an access arrangement for the Network brought into effect under the Electricity Network Access Code by the approval of the ERA.

Ancillary Service is defined in the Market Rules

Ancillary Service Charge for each Billing Period is the Buyer's proportion (based on the quantity of electricity supplied to the Buyer) of Change Energy's estimate of the cost for Ancillary Services charged by the Market Operator

Adjustment Date is defined in clause 5.1.

Affected Obligation is defined in clause 12.1(a).

Affected Party is defined in clause 12.1(a).

Agreed Annual Consumption means the annual Peak and Off Peak Combined Consumption as specified in the Commercial Terms

Agreement means the agreement between Change Energy and the Buyer comprising of:

- (i) the Commercial Terms; and
- (ii) these terms and conditions.

The Commercial Terms and these terms and conditions are to the extent possible, to be read together. If there is any inconsistency between the Commercial Terms and these terms and conditions, then the Commercial Terms shall prevail to the extent of the inconsistency.

Approved Payment Method means a payment method specified as such in the Commercial Terms.

Australian Consumer Law (ACL) means:

- (a) Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as applied as a law of the Commonwealth under section 131 of that Act; and
- (b) The *Australian Consumer Law (WA)* as defined and applied as a law of Western Australia under section 19 of the *Fair Trading Act 2010* (WA).

Balancing Price is defined in the Market Rules.

Billing Period means, for each Site, the period within the Supply Period for which the Contract Charge for the Site is invoiced by Change Energy to the Buyer, typically one month, unless otherwise varied by Change Energy.

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 Renewable Electricity Supply multiplied by the Buyback Price, taking into account Peak and Off Peak Periods as calculated annually on or about 1 July, having regard for the Contract Start Date and Contract End Date.

Buyback Price means the price per kWh specified in the Commercial Terms as peak and off peak charges applicable to Peak and Off Peak Periods respectively.

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

Buyer Facilities means any apparatus, equipment, plant, Renewable Electricity Equipment or building at a Site which is not part of the Network.

Capacity Charge means, in respect of a Billing Period, the portion of the amount of Targeted Reserve Capacity Cost and Shared Reserve Capacity Cost that Change Energy reasonably estimates (using the TDL Ratio, Total Ratio and any other relevant information published by the Market Operator) the Market Operator will allocate to it under the Market Rules, which is attributable to the Buyer's contribution to Change Energy's IRCR.

Change Event means Change in Law or any other event that directly or indirectly results in an increase in Change Energy's costs in connection with supplying electricity to the Buyer under this Agreement.

Change in Law means a change in an existing Law or the enactment of any new Law, including Climate Change Law, but excluding laws relating to income tax or capital gains tax which directly or indirectly results in an increase or decrease in Change Energy's cost of supplying electricity under this Agreement.

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

Climate Change Law means any and all Law which, directly or indirectly, in whole or in part, addresses climate change, promotes or supports renewable, low-emission, zero-emission or new or alternative forms of energy, reduces greenhouse gas emissions whether by an absolute amount or proportion or as an intensity value, or provides for carbon pricing, trading or taxation.

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

Combined Consumption means the combined total of the Electricity Consumption for all Sites.

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

Confidential Information means the terms of this Agreement and all confidential information, material and technology disclosed or provided in any form by either Party to the other Party, which the disclosing Party (acting in accordance with Good Electricity Industry Practice) has identified as being commercially sensitive or confidential.

Connection Point means, in respect of a Site, a point connecting the Network and the Buyer's Site as described in the Commercial Terms (as distinct from any point of interconnection between the Site and any Renewable Electricity Equipment).

Contract Charge is defined in clause 4.

Contract End Date means 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 either the Contract Start Date or one of its anniversaries.

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

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 by Change Energy acting in accordance with Good Electricity Industry Practice which most closely approximates the original effect of that index.

Curtailed means any partial or total interruption, disturbance or fluctuation in the supply or quality of electricity to the Buyer or the Buyer's customers or contractors.

Daily Supply Charge means the price per day per NMI, specified as such in the Commercial Terms.

Deemed Actual Value means Energy Data based on Estimated Data or Substituted Data.

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.

Default Rate means 16% per annum.

Dispute Notice is defined in clause 14.2(a).

Electricity Charge is defined in clause 4.2.

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.

Electricity Networks Access Code means the *Electricity Networks Access Code 2004 (WA)*.

Electricity Price means the price specified as such in the Commercial Terms.

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 Metering Code.

Excess Demand means any half hour where Demand is in excess of the CMD, expressed in kWh.

Excess Demand Charge is defined in clause 4.7(a).

Excess Demand Price means the price specified as such in the Commercial Terms.

Excess Electricity Price means the price specified as such in the Commercial Terms.

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

Financial Default means the failure of the Buyer to pay the Contract Charge, or any other amount payable by the Buyer to Change Energy under this Agreement by the Payment Date or the occurrence of an Insolvency Default.

Force Majeure Event means any event or circumstance which wholly or partially affects a Party's performance of its obligations under this Agreement, the cause of which is beyond the reasonable control of that Party and which, by the exercise of due diligence, the Party is not able to avoid or overcome including but not limited to:

- (a) if any of the following occur:
 - (i) a Network Outage;
 - (ii) a generator outage;
 - (iii) a fuel shortage; or
 - (iv) a failure by any third party supplier in its obligations to supply electricity to Change Energy for any reason provided Change Energy is not in breach of any relevant obligation under its arrangement with the relevant third party.

- (b) But a Party's lack of, or inability or unwillingness to use funds for any purpose is not a Force Majeure Event.

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

Government Authority means any government, or any governmental, semi-governmental or other regulatory or supervisory agency, organisation or body authorised by a Law, and includes the Market Operator.

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

Indirect Damage means:

- (a) any business interruption loss or any loss of (or loss of anticipated) use, production, revenue, income, profits, goodwill, contract, business and savings, whether or not such loss was foreseeable;
- (b) any indirect or consequential loss, cost, expense, damage or liability of any kind however caused
- (c) special or punitive damages; and
- (d) any liability of a Party to any third party, but does not mean any amount that is expressly stated to be payable by one Party to another under this Agreement.

Insolvency Default means when

- (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 suspend, 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; or
- (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,

IRCR (“Individual Reserve Capacity Requirement”) is defined in and calculated under the Market Rules.

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

Liability includes all liabilities (whether actual, contingent or prospective), losses, damages, Claims, costs and expenses 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.

Life Support Equipment means the equipment designated under the Western Australian Government’s Life Support Equipment Electricity Subsidy Scheme.

Loss 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 Charges is defined in clause 4.4.

Market Customer is defined in the Market Rules.

Market Fee means Change Energy’s estimate of the Market Operator’s market fee.

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)* relating to the Wholesale Electricity Market as amended from time to time.

Material Change in Electricity Consumption means consumption in respect of a Site that differs in regards to the timing or quantity of Electricity Consumption from what would reasonably be expected based on the Electricity Consumption data for the Site for the 12 months prior to the date of this Agreement so as to have a material adverse effect on Change Energy’s ability to recover its costs associated with the supply of electricity by Change Energy to the Buyer.

Meter means, for a Site, the electricity meter installed by the Network Operator to measure the electricity transferred at the Connection Point for the Site.

Metering Code means the *Electricity Industry Metering Code 2005 (WA)*.

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.

NMI means the national meter identifier for a Connection Point determined in accordance with the procedures required by the Australian Energy Market Operator.

New Offer is defined in clause 11(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 Change Energy under the Network Access Agreement.

Network Access Agreement means the contract between the Network Operator and Change Energy which grants Change Energy access to the Network to transport electricity to a Site, and includes an electricity transfer access contract and any other contract that serves substantially the same purpose.

Network Charges means all charges published by the Network Operator and as varied from time to time, Penalties and other amounts payable by Change Energy to the Network Operator from time to time under the Network Access Agreement in connection with a Site.

Network Operator means the entity who owns and operates the Network (as described in section 3 of the *Energy Coordination Act 1994 (WA)*). The Network Operator is responsible for the Network, which is the system via which electricity is delivered.

Network Outage means any Curtailment as a result of any Network event due to any act or omission by the Network Operator or the System Operator, 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 one of its obligations, including the Buyer’s obligations under clause 8 in relation to any security required by Change Energy, under this Agreement or to comply with this Agreement, and which is not a Financial Default.

Off Peak Combined Consumption means Combined Consumption during the Off Peak Period only.

Off Peak Minimum Annual Electricity Consumption means the minimum Off Peak Combined Consumption as specified in the Commercial Terms

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

Off Peak Shortfall Electricity Charge for a Contract Year, is equal to the Shortfall Electricity Price multiplied by the Off Peak Shortfall Electricity Quantity, if any, for the Contract Year.

Off Peak Shortfall Electricity Quantity means, where the Off Peak Combined Consumption for a Contract Year is below the Off Peak Minimum Annual Electricity Consumption, the difference, expressed as a positive number, between the Off Peak Combined Consumption for the Contract Year and the Off Peak Minimum Annual Electricity Consumption.

Other Charges is defined as any charge, other than the Capacity Charge, Market Fee or Ancillary Service Charge that the Market Operator charges to Change Energy in respect to a Billing Period.

Outage Charge means the total amount of any Network, Capacity, Market or REC Charges which Change Energy continues to pay in relation to this Agreement during a Force Majeure Event, as reasonably determined by Change Energy.

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

Peak Combined Consumption means Combined Consumption during the Peak Period only.

Peak Minimum Annual Electricity Consumption means the minimum Peak Combined Consumption as specified in the Commercial Terms.

Peak Period means the period from 08:00 to 22:00 Monday to Friday inclusive.

Peak Shortfall Electricity Charge for a Contract Year is equal to the Shortfall Electricity Price multiplied by the Peak Shortfall Electricity Quantity, if any, for the Contract Year.

Peak Shortfall Electricity Quantity means, where the Peak Combined Consumption for a Contract Year is below the Peak Minimum Annual Electricity Consumption, the difference, expressed as a positive number, between the Peak Combined Consumption for the Contract Year and the Peak Minimum Annual Electricity Consumption.

Penalties means any charges incurred by Change Energy under the Network Access Agreement or the Market Rules due to a breach by the Buyer or the Buyer's customers or contractors of the Buyer's obligations under this Agreement, including any excess network usage charges or power factor penalties.

Price means each of the Electricity Price, the Excess Demand Price, the Shortfall Electricity Price, the LGC Price and the STC Price.

Price Review Base Date means the date specified as such in the Commercial Terms.

Price Review Period means the period specified as such in the Commercial Terms.

Prior Agreement means an existing Agreement between the Parties which is in force (whether wholly or in part) immediately prior to the Contract Start Date.

REC Charge means the charge payable by the Buyer in satisfaction of Change 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.

Regulations means the statutes, subsidiary legislation and legislative instruments governing the Western Australian electricity market from time to time.

Renewable Electricity Equipment means, with respect to a Site, renewable electricity generation equipment or batteries connected or to be connected to Buyer Facilities at the Site.

Renewable Electricity Supply means the Surplus Electricity exported to the Network in accordance with

this Agreement, aggregated across all Sites at which Renewable Electricity Equipment is connected to Buyer Facilities.

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 8 in the form, type and amount acceptable to Change Energy.

SRCC ("Shared Reserve Capacity Cost") is defined in and calculated under the Market Rules.

Shortfall Electricity Price is the price per kWh specified as such in the Commercial Terms and escalated under clause 5.

Site means one or more integrated facilities or activities at a single address that are controlled by the Buyer or the Buyer's customers or contractors and consume electricity supplied by Change Energy under this Agreement at a single Connection Point, as described in the Commercial Terms.

Terms and Conditions means these terms and conditions.

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.

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 Metering Code.

Supply Interruption Condition means any suspension, limitation, interruption, Curtailment or termination to the supply of electricity to the Buyer that Change Energy or the Network Operator is entitled to make in accordance with or as contemplated in this Agreement (including due to a Force Majeure Event).

Supply Interruption Notice is defined in clause 9.2(b)

Supply Interruption Permitted Quantity is defined in clause 9.2(b)

Supply Period for a Site means the agreed period during which Change Energy will supply electricity to the Site, as specified in the Commercial Terms.

Surplus Electricity means electricity generated by Renewable Electricity Equipment and exported to the Network and measured by the Meter in accordance with this Agreement, the Network Access Agreement, the Technical Rules and applicable Laws and Regulations.

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).

TRCC (“Targeted Reserve Capacity Cost”) is defined in and calculated under the Market Rules.

Tax Invoice means an invoice issued under clause 7.1.

TDL (“Temperature Dependent Load”) Ratio is calculated under the Market Rules and published monthly by the Market Operator.

Technical Rules means the technical rules approved under the Electricity Networks Access Code for the Network.

Total Ratio is calculated under the Market Rules and published monthly by the Market Operator.

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

18.2 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 a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (d) a reference to a person includes a reference to an individual, firm, partnership, government or public body, company, association or unincorporated body;
- (e) a reference to a person includes a reference to 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 a reference to a clause in the 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 deed, agreement, licence,

document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time;

- (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) a reference to a month is a reference to a calendar month and a reference to a year is to a calendar year;
- (l) 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;
- (m) if a day stipulated for payment is not a Business Day, the payment must be made on the next Business Day;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) a reference to a monetary amount means that amount in Australian currency;
- (p) “under” includes by, by virtue of, pursuant to, and in accordance with;
- (q) “maintain” includes renew and replace;
- (r) a reference to any document (including this Agreement) includes any variation or replacement of it;
- (s) whenever the approval, consent, certification, notification or agreement of any person is required, it must be in writing and obtained before implementing the action to which it relates; and
- (t) 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.