

Large Customer Microgrid Electricity Supply Agreement

Large Customer Microgrid Electricity Supply Agreement

Terms and Conditions

Principal

Peel Renewable Energy Pty Ltd
(ABN 24 634 578 206)

Customer

[TBA]
(ABN)

Dated

[TBA]

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1 RECITALS

- A The Microgrid Operator carries on the business of supplying electricity from the Microgrid.
- B The Customer occupies the Premises, which is electrically connected to the Distribution System and is a Large Customer.
- C The Customer wishes to purchase, and the Microgrid Operator wishes to supply, electricity for consumption at the Premises on the terms of this Agreement.

1 Definitions and Interpretation

Definitions

1.1 In this Agreement:

Agreement	means these terms and conditions, including each schedule, as varied or amended from time to time, and the Agreement Particulars signed by each of the Customer and the Microgrid Operator.
Agreement Particulars	means the details provided in Schedule 1.
Assign	includes to sell, transfer or novate and Assignment has a corresponding meaning.
Australian Consumer Law	means Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth).
Business Day	means a day that is neither a Saturday, Sunday or gazetted as a public holiday in Perth, Western Australia, nor any day during the period commencing 25 December in a year and ending on 7 January in the following year.
Carbon Event	means the introduction of, amendment to or repeal of any Law that has as an objective or consequence of the promotion of energy efficiency, the reduction or abatement of carbon dioxide or any other greenhouse gases, or the promotion of renewable energy or alternative fuels (which fuels reduce the emission of greenhouse gases), including any emissions trading scheme, renewable energy target or carbon tax (however described).
Change Event	means a Change in Law, a Carbon Event or any other event that directly or indirectly results in an increase in the Microgrid Operator's costs in connection with producing, generating, acquiring, conveying, supplying or selling electricity to or for the Customer under this Agreement.
Change in Law	means: <p>(a) the introduction, repeal, amendment or commencement of any Law that, directly or indirectly, results in an increase in the Microgrid Operator's costs in connection with its operation of the Microgrid, or its supply of electricity under this Agreement; and</p>

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	(b) the introduction, repeal, amendment or commencement of any Tax (other than income tax imposed under the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth), as applicable, or GST) that directly or indirectly increases the Microgrid Operator's costs in connection with its operation of the Microgrid, or its supply of electricity under this Agreement.
Charges	means each of the amounts payable under this Agreement, including those specified in Item 6 of the Agreement Particulars.
Claims	means any claim, action, demand, proceedings or judgments made in respect of a person.
Confidential Information	means the terms of this Agreement and all information disclosed by a Party under and in relation to this Agreement, whether arising before or after the Supply Commencement Date.
Connection Point	means the point(s) at which the Customer's Electrical Installation is connected to the Microgrid specified in Item 4 of the Agreement Particulars.
Consumer	has the meaning given to that term in the Australian Consumer Law.
Contract Maximum Demand	(expressed in kW) means the rate at which the Customer is entitled to transfer electricity, from the Microgrid to the Customer's Electrical Installation at the Connection Point specified in Item 5 of the Agreement Particulars, as may be varied in accordance with this Agreement.
Contract Month	means the following periods during the Supply Period: (a) for the first Contract Month, the period commencing on the Supply Commencement Date and ending on the end of the calendar month in which that Supply Commencement Date occurs; (b) each subsequent calendar month; and (c) for the final Contract Month, the period (if any) commencing on the expiration of the last calendar month determined under paragraph (b) and ending on the End Date or earlier termination of this Agreement.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
CPI	means the Consumer Price Index for Perth, Western Australia (All Groups) published by the Australian Bureau of Statistics under Catalogue Number 6401.0 in respect of the relevant quarter, or if the Consumer Price Index for Perth (All Groups) is discontinued, the index substituted for it by a competent Government Agency.
CPI Adjusted	means the adjustment formula described in clause 1.3.
Curtail	means any limitation, reduction, cessation or disconnection or load at the Connection Point.

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Customer	means the party or parties specified in Item 2 of the Agreement Particulars.
Customer Connection and Contribution Guidelines	means the document of that name published on the Microgrid Operator's website from time to time.
Customer's Electrical Installation	means the electrical facilities that are operated by the Customer at the Connection Point but excludes the Electricity Supply Equipment.
Default	means a Financial Default, Non-financial Default or an Insolvency Default.
Defaulting Party	has the meaning given in clause 17.1.
Default Notice	has the meaning given in clause 17.1.
Direct Loss	means any loss that does not include any Excluded Loss.
Discloser	has the meaning given in clause 24.1.
Dispute	has the meaning given in clause 22.1.
Dispute Notice	has the meaning given in clause 22.1.1.
Distribution System	means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV, to which the Premises is attached and which the Microgrid Operator is licenced to operate.
EIA	means the <i>Electricity Industry Act 2004 (WA)</i> .
Electricity Supply Equipment	means the Metering Equipment (if any) for the Premises and all wiring, apparatus and other equipment or works located upstream from the point that electricity leaves that Meter or, if there is no Meter for the Premises, upstream from the Connection Point for the Premises and which are used by the Microgrid Operator for, or in connection with, the supply of electricity and any wiring, apparatus or other equipment or works belonging to the Microgrid Operator located downstream of the point that electricity leaves the Meter for the Premises or, if there is no Meter for the Premises, downstream of the Connection Point for the Premises which are used by the Microgrid Operator for, or in connection with, the supply of electricity.
Emergency	means accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance.
End Date	means the date specified in Item 8 of the Agreement Particulars.
Excluded Loss	means all and any of the following (whether or not known to or contemplated by the Parties, or otherwise reasonably foreseeable at any time): <ul style="list-style-type: none">(a) business interruption loss;(b) lost profits;(c) loss of an opportunity;

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- (d) the Customer's liability to others under contracts, applicable Laws or otherwise;
- (e) indirect or consequential loss of any kind;
- (f) any loss to the extent it is caused by the Customer's own negligence or other fault; or
- (g) any loss to the extent it is caused by an event beyond the Microgrid Operator's control.

Expert has the meaning given in clause 22.5.

Financial Default means a default by a Party of the payment of any sum due to the other Party under this Agreement or the occurrence of an Insolvency Default but does not include a Prudential Breach.

Force Majeure Event means any event or circumstance not within the reasonable control of a Party and which by the exercise of due diligence, that Party is not reasonably able to prevent or overcome, including without limiting the generality of the nature of those events or circumstances, any of the following events or circumstances:

- (a) unavoidable accidents involving, or breakdown of or loss or damage to, any plant, machinery, equipment, lines or pipes necessary to enable Microgrid Operator to generate, acquire or supply electricity to the Customer (including, without limitation, that of the Microgrid Operator and its Related Bodies Corporate or the Regulator);
- (b) a curtailment in the rate of, or interruption to, the transmission of electricity into the Microgrid;
- (c) failure of suppliers or operators to supply, transport or distribute fuel, equipment or machinery; and
- (d) any interruption that is required or directed by any Commonwealth, State or local Government Agency or any Commonwealth or State statutory authority or the Regulator having authority to so require or direct, but does not include a lack of funds for any reason whatsoever or an inability to use available funds.

Generating Works has the meaning given to that term in the EIA.

Government Agency means a government or governmental department or other body; a governmental, semi-governmental or judicial person including a statutory corporation or a person (whether autonomous or not) who is charged with the administration of a Law.

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

Insolvency Default means the Customer suffering any of the following events:

- (a) a liquidator or provisional liquidator, receiver, manager, receiver and manager, trustee, administrator, controller or similar officer is appointed in respect of the Customer or any asset of the Customer;
- (b) any application (not being an application withdrawn or dismissed within 10 Business Days) is made to a court for

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- an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of appointing a person referred to in paragraph (a) or winding up of the Customer;
- (c) a moratorium of any debts of the Customer or any official assignment or a composition or an arrangement (formal or informal) with the Customer's creditors or any similar proceeding or arrangement by which the assets of the Customer are subjected conditionally or unconditionally to the control of the Customer's creditors is ordered, declared or agreed to, or is applied for;
 - (d) the Customer becomes, admits in writing that it is, is declared or is deemed under any applicable Law to be, insolvent or unable to pay its debts;
 - (e) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Customer which is material in the context of this Agreement; or
 - (f) any act is done or event occurs which under the laws from time to time of a country other than Australia has an analogous or similar effect to any of the events in paragraphs (a) to (e) (inclusive).

Interest

is:

- (a) unless otherwise specified, interest which accrues daily from the due date for payment up to the date the outstanding amount (together with accrued interest) is paid to Microgrid Operator, at the following rate:
 - (i) an annual interest rate which is equal to, on any day, 2% above the rate applied by Australia and New Zealand Banking Group Limited to overdrafts to commercial customers as published in major Australian newspapers from time to time; or
 - (ii) if the rate cannot be determined by the procedure referred to in paragraph (a)(i), a reasonable rate determined by Microgrid Operator having regard to comparable indices then available;
- (b) payable on the first Business Day of each month and is calculated on actual Days elapsed and a 365-Day year; and
- (c) capitalised on the first Business Day of each month following the due date for payment if such interest is not paid when due.

Invoice

has the meaning given in clause 14.1.

Large Customer

means a person that consumes not less than 160MWh per annum.

Law

means the common law, all present and future Acts of the Parliament of the Commonwealth or of the Parliament of Western Australia, regulations, codes, ordinances, local laws, by-laws, orders, judgments, licences, rules, permits, registrations, agreements, and requirements of all Government Agencies.

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Loss	means any loss, cost, damages, liability or expense.
Meter	means the meter and meter equipment located at the Connection Point which is used to measure the volume of electricity that the Microgrid Operator supplies to the Customer under this Agreement.
Metered Data	has the meaning given in clause 10.1.
Metering Equipment	means all of the equipment that measures and records the rate at which electricity is transferred, and the amount of electricity transferred, from the Microgrid to the Customer's Electrical Installation at the Connection Point.
Microgrid	means the Distribution System and Generating Works owned and/or operated by the Microgrid Operator and any of its Related Bodies Corporate.
Microgrid Easement	means any parcel of land in respect of which a part of the Microgrid is located.
Microgrid Operator	means the party specified in Item 1 of the Agreement Particulars.
Microgrid Technical Rules	means the document of that name published on the Microgrid Operator's website, as amended from time to time.
Non-defaulting Party	has the meaning given in clause 17.1.
Non-financial Default	means a default, other than a Financial Default, by a Party in performing one or more of its obligations under this Agreement but does not include a Prudential Breach.
Other Charge	has the meaning given in clause 27.17.
Parties	means the Microgrid Operator and the Customer and Party is a reference to any one of them.
Permitted Person	means, in respect of the Parties, any Related Body Corporate, invitee, customer, supplier, contractor, adviser, officer, employee or director of the Parties (as applicable).
Permitted Recipient	means: <ul style="list-style-type: none">(a) the employees, officers or legal counsel of a Recipient or a Related Body Corporate of a Recipient;(b) the independent consultants and contractors, agents, financiers, auditors and insurers of a Recipient or a Related Body Corporate of a Recipient, provided those persons have first made an undertaking of confidentiality to the Recipient in favour of both Parties on terms similar to those contained in this Agreement; and(c) a genuine prospective assignee or acquirer of a Recipient or its rights or obligations under this Agreement and their financiers, consultants and advisers, provided those persons have first made an undertaking of confidentiality to the Recipient in favour of both Parties on terms similar to those contained in this Agreement.

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Premises	has the meaning given in Item 3 of the Agreement Particulars.
Protected Rights	means: <ul style="list-style-type: none">(a) any rights of recovery or to compensation the Customer may have under the Australian Consumer Law (including in relation to Excluded Loss);(b) any other rights of recovery or to compensation that the Customer may have under Law; or(c) any other condition, warranty or guarantee (including the application of any Consumer guarantee under the Australian Consumer Law) where applicable, if and to the extent that the Microgrid Operator is prohibited by Law from excluding, restricting or modifying them.
Prudential Breach	means the occurrence of either of the following: <ul style="list-style-type: none">(a) the Customer fails to provide Prudential Support within 5 Business Days of the Microgrid Operator's request under clause 13.1; or(b) the Customer fails to comply with its obligations under clause 13.1 in the time required by Microgrid Operator.
Prudential Support	means security for the performance of the Customer's obligations under this Agreement, in a form acceptable to the Microgrid Operator and in accordance with clause 13.2.
Recipient	has the meaning given in clause 24.1.
Recoverable Costs	has the meaning given in clause 12.2.
Regulated Tariff	means a tariff set out in the <i>Energy Operators (Electricity Generation and Retail Corporation) Bylaws 2006</i> (WA).
Regulator	means the Independent Market Operator, established under the <i>Electricity Industry (Independent Market Operator) Regulations 2004</i> (WA) to administer and operate the Market.
Related Body Corporate	has the meaning given to that term when used in the Corporations Act.
Supply Commencement Date	means the later of: <ul style="list-style-type: none">(a) the date specified in Item 7 of the Agreement Particulars; and(b) the date that the right to supply electricity at the Connection Point is transferred to the Microgrid Operator pursuant to the Customer Transfer Code or the Customer Connection and Contribution Guidelines.
Supply Period	means the period commencing on the Supply Commencement Date and ending on the End Date or earlier termination of this Agreement.
Supply Related Liability	means any loss, damage or liability (including any Excluded Loss) arising for any reason from or in connection with:

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- (a) any loss or curtailment of or interruption or delay in the Customer's electricity supply (including any delay in connection, disconnection or reconnection of the Customer's electricity supply);
- (b) any surge, disruption or fluctuation in electricity supply or its quality from time to time; or
- (c) the Microgrid failing, for any reason, to supply electricity meeting any particular quality, reliability or quantity.

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding of whatever kind and whether direct or indirect.

Term has the meaning given in clause 3.

Western Power means Electricity Networks Corporation established under the *Electricity Corporations Act 2005* (WA).

Western Power Network means the electricity network operated by Western Power.

Interpretation

1.2 In this Agreement, unless the context otherwise requires:

- 1.1.1 Headings or subheadings are for convenience only and do not affect the interpretation of any provision of this Agreement.
- 1.1.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 1.1.3 The singular includes the plural and vice versa.
- 1.1.4 Words expressed in one gender include the other gender.
- 1.1.5 A "person" includes an individual, partnership, firm, company, government, joint venture, association, authority, corporation or other body corporate.
- 1.1.6 References to the background, parts, clauses, schedules and annexures are references to the background, parts, clauses, schedules and annexures to this Agreement.
- 1.1.7 The expression "this Agreement" includes the agreement, arrangement, understanding or transaction recorded in this Agreement.
- 1.1.8 References to a Party to this Agreement include that Party's executors, administrators, substitutes, successors and permitted assigns.
- 1.1.9 A reference to a group of people is a reference to all of them collectively and to each of them individually.
- 1.1.10 References to time are to time in Perth, Western Australia.
- 1.1.11 If the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

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- 1.1.12 A covenant or agreement made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally.
- 1.1.13 A reference to any statute or to any statutory provision includes any amendment, re-enactment or consolidation of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- 1.1.14 “\$” or “dollars” is a reference to Australian currency.
- 1.1.15 A reference to a thing or an amount includes the whole or part of that thing or amount.
- 1.1.16 A reference to kW means kilowatt; a reference to kWh means kilowatt-hour; a reference to kVA means kilovolt-ampere.

CPI adjustments

- 1.3 Where, in this Agreement, an amount is described as being CPI Adjusted, the following formula must be used:

$$N = C \times \left(1 + \frac{CPI_n - CPI_c}{CPI_c} \right)$$

Where:

“N” is the new amount being calculated; and

“C” is the current amount being adjusted; and

“CPI_n” is the CPI applicable for the March quarter most recently ended prior to the current adjustment date; and

“CPI_c” is the value of CPI applicable for the calendar quarter occurring 12 months before the calendar quarter referred to in the definition of CPI_n.

2 Agreement

- 2.1 This Agreement is comprised of:
 - 2.1.1 the Agreement Particulars that are signed by both parties; and
 - 2.1.2 these terms and conditions.
- 2.2 If there is any inconsistency between these terms and conditions and the Agreement Particulars, then the Agreement Particulars will prevail to the extent of that inconsistency.
- 2.3 The Customer acknowledges and agrees that:
 - 2.3.1 it is, and will for the duration of the Term, remain a Large Customer;
 - 2.3.2 that this Agreement applies only to Large Customers;
 - 2.3.3 that certain regulatory protections apply to Customers that consume less than 160 MWh per annum, which are not contained in this Agreement.

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3 Term

- 3.1 This Agreement commences on the date that the Agreement Particulars are signed by the last Party to do so and continues until the End Date, unless terminated earlier in accordance with its terms (Term).

4 Sale and Purchase

- 4.1 On and from the Supply Commencement Date and for the duration of the Supply Period, the Microgrid Operator agrees to supply to the Customer, and the Customer agrees to buy from the Microgrid Operator, electricity at the Connection Point in accordance with the terms and conditions set out in this Agreement.

5 Title and Risk

- 5.1 Title and risk in electricity supplied to the Customer under this Agreement passes to the Customer at the Connection Point.

6 Demand

- 6.1 The Customer must ensure that:

6.1.1 it is, and will for the duration of the Term, remain a Large Customer;

6.1.2 that this Agreement applies only to Large Customers;

- 6.2 If the Customer does not comply with clause 6.1, then:

6.2.1 the Microgrid Operator may direct the Customer to:

(a) reduce the rate at which electricity is transferred out of the Distribution System at the Connection Point so that it does not exceed the Contract Maximum Demand; and/or

(b) cease the export of electricity at the Connection Point into the Distribution System; and

6.2.2 the Customer must immediately comply with any such direction.

- 6.3 If the rate at which electricity is transferred out of the Distribution System at the Connection Point is for any period of 12 consecutive months more than 10% below the Contract Maximum Demand, then the Microgrid Operator may by notice to the Customer reduce the Contract Maximum Demand.

- 6.4 The Contract Maximum Demand notified by the Microgrid Operator to the Customer:

6.4.1 takes effect from the date specified in the Microgrid Operator's notice, being not less than 15 Business Days from the date of the notice; and

6.4.2 must be a quantity that is not less than 110% of the peak rate at which electricity was transferred out of the Distribution System in the subject period of 12 consecutive months.

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7 Electrical Facilities

Electrical Supply equipment

- 7.1 The Electricity Supply Equipment remains the Microgrid Operator's property at all times and the Microgrid Operator must install and maintain the Electricity Supply Equipment.

Customers Electrical Installation

- 7.2 The Customer is responsible for keeping the Customer's Electrical Installation in good working order and condition.

Prohibited Activity

- 7.3 The Customer must not and must not allow anyone else to:
- 7.3.1 tamper with, bypass, circumvent or otherwise interfere with the Electricity Supply Equipment, or do anything that will prevent the Microgrid Operator from accessing the Electricity Supply Equipment;
 - 7.3.2 use electricity in a way that interferes with the supply of electricity to any other person;
 - 7.3.3 use electricity in a way that interferes with the supply of electricity by the Microgrid Operator to the Customer;
 - 7.3.4 use electricity in a way that causes loss to the Microgrid Operator or any other person;
 - 7.3.5 contravene any Law in relation to the use of electricity, use or operation of the Electricity Supply Equipment or use or operation of the Customer's Electrical Installation; or
 - 7.3.6 use a Connection Point to transfer electricity into the Microgrid without the Microgrid Operator's prior written consent.

Microgrid Technical Rules

- 7.4 The Parties must at all times comply with the Microgrid Technical Rules.

8 Metering Equipment

- 8.1 The Microgrid Operator must:
- 8.1.1 install, operate and maintain the Metering Equipment; and
 - 8.1.2 verify the accuracy of the Metering Equipment in accordance with good electricity industry practice and the Law.
- 8.2 The Customer must ensure that:
- 8.2.1 the Metering Equipment located on the Premises is safe and secure and is not bypassed, circumvented or otherwise interfered with; and
 - 8.2.2 the Microgrid Operator may safely access the Metering Equipment during the Term as required to fulfil its obligations under this Agreement and the Law or otherwise for the purposes of routine meter reading and maintenance.

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9 Access to Premises

- 9.1 The Customer must ensure that the Microgrid Operator has all reasonable rights of entry to the Premises:
- 9.1.1 for the purposes of reading, constructing, installing, operating, maintaining and verifying the accuracy of any Metering Equipment or other equipment or thing;
 - 9.1.2 to inspect for safety or other reasons the construction, installation, operation, maintenance and repair of any Metering Equipment or other equipment or thing; and
 - 9.1.3 for any other reasonable purpose connected with or arising out of this Agreement.
- 9.2 Any entry under clause 9.1 is made in all respects at the expense and risk of the Microgrid Operator, who must make good any damage occasioned by or resulting from the entry, other than to the extent the damage is caused by:
- 9.2.1 fair wear and tear;
 - 9.2.2 the negligence or Default of the Customer or any Customer's Permitted Persons; or
 - 9.2.3 a Force Majeure Event.
- 9.3 The Microgrid Operator must:
- 9.3.1 before exercising a right of entry under clause 9.1, give reasonable notice to the Customer specifying the purpose, proposed time and estimated duration of entry, except where it is not practicable to do so due to any Emergency or where it is for the purposes of routine meter reading or maintenance;
 - 9.3.2 while exercising a right of entry under clause 9.1:
 - (a) take steps that are reasonable in the circumstances to, ensure that during the entry, the Microgrid Operator and its Permitted Persons cause as little inconvenience to the Customer as is practicable; and
 - (b) comply with all reasonable health and safety standards, induction and supervision requirements and other requirements of the Customer, except where to do so would be impracticable during an Emergency.
- 9.4 To the extent that any equipment or thing relevant to the obligations or rights of a Party under this Agreement is located on the premises of a third person, the Parties must use their reasonable endeavours to secure for either or both of the Parties a reasonable right of entry to the third person's premises.

10 Calculation of Electricity Supplied

- 10.1 The amount of electricity supplied to the Customer under this Agreement shall be determined by reference to the amount of electricity registered on the Metering Equipment (**Metered Data**).
- 10.2 If the Microgrid Operator is unable to access the Metering Equipment or obtain Metered Data, the Customer acknowledges that the Microgrid Operator may reasonably estimate the amount of electricity supplied to the Customer based on the Customer's usage history and any other information available to the Microgrid Operator.

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- 10.3 If the Microgrid Operator estimates the amount of electricity supplied to the Customer and more precise information subsequently becomes available, then the resulting correction will be treated as an overpayment or underpayment (as the case may be).
- 10.4 A correction under clause 10.3 may only be made if it relates to a period in the 12 months prior to the time that the estimate of electricity supplied to the Customer was shown to be imprecise.

11 Charges

- 11.1 The Customer must pay the Microgrid Operator the Charges in accordance with this Agreement.

12 Price Adjustments

Adjustments for changes in CPI

- 12.1 Each of the Charges will be CPI Adjusted on the first day of July in each calendar year during the Term.

Adjustments for Change Event

- 12.2 If a Change Event occurs, which:

- 12.2.1 directly or indirectly increases the Microgrid Operator's costs of supplying electricity to the Customer or operating and maintaining the Microgrid; or
- 12.2.2 where the Change Event is a Carbon Event or requires or permits the Microgrid Operator to incur and increase in its costs, including by purchasing certificates, offsets or other things, or by paying charges

(together, **Recoverable Costs**), then:

- 12.2.3 the Microgrid Operator may adjust the Charges or impose other or additional charges to reflect the impact of the Recoverable Costs on the Microgrid Operator's costs;

- 12.2.4 but such an adjustment:

- (c) is only to the extent necessary to fairly reflect the proportion of the increase that is reasonably attributable to the Customer, as determined by the Microgrid Operator; and
- (d) must not cause the Customer's total annual Charges under this Agreement for the supply of electricity to exceed the charges that the Customer would have paid had the Charges been equal to an applicable Regulated Tariff (determined by the Microgrid Operator) minus 30%, or such lesser amount discount that may be approved by DevelopmentWA (not to be a discount of less than 0%).

- 12.3 Prior to imposing the adjusted Charges or the additional charge, the Microgrid Operator must give notice to the Customer detailing the Change Event, the Recoverable Costs and grounds for the adjustments made by the Microgrid Operator.

- 12.4 The adjusted Charges or the additional charge may only take effect on and from the date on which the Change Event commences to have effect.

- 12.5 If the Customer disagrees with the Microgrid Operator's characterisation of, or assessment of the impact of, the Change Event, the Customer may Dispute the matter under clause 22.

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13 Prudential Support

- 13.1 If the Microgrid Operator considers on reasonable grounds, determined in its absolute discretion, that the Customer is unable to meet or continue to meet its obligations under this Agreement, then the Microgrid Operator may require the Customer to provide Prudential Support to secure the Customer's performance of its obligations under this Agreement.
- 13.2 The Prudential Support required by the Microgrid Operator shall be in a form, type and in respect of an amount determined by the Microgrid Operator but must not exceed the Microgrid Operator's forecast of the Charges payable by the Customer in the three Contract Months following the date on which Prudential Support is requested.
- 13.3 If the Customer:
- 13.3.1 is in Financial Default; or
 - 13.3.2 pays an amount under this Agreement that the Microgrid Operator is subsequently required by Law to disgorge or repay, then the Microgrid Operator may exercise its rights under any Prudential Support provided pursuant to clause 13.1 in respect of that amount.
- 13.4 The Customer agrees not to take any action that may prevent the Microgrid Operator from exercising its rights under any Prudential Support.
- 13.5 If the Microgrid Operator draws down on any Prudential Support, the Customer must (within 14 days of receiving a written request to do so from the Microgrid Operator) provide such additional Prudential Support in order to restore the Prudential Support to the amount required under clause 13.1.
- 13.6 The Microgrid Operator must return the undrawn amount of any Prudential Support to the Customer within 10 Business Days of the last to occur of:
- 13.6.1 the expiry of the Term; and
 - 13.6.2 the date on which the Customer repays in full any and all outstanding amounts pursuant to this Agreement.

14 Billing and Payment

Customer Invoices

- 14.1 The Microgrid Operator must issue an invoice to the Customer in respect of a Contract Month as soon as practicable after the end of each Contract Month, setting out any and all amounts payable by the Customer in respect of that Contract Month in accordance with this Agreement (Invoice).
- 14.2 The Microgrid Operator may issue an Invoice following the end of a Contract Month or the end of the Supply Period for amounts owing by the Customer under this Agreement.
- 14.3 In each Invoice, the Microgrid Operator must provide a comparison of the fees and charges for supply that would have been payable by the Customer if it was supplied on an applicable Regulated Tariff.

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Payment of Invoices

- 14.4 The Customer must pay the amount set out in an Invoice by an approved payment method advised by the Microgrid Operator. Payment must be made by no later than 12.00pm on the day that is 14 days from the date of the Invoice. Despite clause 26, if an Invoice is emailed by the Microgrid Operator, the Invoice is deemed to have been received by the Customer when the email leaves the Microgrid Operator's exchange email server.
- 14.5 If the Customer disputes an amount payable under this Agreement, it must nevertheless pay the Invoice in full, including any disputed amount.

Errors in Invoices

- 14.6 If either Party detects an underpayment or overpayment of amounts owing under this Agreement due to an error by the Microgrid Operator, the detecting Party must notify the other Party of the amount of the underpayment or overpayment, and except where the Correcting Amount relates to any underpayment or overpayment occurring more than two years prior to the date of notification:
- 14.6.1 a correcting payment for the Correcting Amount is to be made within 10 Business Days after receiving that notice; or
- 14.6.2 the following Contract Month's Invoice will be adjusted to take into account the Correcting Charge,
- whichever is earlier.

Use of estimates

- 14.7 If for any reason, the Microgrid Operator is unable to calculate a Customer Invoice because relevant information, including Metering Data, is not available, it may base the Customer Invoice on its reasonable estimate of that information, including the Customer's consumption measured by the Meter during the relevant Contract Month.
- 14.8 Where a Customer Invoice is calculated on the basis of estimated information and the Microgrid Operator subsequently obtains more accurate information, it must recalculate that Customer Invoice in respect of the relevant Contract Month based on such information and re-issue the Invoice in respect of that relevant Contract Month.

Interest on unpaid amounts

- 14.9 Without prejudice to the Microgrid Operator's other rights under this Agreement, if the Customer fails to pay an amount shown in an Invoice when due, it must pay Interest on that amount to the Microgrid Operator.
- 14.10 If an amount paid by the Customer is subject to a dispute under clause 22 and the dispute is resolved in the favour of the Customer such that the Microgrid Operator is required to pay the entire disputed amount to the Customer, then:
- 14.10.1 the Microgrid Customer must pay that disputed amount; and
- 14.10.2 the Microgrid Operator must pay the Customer Interest on that amount calculated in respect of the period commencing from the date on which the dispute was raised by the Customer under clause 22 and to the date the payment is refunded to the Customer.

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15 Curtailment

Microgrid Operator may Curtail

- 15.1 The Microgrid Operator may Curtail the supply of electricity, or may issue a notice to the Customer requiring the Customer to reduce its consumption of electricity, at the Connection Point:
- 15.1.1 if the Customer is in breach of clause 6.1;
 - 15.1.2 to carry out planned augmentation or maintenance to the Distribution System;
 - 15.1.3 to carry out unplanned maintenance to the Distribution System where the Microgrid Operator considers it necessary to do so to avoid injury to any person or material damage to any property or the environment;
 - 15.1.4 if there is any breakdown of or damage to the Distribution System or any Generating Works that affects the Microgrid Operator's ability to supply electricity at that Connection Point;
 - 15.1.5 if a Force Majeure Event occurs affecting the Microgrid Operator's ability to supply electricity at the Connection Point, for so long as the Microgrid Operator's ability to supply electricity is affected by the Force Majeure Event; or
 - 15.1.6 to the extent necessary for the Microgrid Operator to comply with a Law.

Extent of Curtailment

- 15.2 The Microgrid Operator must keep the extent and duration of any Curtailment under clause 15.1 to the minimum reasonably required by the Microgrid Operator (acting reasonably).

Notification of Curtailment

- 15.3 The Microgrid Operator must use reasonable endeavours to notify the Customer of any Curtailment under clause 15.1 as soon as practicable.

User must comply with Curtailment

- 15.4 If the Microgrid Operator notifies the Customer of a Curtailment under clause 15.3 in respect of a Connection Point, the Customer (acting reasonably) must comply, or procure compliance, with any reasonable requirements set out in such notice.

16 Interruptions to Electricity Supply

- 16.1 The Customer acknowledges that in the event of any interruption, disturbance, curtailment or failure (either in whole or in part) in the delivery or supply of electricity into, across or out of the Microgrid, the Microgrid Operator may immediately interrupt, curtail or disconnect the Customer's electricity supply.
- 16.2 The Customer acknowledges that the Microgrid Operator is not in default of any of its obligations under this Agreement and is not liable to the Customer for any Loss or Claims (however arising) suffered by the Customer in respect of any interruption, disturbance, curtailment or failure to supply electricity to the Customer under clause 16.1 provided that it uses all reasonable endeavours to remedy any such interruption as soon as is reasonably practicable.

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17 Default and Termination

Default Notice

- 17.1 If a Party (Defaulting Party) defaults in performing an obligation under this Agreement, the other Party (Non-defaulting Party) may serve a notice (Default Notice) on the Defaulting Party specifying the nature of the default and stating that, in the case of a default that:
- 17.1.1 is reasonably capable of remedy and that is a:
- (a) Financial Default, the Defaulting Party must remedy the default within a specified period not less than 7 days from the date of service of the Default Notice; or
 - (b) Non-financial Default, the Defaulting Party must remedy the default within a specified period not less than 21 days from the date of service of the Default Notice; or
- 17.1.2 is not reasonably capable of remedy, the Non-defaulting Party intends to exercise its rights under this clause after a specified period being not less than 5 days from the date of service of the Default Notice.

Remedies for Default

- 17.2 If the Customer commits a Prudential Breach or if the period of time specified in a Default Notice has expired and the default has not been remedied, then the Non-defaulting Party may exercise any of the following powers without prejudice to any of its other rights and remedies:
- 17.2.1 if the Non-defaulting Party is the Microgrid Operator, the Microgrid Operator may:
- (a) revise the frequency for the rendering and payment of Invoices under clause 14;
 - (b) interrupt or limit the supply of electricity to the Customer at the Connection Point; or
 - (c) cause or allow the Customer's Electrical Installation to be disconnected from the Distribution System; or
- 17.2.2 if the Non-defaulting Party is the Customer, the Customer may terminate this Agreement immediately by written notice to the Microgrid Operator.

18 Electricity Supply

The nature of the electricity supplied

- 18.1 In order to sell electricity to the Customer, the Microgrid Operator sources electricity from the Western Power Network and generates electricity on the Microgrid to deliver electricity to the Connection Point.
- 18.2 Electricity delivered from the Microgrid may, therefore, be impacted by the operation of the Western Power Network or the consumption or generation of electricity by consumers connected to the Microgrid.

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18.3 The Microgrid Operator will use reasonable endeavours to ensure the supply of electricity under this Agreement is at a standard of supply consistent with electricity available on the Western Power Network. However, the Microgrid Operator makes no warranty or representation in respect of the electricity supplied under this Agreement, which:

18.3.1 may not be free from interruptions or fluctuations and may fluctuate in quality from time to time;

18.3.2 will be of the quality of electricity contained in the Western Power Network; and

18.3.3 may not suit the Customer's specific needs if, for example, the Customer has specific goods or equipment at the Premises that require a continuous electricity supply free from interruptions or fluctuations in supply or fluctuations in quality.

19 Energy Operator Powers

19.1 The Customer agrees that for the purposes of this Agreement, the Microgrid Operator has the rights, powers and remedies contained in the Energy Operators Powers Act 1979 (WA) that are capable of being granted by the Minister for Energy to the holder of a distribution licence under section 45 of the EIA.

20 Liability

Protected rights under the Australian Consumer Law

20.1 The Microgrid Operator may be taken to have given the Customer certain Consumer guarantees under the Australian Consumer Law in respect of:

20.1.1 the supply of goods, including electricity; or

20.1.2 the supply of services (if any),

to the Customer.

20.2 If the Microgrid Operator fails to comply with the Consumer guarantees in clause 20.1, then the Customer may have rights against the Microgrid Operator under the Australian Consumer Law that the Microgrid Operator is prohibited from being excluded, restricted or modified.

20.3 Notwithstanding clause 20.2, where any electricity or other goods or services supplied under this Agreement are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Microgrid Operator's liability for breach of any Consumer guarantee is, to the extent permitted by the Australian Consumer Law, limited to any one or more of the following, to be determined by the Microgrid Operator:

20.3.1 the supply of equivalent goods or, as applicable, the supply of the services again; and

20.3.2 the payment of the cost of acquiring equivalent goods or, as applicable, of having the services supplied again.

20.4 Nothing contained in this Agreement is to be taken to exclude, restrict or modify the Protected Rights if and to the extent that the Microgrid Operator is prohibited by Law from excluding, restricting or modifying them.

20.5 Clauses 20.1 to 20.5 (inclusive) take precedence over every other provision of this Agreement.

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- 20.6 If another provision of this Agreement has (or, but for this clause 20.6, would have) an effect that is inconsistent and conflicts with clauses 20.1 to 20.5 (inclusive), then clauses 20.1 to 20.5 (inclusive) override that other provision and that other provision will not apply where and to the extent it is inconsistent and conflicts with clauses 20.1 to 20.5 (inclusive).

Protected rights have priority

- 20.7 The Protected Rights are not excluded, restricted or modified by clauses 20.7 to 20.13 (inclusive), if and to the extent that such an exclusion, restriction or modification is prohibited by Law.

General exclusion of implied warranties etc

- 20.8 Unless this Agreement expressly provides otherwise, all conditions, warranties and guarantees that the Consumer may have at any time in relation to this Agreement (including without limitation any rights of recovery or to compensation) however arising, are, to the maximum extent permitted by Law, excluded.

Additional limitations of our liability

- 20.9 To the fullest extent permitted by Law, the Microgrid Operator will not be liable to the Customer for any loss, damage or liability (including any Excluded Loss and any Supply Related Liability) arising for any reason under or in relation to this Agreement.
- 20.10 The limitation in clause 20.9 does not apply to any Direct Loss (other than any Direct Loss that is Supply Related Liability) the Customer may suffer or incur to the extent it is caused by the Microgrid Operator's negligence.
- 20.11 In no event is the Microgrid Operator liable to the Customer for any Excluded Loss.

DevelopmentWA provisions

- 20.12 The Customer acknowledges and agrees that DevelopmentWA has no liability to the Customer for any loss, damage or liability (including any Excluded Loss and any Supply Related Liability) arising out of or in relation to:
- 20.12.1 this Agreement, including any breach of this Agreement or breach of any representation or warranty given by a person in connection with this Agreement;
 - 20.12.2 the Microgrid or any act or omission of the Microgrid Operator or its Permitted Persons;
 - 20.12.3 the installation, maintenance, operation, performance, non-performance or removal of any Generating Works owned or operated by the Microgrid Operator or any of the Microgrid Operator's Related Bodies Corporate;
 - 20.12.4 the use or occupation of the Premises, any Microgrid Easement or any adjoining or nearby property;
 - 20.12.5 the injury, death or illness or any person sustained when on, using, entering or near the Premises, any Microgrid Easement, the Premises or any adjoining or nearby property; and
 - 20.12.6 any work carried out by or on behalf of the Microgrid Operator or any of the Microgrid Operator's Related Bodies Corporate.

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20.13 The Parties acknowledge and agree that clause 20.12 is for the benefit of, and is enforceable against the Customer by, DevelopmentWA in accordance with section 11 of the Property Law Act 1969 (WA).

20.14 The Customer hereby indemnifies and agrees to keep indemnified the Microgrid Operator and its Related Bodies Corporate from and against all loss, damage or liability (including any Excluded Loss and any Supply Related Liability) that is incurred, suffered or accrued, or brought or made against the Microgrid Operator or its Related Bodies Corporate by DevelopmentWA, which arises out of or in relation to any Claim brought by the Customer or any of the Customer's Permitted Persons.

DevelopmentWA indemnity

20.15 The Protected Rights are not excluded, restricted or modified by these clauses 20.15 to 20.17, if and to the extent that such an exclusion, restriction or modification is prohibited by Law.

20.16 The Customer fully indemnifies the Microgrid Operator against all and any loss, damage or liability of any kind caused by, consequent upon, or arising out of any acts or omissions on the Customer's part in relation to:

20.16.1 The Customer's breach of any term of this Agreement;

20.16.2 The Customer's breach of any applicable Laws; or

20.16.3 The Customer's negligence, fraud, theft or other wrongful act or omission,

but only to the extent that such loss or damage was reasonably foreseeable as a possible consequence of the Customer's breach, negligence, fraud, theft or other wrongful act or omission, and that doing so would not be inconsistent and conflict with clauses 20.1 to 20.5 (inclusive).

20.17 Each indemnity described in this Agreement is without prejudice to any other right or remedy the Microgrid Operator have and survives termination of this Agreement.

Legitimate interests

20.18 The terms of this clause 20 (including those that exclude, restrict or modify our liability) are reasonably necessary to protect the Microgrid Operator's legitimate interests, and by appropriating risks so as to help minimise the Microgrid Operator's charges for electricity for all customers and to ensure the sustainable operation, maintenance and augmentation of the Microgrid.

21 Force Majeure Event

Suspension

21.1 An obligation of a Party under this Agreement (other than an obligation to pay money) will be suspended during the time and to the extent that the Party is prevented from complying with that obligation by a Force Majeure Event.

Notice

21.2 A Party affected by a Force Majeure Event must:

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- 21.2.1 give to the other Party notice in writing within 24 hours of becoming aware of the relevant Force Majeure event, providing:
 - (a) details of the Force Majeure Event;
 - (b) details of the obligations affected, and the extent to which they are affected, by the Force Majeure Event;
 - (c) an estimate of the likely duration of the Force Majeure Event; and
 - (d) details of the steps being taken by the Party affected by the Force Majeure Event to work around, avoid or minimise the impact of the Force Majeure Event;
- 21.2.2 keep the other Party informed of any changes in the nature and likely duration of the Force Majeure Event;
- 21.2.3 promptly advise the other Party of the cessation of the Force Majeure Event;
- 21.2.4 take all reasonable steps to remove or mitigate the Force Majeure Event and, in the case of the Microgrid Operator, assist the Customer to obtain an alternative supply of electricity; and
- 21.2.5 use its best endeavours to perform its obligations under this Agreement within the time specified by this Agreement despite the Force Majeure Event.

22 Dispute Resolution

Disputes

- 22.1 If there is any dispute or difference whatsoever arising out of or in connection with this Agreement (Dispute), then:
 - 22.1.1 either Party may give a notice in writing to the other Party setting out the details of the Dispute (Dispute Notice); and
 - 22.1.2 the provisions of this clause 22 will apply to the Dispute.

Parties to negotiate

- 22.2 The Parties must use all reasonable endeavours to resolve the Dispute within 14 Business Days from the date of:
 - 22.2.1 the Dispute Notice; or
 - 22.2.2 such other date as may be agreed between the Parties.

Referral of Disputes to an Expert

- 22.3 If a Dispute cannot be resolved within the time period required in clause 22.2, then that Dispute must be determined by an Expert in accordance with this clause 22.
- 22.4 Subject to clauses 22.15 and 22.17 (inclusive), the parties agree to comply with the provisions of this clause 22 before commencing any proceedings in relation to a Dispute.

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Nomination of Expert

- 22.5 An “Expert” for the purpose of this Agreement is:
- 22.5.1 a person agreed between the Parties within 10 Business Days of the date of the Dispute Notice; or
 - 22.5.2 failing agreement within 10 Business Days and at the request of either Party, a person nominated by the President of the Law Society of Western Australia.

Conduct of proceedings

- 22.6 Unless the Parties otherwise agree in writing, the Expert will:
- 22.6.1 accept written submissions from the Parties as to the subject matter of the Dispute within 14 days of their appointment; and
 - 22.6.2 provide the determination in writing within 28 days of their appointment.
- 22.7 Unless the Parties otherwise agree in writing, the Expert will have the power to:
- 22.7.1 inform themselves independently as to facts and if necessary, any technical matter relating to the Dispute;
 - 22.7.2 consult with such other professionally qualified persons as they think fit;
 - 22.7.3 receive and act on written submissions, sworn and unsworn statements and photocopied documents; and
 - 22.7.4 take such measures as they consider fit to expedite the resolution of the Dispute.
- 22.8 The Parties will do all things reasonably required by the Expert to assist the Expert in reaching their determination.
- 22.9 The Expert must act honestly and fairly, independently and impartially.
- 22.10 The Expert will act as an expert and not as an arbitrator.

Expert's decision final and binding

- 22.11 In the absence of manifest error, error of law, corruption, fraud, partiality, bias or a breach of the rules of natural justice by the Expert, the Expert’s decision will be final and binding on the Parties.

Confidentiality

- 22.12 The Expert must keep confidential matters coming to their knowledge by reason of their appointment and carrying out their determination.

Dispute not to interfere with obligations

- 22.13 The existence or referral of a Dispute to an Expert does not affect any Party’s obligation to perform its obligations under this Agreement.

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Costs of Expert

22.14 All costs of the Expert appointed pursuant to this clause must be paid in the manner determined by the Expert.

Dispute in relation to termination

22.15 If a Dispute arises under this Agreement in connection with:

22.15.1 the termination of this Agreement; or

22.15.2 a repudiation of this Agreement,

then the provisions of this clause do not apply and the Parties are at liberty to institute proceedings in a court of law.

22.16 Declaratory or injunctive relief

22.17 Nothing in this clause 22 will prejudice the right of a Party to institute proceedings to seek urgent injunctive or declaratory relief in respect of any matter arising out of this Agreement.

23 GST

Recovery of GST

23.1 Terms defined in the GST Act have the same meaning in this clause 23 unless expressly provided otherwise.

23.2 If GST is or will be imposed on a supply made by a Party under or in connection with this Agreement (including costs required to be reimbursed or indemnified under this Agreement), the supplier may, to the extent that the consideration otherwise provided for that supply under this Agreement is not stated to already include an amount in respect of GST on the supply:

23.2.1 increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or

23.2.2 otherwise recover from the recipient the amount of that GST.

Invoices required

23.3 The recovery of any amount in respect of GST by the supplier under this Agreement on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient. Subject to any other provision of this Agreement, the recipient of a supply must pay any amount in respect of GST within 7 days of the issuing of the relevant tax invoice or adjustment note to the recipient.

Reimbursements

23.4 Despite clause 23.2, if a Party is entitled under this Agreement to be reimbursed or indemnified by the other Party for a cost or expense incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Party entitled to be reimbursed or indemnified.

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Value of Taxable Supplies

- 23.5 Where the consideration for a taxable supply under this Agreement is not, or is not expressed, as an amount of money, the Party making the supply will provide the recipient with a tax invoice for that supply based on the GST inclusive market value of the consideration as determined in good faith by the Party making the supply.
- 23.6 If a Party disputes the GST inclusive market value of the supply determined by the Party making the supply under clause 23.5, the disputing Party may refer the matter for determination by the Expert.

Invoice

- 23.7 Without affecting the obligations of the parties under this Agreement, this Agreement is not a document notifying an obligation to make payment and is not an invoice under the GST Act.

24 Confidentiality

Use of Confidential Information

- 24.1 A Party (Recipient) that acquires Confidential Information of another Party (Discloser) must not, without the prior written consent of the Discloser, use any of the Confidential Information except in connection with exercising its rights and performing its obligations under this Agreement or, in the case of Permitted Recipients, in relation to assessing the value of, and preparing a bid for, the Party or a proposed Assignment of a Party's interests under this Agreement.

Disclosure of Confidential Information

- 24.2 A Recipient must not disclose any of the Discloser's Confidential Information except:
- 24.2.1 with the prior written consent of the Discloser;
 - 24.2.2 to a Permitted Recipient; or
 - 24.2.3 to the extent required by Law or by order of any arbitrator, court or tribunal of competent jurisdiction or by a direction or requirement of any Government Agency or stock exchange.
- 24.3 The Recipient must ensure any person it discloses Confidential Information to under clause 24.2.2 keeps the information confidential and does not use it for any purpose other than as permitted under clause 24.1. If the Recipient is required to make a disclosure under clause 24.2.3, it must, to the extent reasonably practicable, consult with the Discloser about action to be taken to limit the disclosure and preserve the secrecy of the Confidential Information. The Recipient must use all reasonable efforts to notify the disclosee of the confidential nature of the information and the Recipient's obligations in respect of that Confidential Information under this Agreement.

Injunction

- 24.4 Each Party acknowledges and agrees that:
- 24.4.1 any breach or threatened breach of this clause 24 may cause the other Party immediate and irreparable harm for which damages alone may not be an adequate remedy; and

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- 24.4.2 that Party may commence proceedings to restrain any breach or threatened breach of this clause 24 and any other unauthorised access to, or use or disclosure of, any Confidential Information or to compel specific performance of this clause 24.

Survival of obligations

- 24.5 The confidentiality obligations imposed by this clause 24 survive the termination of this Agreement or expiry of the Term and remain enforceable for 3 years from the date of such termination or expiry. Any person who ceases to be a Party to this Agreement continues to be bound by this clause 24.

25 Post term supply

Notification

- 25.1 The Microgrid Operator must, not less than one month prior to the expiry of the then applicable Term, provide to the Customer a notice setting out the terms and conditions of supply, including in respect of electricity prices and charges, that the Microgrid Operator offers to the Customer for a period of not less than 12 months following the expiry of the Term (Post Term Offer).
- 25.2 The Customer may accept the Post Term Offer by signing and returning the Post Term Offer to the Microgrid Operator on or before the date that is one week prior to the expiry of the then applicable Term.
- 25.3 If the Customer does not accept the Post Term Offer in accordance with 25.2 but continues to take electricity at the Connection Point following the expiry of the Term, then:
- 25.3.1 such supply will be terminable by either Party on not less than 15 Business Days notice;
 - 25.3.2 the charges for electricity will be the charges described as applying to post Term supply of electricity in the Post Term Offer;
 - 25.3.3 otherwise, the terms of this Agreement shall apply, except that the End Date under the Agreement will be deemed to be the date which is one year from the most previously prevailing End Date under this Agreement.

26 Notices

Form and delivery

- 26.1 A notice, consent, information or request that must or may be given or made to a Party under this Agreement is only given or made if it is:
- 26.1.1 delivered or posted to that Party at the address stated in this Agreement;
 - 26.1.2 emailed to that person at the email address stated in this Agreement,
- or at such other address, or email (as the case may be) that has been notified by that Party to the other Party in writing, from time to time.

Execution of emails

- 26.2 If notice is given by email, the sending Party must ensure that it is either signed by means of an electronically produced signature of a person authorised by that Party to send the email or states that it is being sent by a person authorised to send the email on behalf of that person.

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Receipt and effect

26.3 A notice, consent, information or request is to be treated as given or made at the following time if it is:

26.3.1 delivered, when it is left at the relevant address.

26.3.2 sent by post, 3 Business Days after it is posted.

26.3.3 sent by email, as soon as it enters the recipient's information system.

26.4 If:

26.4.1 a notice, consent, information or request is delivered;

26.4.2 the email enters the recipient's information system,

after the normal business hours of the Party to whom it is delivered or sent, it is to be treated as having been given or made at 9.00am the next Business Day.

27 General

Trustee

27.1 If a Party acts as trustee of a trust, that Party enters into this Agreement in its own right and as trustee for the trust.

Variation

27.2 This Agreement, including the schedules, can only be varied by the Parties in writing, signed by all of the Parties.

Waiver

27.3 The fact that a Party fails to do, or delays in doing, something that Party is entitled to do under this Agreement does not amount to a waiver of that Party's right to do it.

27.4 A waiver by a Party is only effective if it is in writing.

27.5 A written waiver by a Party is:

27.5.1 only effective in relation to the particular obligation or breach in respect of which it is given; and

27.5.2 is not to be taken as an implied waiver of:

(a) any other obligation or breach; or

(b) that obligation or breach in relation to any other occasion.

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Severability

- 27.6 If:
- 27.6.1 a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way;
 - 27.6.2 any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected; and
 - 27.6.3 the removal of a clause or part of a clause under clause 27.6.2 materially alters the commercial allocation of benefit and risk (or management of risk) under this Agreement, the Parties agree to negotiate in good faith to amend or modify the terms of the document as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

Relationship of the parties

- 27.7 This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties.
- 27.8 No Party is liable for an act or omission of another Party, except to the extent set out in this Agreement.

No merger

- 27.9 The provisions of this Agreement do not merge with any action performed or document executed by any Party for the performance of this Agreement.

Assignment

- 27.10 The Microgrid Operator may Assign any of its rights and obligations under this Agreement without the Customer's prior consent.
- 27.11 The Customer must not Assign any of its rights and obligations under this Agreement without the prior written consent of the Microgrid Operator, which consent must not be unreasonably delayed or refused.

Survival

- 27.12 All rights and obligations of the Parties that accrue during the Term, and any clause described as surviving the expiry or termination of this Agreement, survives termination of this Agreement.

Governing Law and jurisdiction

- 27.13 This Agreement is governed by the Law of the State of Western Australia.
- 27.14 The Parties submit to the non-exclusive jurisdiction of its courts. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

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Non Business Days

27.15 If the day on or by which a person must do something under this Agreement is not a Business Day:

27.15.1 if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

27.15.2 in any other case, the person must do it on or by the previous Business Day.

Requirement on a person not a Party to this Agreement

27.16 If a provision of this Agreement requires a person that is not a Party to do, or not to do, a thing, each Party must use its reasonable efforts to ensure that the person does, or does not, do that thing.

Payment of costs and charges

27.17 If a clause of this Agreement lists specific amounts, costs, charges, fees or penalties that are payable by a Party and a separate amount, cost, charge, fee or penalty is expressly described to be payable by that Party under another clause (Other Charge), then the Other Charge will be payable notwithstanding that it is not listed in the first mentioned clause.

Multiple parties

27.18 If a Party is made up of more than one person, or a term is used in this Agreement to refer to more than one party:

27.18.1 an obligation of those persons is joint and several and a right of those persons is held by each of them severally; and

27.18.2 any other reference to that Party or that term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

Large Customer Microgrid Electricity Supply Agreement

Execution

Executed as an Agreement by

Peel Renewable Energy Pty Ltd
ACN 634 578 206
by its authorised person

Signature of Authorised Person

Signature of Witness

Print name of Authorised Person

Print name of Witness

Date:

Signed by

[TBA]
ABN [TBA]
by its Authorised Person

Signature of Authorised Person

Signature of Witness

Print name of Authorised Person

Print name of Witness

Date:

“Safety by choice - not by chance”