

**utilise.**<sup>®</sup>



**UTILISE POWER  
PURCHASE AGREEMENT  
STANDARD TERMS AND  
CONDITIONS**

**OCTOBER 2022**

## Table of Contents

1.	Status of the Agreement.....	3
2.	Commencement of Supply .....	3
3.	Licence to Occupy.....	3
4.	Installation of the System .....	4
5.	Personal Property Securities Act.....	5
6.	Option to Purchase System.....	6
7.	Sale and purchase of Electricity .....	7
8.	Title and risk.....	8
9.	Operation and maintenance .....	9
10.	Metering .....	9
11.	Payments .....	10
12.	ICP Management .....	11
13.	Force Majeure .....	11
14.	Changes in Law .....	13
15.	Termination by default or insolvency .....	14
16.	Termination other than by default or insolvency .....	16
17.	Liability .....	18
18.	Insurance .....	18
19.	Dispute Resolution .....	19
20.	Assignment and subcontracting .....	20
21.	Financing .....	20
22.	Confidentiality.....	20
23.	Notices .....	21
24.	Miscellaneous .....	22
25.	Defined terms & interpretation.....	23

## 1. Status of the Agreement

### 1.1 Contract

A contract between the Customer and the Seller is formed on these terms and conditions including any Specific Terms and the Customer will be liable to pay our charges.

- (a) when we accept your Business Services Agreement; or
- (b) when the Customer first uses Electricity after the Customer has received notice that these are the terms and conditions on which the Seller is prepared to supply Electricity to the Customer, whichever occurs first.

The Customer will only be liable to pay for Electricity consumed from the date the System is installed and operational on the Property (unless otherwise agreed between the Customer and the Seller)

### 1.2 Contract Commencement

Once a contract is formed, all Electricity supplied by the Seller to the Customer at the Property subsequent to formation of the contract is deemed to be covered by the contract and the Customer will be liable to pay our charges for that Electricity in accordance with these terms and conditions.

### 1.3 Specific Terms

The terms and conditions of Specific Terms will prevail over anything to the contrary contained in the Standard Terms or any other document.

### 1.4 Defined Terms and Interpretations

The definition and interpretation of terms used in this agreement can be found at the end of this agreement.

## 2. Commencement of Supply

### 2.1 Supply Period

The obligations of the Seller to make available and the Customer to take and pay for Electricity in accordance with this Agreement shall commence on the Commercial Operations Date and continue until the earlier of:

- (a) the End Date; and
  - (b) the date this Agreement is terminated,
- (the **Supply Period**).

## 3. Licence to Occupy

### 3.1 Licence to Occupy

If the Customer is the Landowner, the Customer must grant to the Seller a Licence to Occupy in the form set out by the Seller. If the Customer is not the Landowner, the Customer must procure that the Landowner grants to the Seller a Licence to Occupy in the form agreed between the Customer and Seller. In each case the Licence to Occupy must be granted and all consents of holders of interests in the Property as reasonably requested by the Seller must be provided to the Seller prior to the Seller commencing installation of the System under this Agreement.

### 3.2 Acknowledgement

The Customer acknowledges and agrees and will procure that the Landowner acknowledges and agrees that the System is and will at all times remain the property of the Seller. All data

generated from the System and all rights to tax credits or rebates that become available as a result of installation and operation of the System shall be the property of the Seller.

### **3.3 Access**

The Customer and the Landowner will grant to the Seller and its employees, agents and contractors and any person providing finance to the Seller and holding a security interest over the System, the right to reasonably access the Property as necessary for the purposes of exercising its rights or otherwise complying with this Agreement.

### **3.4 Modifications to Property**

If any repairs or improvements to the Property that could interfere with the System (such as repairing the roof where the System is located) are to be carried out, the Customer must provide not less than 30 days prior written notice to the Seller of such works. The System may only be removed and replaced in accordance with the Specific Terms. The parties shall cooperate in good faith to determine the appropriate method to accommodate these changes to the Property. Any changes made to the System under this clause shall be at the Customer's (or the Landowner's, as the case may be) reasonable expense. This Agreement will be amended to the necessary extent to reflect any changes to the System (including without limitation a reduction in capacity of the System) resulting from repairs or improvements to the Property. The Seller agrees it will not prevent changes to the Property reasonably required by the Customer or Landowner.

### **3.5 Change of ownership of the Property**

- (a) The Customer agrees to immediately notify the Seller in writing if the Landowner proposes to sell, lease or otherwise grant an interest in the Property.
- (b) If the Landowner sells the Property, the Customer will use good faith to procure that the Landowner ensures that the transferee assumes the obligations of the Landowner under the Licence to Occupy or, at the option of the Seller, enters into a new Licence to Occupy with the Seller.

### **3.6 Termination of Licence to Occupy**

If at any time the Licence to Occupy is terminated for any reason prior to the End Date, this Agreement will automatically terminate and:

- (a) the Seller will no longer be obliged to sell Electricity to the Customer; and
- (b) the Seller will be entitled to remove the System at its cost from the Property pursuant to clause 16.5.

## **4. Installation of the System**

- 4.1 The Seller will install the System and associated assets at the Property in the locations agreed in the Installation Drawings. All work undertaken by the Seller and its sub-contractors at the Property will be carried out in accordance with Prudent Operating Practice by qualified persons. In carrying out the installation and maintenance of the System, the Seller and its subcontractors will at all times comply with the Seller's and the Customer's health and safety policies as advised to the Seller prior to the date of this Agreement. The Seller will provide the Customer with a copy of its health and safety policies upon request.
- 4.2 The Seller will be responsible for obtaining all resource consents, building consents and other permits and authorisations of any government authority required for the installation and operation of the System.
- 4.3 Prior to commencement of the installation of the System by the Seller, the Customer must have completed all of the preparatory or enabling works identified in the Installation Drawings as the

responsibility of the Customer. All such works must be carried out by the Customer in accordance with the requirements of any relevant Authority and all regulations and to the satisfaction of the Seller. If the Customer fails to complete any such preparatory or enabling works prior to the scheduled Installation Date, the Seller may terminate this Agreement by giving not less than 5 Business Days notice to the Customer. On termination under this clause 4.3 the Customer must indemnify the Seller for all costs, losses and expenses incurred by the Seller including, without limitation, the cost of any materials or equipment ordered or acquired by the Seller in preparation for installation of the System

- 4.4 The Seller warrants that all roof penetrations the Seller makes for the installation of the System will be watertight. This warranty will run the longer of the first ten (10) years of the term and the length of any existing installation warranty for the roof.
- 4.5 Seller will repair damage it causes to the Property or pay for the damage or loss that the Seller may cause in the installation and maintenance of the System.
- 4.6 The Customer agrees to:
- (a) keep, and procure that the Landowner keeps trees, bushes and hedges trimmed so that the System receives as much sunlight as it did when the Seller installed it;
  - (b) not modify the Property in a way that shades the System;
  - (c) be responsible for any conditions at the Property that affect the installation (e.g., blocking access to the roof, or removing a tree that is in the way, prior to any installation work done on the Property);
  - (d) not remove any markings or identification tags relating to the System; and
  - (e) make an internet connection available for connection of the System.
- 4.7 Where the Seller elects or is required to perform any of the above obligations on behalf of the Customer to ensure the Customer complies with its obligations under this Agreement, including without limitation under clause 4.3, the Customer is required to indemnify the Seller against all expenses and costs incurred by the Seller on behalf of the Customer.
- 4.8 For the avoidance of doubt, except where explicitly stated otherwise in this Agreement, all costs relating to the design, installation, monitoring, and maintenance of the System shall be the Seller's responsibility.

## 5. Personal Property Securities Act

### 5.1 System not a fixture

The Customer agrees and will procure that the Landowner provides written acknowledgement that:

- (a) the System is the personal property of the Seller and will at no time be or become a fixture on the Property;
- (b) this Agreement is not a contract to sell or lease the System;
- (c) the installation of the System creates a security interest under the Personal Property Securities Act 1999 (PPSA) in favour of the Seller;
- (d) the Seller, or its nominee, has the right to register a financing statement on the Personal Property Securities Register to record its interest in the System;
- (e) no other security interest, lien or encumbrance will be granted over the System;
- (f) at all times the Customer and the Landowner must keep the System free and clear of all liens, claims, levies and legal processes not created by the Seller, or its nominee under clause 5.1 (d) above;

- (g) the Customer and the Landowner must sign any documents and do anything else reasonably required by the Seller to give effect to the rights of the Seller under this Agreement.

## 5.2 Further Assurances

The Customer agrees to do and will procure that the Landowner will do and procure such things as the Seller may reasonably request to enable the Seller to register a financing statement on the Personal Property Securities Register (PPSR) and to ensure that the Seller's, or its nominee under clause 5.1 (d), security interest in the System is a first ranking perfected security interest on the PPSR.

## 6. Option to Purchase System

### 6.1 Option to Purchase

- (a) The Seller grants to the Customer an option to purchase the System in full or in part as to a particular Landowner. The option to purchase the System may be exercised at any time by the Customer providing notice in writing to the Seller.
- (b) If the Customer gives an exercise notice under this clause 6.1, the Customer will purchase and the Seller will sell the System (or the relevant part) to the Customer on the date which is 30 days after the date of the Customer's exercise notice ("Settlement Date").
- (c) On the Settlement Date:
  - (i) The Customer must pay the purchase price calculated in accordance with clause 6.2; and
  - (ii) The Seller will transfer the System to the Customer. The transfer of the System will be on an 'as is where is' basis and the Seller will not make any warranties as to the condition or fitness for purpose of the System, though will provide all reasonable information sufficient for the Customer to undertake its due diligence before exercising its option to purchase the system. The System will be transferred to the Customer or its nominee free of all encumbrances.
- (d) The Customer may nominate the Landowner or any other occupier of the Property as the purchaser of the System on exercise of the option in this clause 6.1.
- (e) Following completion of the purchase of the System on the Settlement Date, this Agreement will be terminated with respect to that part of the system which is purchased but without releasing the Customer from any of its obligations under this Agreement that have accrued prior to date of termination. This agreement will continue to apply to those parts of the system which are not purchased.
- (f) The Customer acknowledges that the Landowner(s) or the counter-party(ies) to the Licence to Occupy associated with the System, has a similar right to purchase the system, and if so performed, the rights under this clause 6.1 will lapse. However, if only part of the System is purchased by a Landowner, then the Customer retains the rights under this clause 6.1 in relation to the remaining part of the System not purchased by the Landowner.

### 6.2 Option Purchase Price

The purchase price payable by the Customer or its nominee on exercise of the option in clause 6.1 will be calculated based on the following formula:

- (a) the calculated System Cost adjusted for a depreciation schedule as below. That is:

$$\text{Purchase Price} = (C \times N) - D$$

Where:

C = The price per kilowatt specified in the Specific Terms

N = number of kilowatts at date of installation relevant to that part of the System being purchased

D = depreciation calculated in accordance with the methodology, and at the rate per year, specified in the Specific Terms, from the Commercial Operations Date.

## 7. Sale and purchase of Electricity

### 7.1 Electricity

- (a) Subject to this Agreement:
- (i) the Seller must make available to the Customer all Electricity during the Supply Period;
  - (ii) at all times during the Supply Period that the Customer has demand for electricity at the Property, the Customer must prioritise using the Electricity before using electricity from any Retailer; and
  - (iii) the Customer agrees to pay, in accordance with Clause 11 and Schedule 1, for all Electricity delivered by the Seller to the Delivery Point and used by the Customer at the Property during the Supply Period.

### 7.2 Tariff

The Customer must pay the Seller for the Electricity delivered by the Seller to the Delivery Point during each Accounting Month calculated as:

$$MT = (E \times P) + ES$$

Where:

MT is the amount payable by the Customer to the Seller for Electricity in that Accounting Month

E = the amount of Electricity measured in kWh generated in that Accounting Month and used by the Customer at the Property

P = the current Price

ES = the amount received by the Customer from the Retailer in respect of all Exports pursuant to clause 12.2.

### 7.3 Delivery and connection

- (a) All Electricity must be delivered to the Customer at the Delivery Point.

### 7.4 Compliance with Electricity Act and Code

- (a) The Seller must, whenever delivering Electricity to the Customer, comply with:
- (i) the Electricity Act; and
  - (ii) the requirements of the Code as it applies to the System.
- (b) The Customer must comply with the requirements of the Code as it applies to an electricity consumer purchasing the Electricity from the Seller.

### 7.5 Maintenance of System and Quality of Supply

- (a) The Seller will operate and maintain the System in accordance with Prudent Operating Practice. The Seller will install and operate the System so that during the Supply

Period the System will operate within the manufacturer's specifications and if it does not, the Seller will repair or replace any defective part and restore System performance. In any event, the Seller will generally keep the System operational and fit for purpose.

- (b) The Customer acknowledges and agrees that the Seller does not guarantee that the System will provide uninterrupted supply of electricity for the Supply Period or will deliver any minimum amount of Electricity. The Customer acknowledges that photovoltaic cells are subject to degradation over time affecting the output of the System. Utilise will use reasonable endeavours to ensure that the System's rated electrical output during the first ten (10) years of the Supply Period shall not decrease by more than fifteen percent (15%).
- (c) The Seller is not responsible for any lost power production or any repair, replacement or correction required due to the following:
  - (i) someone other than the Seller or its approved service providers installing, removing, re-installing, altering, modifying or repairing the System;
  - (ii) destruction or damage to the System or its ability to safely generate electricity not caused by the Seller or its approved service providers while servicing the System;
  - (iii) the Customer's failure to perform, or breach of, the Customer's obligations under this Agreement;
  - (iv) any Force Majeure Event (as defined in the PPA);
  - (v) shading from foliage that is new growth or is not kept trimmed to its appearance on the date the System was installed;
  - (vi) any failure or lost production not caused by a System defect;
  - (vii) theft of the System;
  - (viii) damage to your Property that results from our roof penetrations after the end of the Roof Warranty; and
  - (ix) damage or loss to the System due to being struck by a ball or similar object.

## 8. Title and risk

### 8.1 Passing of title and risk

As between the parties, title to and risk in electricity supplied under this Agreement shall pass from the Seller to the Customer at the Delivery Point.

### 8.2 Warranties

- (a) The Seller represents and warrants to the Customer that:
  - (i) the Seller has title to all Electricity delivered by the Seller to the Customer; and
  - (ii) the Electricity is free from any lien, charge, security or other interest or adverse claim which may affect the ability of the Seller to transfer title to that Electricity to the Customer at the Delivery Point.
- (b) Subject to any law to the contrary and except as provided under Clause 8.2(a) or elsewhere in this Agreement, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, in relation to the quality of the Electricity tendered for delivery at the Delivery Point by the Seller are excluded and the Seller disclaims all liability in relation to these to the maximum extent permitted by law.



## 9. Operation and maintenance

### 9.1 Operation and maintenance

The Seller must operate and maintain the System in accordance with all legal requirements (including, for the avoidance of doubt, the Electricity Act and the Code), including the terms of all Consents, and in accordance with Prudent Operating Practice and the legal requirements and standards applicable to the System, so as to meet its obligations under this Agreement.

### 9.2 Consents

The Seller must at its own expense obtain and keep in force all Consents required for the operation of the System in accordance with this Agreement throughout the Supply Period.

### 9.3 Cooperation

Each party shall provide the other with such information as a party may require from time to time to enable that party to comply with the Code and the Retailer's requirements and will establish an information exchange system compatible with the Code and the Retailer's requirements, provided such information is otherwise treated as confidential information under Clause 22.

### 9.4 Scheduled Outages

Without limiting or prejudicing in any way the Seller's obligations under this Clause 9, the Customer and the Seller shall endeavour to consult with each other to co-ordinate their scheduled maintenance programs so as to minimise the impact to the Customer's operations and the Seller's dispatch of Electricity from the System.

## 10. Metering

### 10.1 Seller's obligation

- (a) The Seller is responsible for the provision, operation, maintenance and testing of Metering Equipment to measure, record and retain the Metering Information and must ensure that the Metering Equipment and Metering Information comply with all applicable requirements of the Code and the Retailer's requirements. The Customer accepts metering to the IEC Technical Committee 13 metering standards. The Customer is responsible for the meter board. Disputes on the accuracy of the meters on the System can be referred for clarification to an Authorised Test House under the Code, at the cost of the complainant. The Customer is responsible for repairs and maintenance to the meter board or box and any associated fuses and wiring, except where caused by the Seller or defects in the System.
- (b) The Seller must ensure that the Metering Equipment is read on the Commercial Operations Date and thereafter at least once each calendar month.
- (c) Metering of Electricity taken from the System will be conducted by or on behalf of the Seller at the Delivery Point.
- (d) The Seller will, at its sole cost and expense, maintain and test the Metering Equipment in accordance with Prudent Operating Practice during the Supply Period to preserve its accuracy.

### 10.2 Customer's inspection right

The Customer may, with prior notice to the Seller, inspect the Metering Equipment and the recording of the Metering Information at any time.

### 10.3 Export ICP

The Seller must ensure there is a means of supplying Exports, and keeping track of Exports supplied, to the Local Network at the Property during the Supply Period. The Seller may, with prior notice to the Customer, establish a dedicated connection to the Local Network, for the sole purpose of supplying Exports to the market. The cost of establishing and operating this connection will be borne by the Seller, however, the Customer agrees to provide all cooperation necessary to enable this connection.

## 11. Payments

### 11.1 Monthly Invoice

Within 10 Business Days following the end of each Accounting Month during the Supply Period, the Seller must give the Customer an invoice (the **Monthly Invoice**) setting out (in Dollars) the charges payable by the Customer to the Seller, and payable by the Seller to the Customer (if any), under this Agreement for that Accounting Month.

### 11.2 Payment period

The Customer, and if the charges payable by the Seller to the Customer exceed those payable by the Customer to the Seller, then the Seller, must pay the amount specified in each invoice received under Clause 11.1 within 10 Business Days following the date of receiving that invoice.

### 11.3 GST

- (a) In addition to any payments specified or determined under this Agreement (including payments under this Clause 11), the party liable to pay that amount (the **payer**) must pay to the other party ("**payee**") an amount equal to any GST which the payee is liable for in respect of payments made by the payer under this Agreement (the **GST Amount**).
- (b) The GST Amount is due and payable at the same time as the payment on which it is levied pursuant to Clause 11.3.
- (c) An invoice given under this Agreement must specify the GST Amount and must comply with the GST Act.

### 11.4 Default Rate

If any party does not pay any undisputed amount payable by it under this Agreement (including any invoice given under Clause 11.1) within the period prescribed for the payment of that amount, then interest accrues on that amount at the Default Rate from the expiry of the prescribed period until that amount is paid.

### 11.5 Supporting data

- (a) The Seller must, promptly on request by the Customer, provide the Customer with data and records which support the calculation of an invoice given under this Clause 11 or to support any other statement, compilation, invoice or claim made under this Agreement, provided such information is otherwise treated as confidential information under Clause 22.
- (b) The Customer must, promptly on request by the Seller, provide the Seller with data and records which support the calculation of an invoice given under this Clause 11 or to support any other statement, compilation, invoice or claim made under this Agreement, provided such information is otherwise treated as confidential information under Clause 22.

**11.6 No Setoff**

All payments by the Customer or the Seller to the other party under this Agreement must be made without set-off, deduction or withholding except to the extent required by law

**12. ICP Management****12.1 Seller to be Customer's agent**

The Customer authorises the Seller to act as its agent in respect to the metering configuration at the ICP.

**12.2 Sale of excess electricity**

The Customer authorises the Seller to act as its agent in respect of Exports, including incorporating export tolling terms into the Customer's electricity supply agreement with its Retailer associated with the ICP. The Seller will at its sole discretion determine who buys any Exports and under what terms.

**12.3 Letter of authority**

The Customer must provide a letter to the Seller in the form provided by the Seller to confirm the appointment of the Seller as the Customer's agent under this Agreement and the entitlement of the Seller to receive all information relating to Exports during each Accounting Month. Such information may include, though not be limited to, existing prices, existing contract/s and expiry date/s, transaction summaries and invoices, meter setup details, and all consumption data available including half hourly time of use data (kWh), demand data (kVA and kW), reactive energy data (kVAr and PF), and any other aspects related to the Customer's energy account

**12.4 Seller Obligations as agent**

As the Customer's agent under this clause 12, the Seller shall:

- (a) not do anything to put the Customer in breach of its electricity supply agreement with its Retailer, or otherwise harm the Customer's relationship with its Retailer;
- (b) in addition to its obligation under clause 11.5(a), provide the Customer with all relevant information relating to the metering configuration and Exports upon the Customer's request (such as the terms of any arrangement negotiated with the Retailer on the Customer's behalf); and

**13. Force Majeure****13.1 Effect on obligations**

- (a) Subject to Clause 13.4, if either party is rendered wholly or partially unable to perform its obligations (not being an obligation to pay money) under this Agreement by reason of a Force Majeure Event, then that obligation is suspended, so far as the affected party's ability to perform it is affected by that Force Majeure Event, provided that party complies with the following provisions of this Clause.
- (b) Subject to Clause 13.4, if this Agreement requires an obligation to be performed or a thing to be achieved by a specified date, that date will be extended by a period of time equal to the period of time during which the performance of that obligation is suspended under Clause 13.1.

### 13.2 Obligation to notify

If a party becomes aware of a circumstance which the party reasonably considers constitutes or is likely to constitute or result in a Force Majeure Event, then that party must:

- (a) as soon as reasonably practicable after becoming aware of the circumstance give the other party notice of the circumstance and of the obligations under this Agreement which have been or will be, or are likely to be, affected by that circumstance; and
- (b) keep the other party informed both at reasonable intervals and upon request by the other party, as soon as practicable following the receipt of that request, of:
  - (i) the affected party's estimate of the likely duration of the Force Majeure Event;
  - (ii) the action taken and the action proposed to be taken by the affected party in complying with its obligations under Clause 13.3;
  - (iii) the cessation of the Force Majeure Event or the successful mitigation or minimisation of the effects of the Force Majeure Event; and
  - (iv) any other matter which the other party reasonably requests in connection with the occurrence of the Force Majeure Event and the matters referred to in Clauses 13.2(b)(i), (ii) and (iii).

### 13.3 Obligation to mitigate

If a Force Majeure Event occurs, then the party whose performance is affected must, as soon as practicable after the occurrence of that Force Majeure Event, use reasonable endeavours to mitigate the consequences (including financial consequences) of that Force Majeure Event and minimise any resulting delay in the performance of its obligations under this Agreement.

### 13.4 Obligations reduced

The period of suspension under Clause 13.1(a) or extension under Clause 13.1(b) does not include any delay in the performance of the affected obligation which is attributable to a failure by the affected party to comply with Clause 13.3. The degree to which an obligation is suspended under Clause 13.1 is reduced to the extent that the affected party's inability to perform the obligation is attributable to the failure by the affected party to comply with Clause 13.3.

### 13.5 Extended Force Majeure

If the suspension or extension under clause 13.4 continues for a period of greater than 180 days, the Seller may at its option, terminate this Agreement by not less than 5 Business Days' notice to the Customer.

### 13.6 Force Majeure Events

In this Agreement, "**Force Majeure Event**" in respect of a party means a circumstance which satisfies the following requirements:

- (a) the circumstance is beyond the reasonable control of the party;
- (b) the circumstance could not have been prevented, avoided or removed by the party;
- (c) the circumstance is not the result of a failure by that party to observe Prudent Operating Practice or any other breach of this Agreement by the party or of an intentional, reckless or negligent act or omission of the party; and
- (d) the circumstance materially and adversely affects the party's ability to observe or perform on time and as required any obligation (not being an obligation to pay money) under this Agreement.

To the extent the conditions in 13.6(a), (b) and (d) are satisfied, a Force Majeure Event will include, without limitation:

- (i) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, cyclones, tidal waves, landslides, adverse weather conditions, fires and any natural disaster;
- (ii) acts of war (declared or undeclared), acts of public enemies, civil commotions, malicious damage, sabotage, blockade, revolution, riot, insurrection, civil commotion and epidemic;
- (iii) acts or omissions (whether legislative, executive or administrative) of any Authority;
- (iv) strikes, lockouts or other labour difficulties, which is specific to the party claiming relief under Clause 13.1 or its premises;
- (v) embargo, inability to obtain any necessary materials, equipment, facilities or qualified employees, power or water shortage or lack of, or delay in, transportation;
- (vi) breakage or accident or other damage to machinery or equipment; or
- (vii) lack of availability of the Local Network for any reason.

## 14. Changes in Law

### 14.1 General changes

If, due to one or more Changes in Law, the Seller's annual costs attributable to the financing, operation or maintenance of the System for the purposes of supplying Electricity under this Agreement are increased or decreased (other than by reason of a change to Income Tax), then this Clause 14 applies.

### 14.2 Notice

- (a) If a Party wishes to claim a Change in Law under this Clause 14, then it must give notice to the other Party in accordance with paragraph (b) as soon as reasonably practicable after becoming aware of the change.
- (b) Any notice served under this Clause 14.2 must give details of:
  - (i) the Change in Law;
  - (ii) the effects on the Seller of any of the matters referred to in Clause 14.1; and
  - (iii) whether or not, and if so how, the Seller is beneficially or adversely affected by the Change in Law.
- (c) The Seller must provide all information reasonably requested by the Customer to assess the impact of the Change in Law on the Seller.

### 14.3 Amendments

Within 30 Business Days of the notice being served under Clause 14.2(b), the parties must meet, acting reasonably, and endeavour to agree on:

- (a) the effects on the Seller resulting from the Change in Law;
- (b) the reimbursement for the change in costs resulting from a Change in Law whether by way of:
  - (i) a variation to the Price payable by the Customer; and/or
  - (ii) one or more lump sum payments,

to put the Seller into the same financial position as it would have been but for the Change in Law

If, within 30 Business Days of the commencement of the meetings between the parties under this Clause 14.3, the parties are unable to reach agreement on the matters referred to in 14.3(b), then either party may refer the matter for dispute resolution under Clause 19.

#### 14.4 Additional rights

Any tax credits, rebates or other rights that become available as a result of a Change in Law or change in government policy after the Commencement Date and are redeemable by the Seller as a result of installation and operation of the System shall be shared equally between the Customer and the Seller. If the relevant laws or regulations giving rise to the tax credits or rebates do not allow them to be shared, the Seller shall be entitled to the full amount of the tax credits or rebates.

### 15. Termination by default or insolvency

#### 15.1 Default by Customer

The Seller may give the Customer a notice (a **Customer Default Notice**) if:

- (a) the Customer does not pay to the Seller when due any undisputed amount payable by it under this Agreement;
- (b) the Customer commits a breach of a material obligation under this Agreement (other than an obligation to pay money) and which was not caused by a breach of this Agreement by the Seller; or
- (c) an Insolvency Event occurs in respect of the Customer.

#### 15.2 Cure period for Customer

Except as otherwise provided in this Agreement, if the default or event which entitled the Seller to give the Customer Default Notice continues to subsist for 30 days (or such longer period as may be agreed between the parties) after a Customer Default Notice is given, then the Seller may, following the expiration of that period referred, immediately terminate this Agreement by written notice to the Customer.

#### 15.3 Accrued rights and obligations

Termination or expiration of this Agreement for any reason does not affect:

- (a) any rights of any party against another party which:
  - (i) arose prior to the time at which such termination or expiration occurred; and
  - (ii) otherwise relates to or may arise at any future time from any breach or non-observance of obligations under this Agreement occurring prior to the termination or expiration; or
- (b) the rights and obligations of the parties under Clauses 17 and 22.

#### 15.4 Termination Payment

- (a) If this Agreement is terminated prior to the End Date for any reason other than:
  - (i) default by the Seller;
  - (ii) a termination under clause 16
  - (iii) a termination under clause 13.5;
  - (iv) termination of the Licence to Occupy, as outlined in clause 3.6; or

- (v) purchase of the System under clause 6.

the Customer must pay to the Seller a termination payment. The termination payment will be equal to the Purchase Price payable under Clause 6.2 as if the option to purchase the System were exercised and the Settlement Date were the date of termination. Upon payment of the termination payment the Seller must transfer ownership of the System to the Customer as if the Customer had exercised its rights under clause 6.1.

## 15.5 Insolvency Event

In this Agreement, "**Insolvency Event**" means the happening of any of the following events:

- (a) a liquidator or interim liquidator is appointed in respect of the Customer or an application is made to a court for an order that the Customer be put into liquidation and that application is not withdrawn, dismissed or stayed within 15 Business Days;
- (b) a resolution is passed by the Customer to put that Customer into liquidation;
- (c) the Customer:
  - (i) is or states that it is insolvent or unable to pay its debts;
  - (ii) is presumed to be unable to pay its debts by virtue of the application of section 287 of the Companies Act 1993;
  - (iii) stops or suspends or threatens to stop or suspend payment of any of its indebtedness or begins negotiations or takes any proceedings to reschedule any of its indebtedness;
  - (iv) makes or proposes to make an assignment, arrangement, composition or compromise with, or for the benefit of, its creditors in respect of or affecting any of its indebtedness; or
  - (v) enters into or resolves to enter into an amalgamation other than an amalgamation when solvent on terms approved by the other party;
- (d) the Customer is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, or a statutory manager is appointed or any step is taken with a view to any such appointment in respect of it under that Act (including a recommendation by, or submission by any person to, the Financial Markets Authority supporting such an appointment);
- (e) distress, attachment, execution or other legal process is levied or enforced on or against the assets of the Customer in respect of an amount exceeding \$10,000 and is not discharged or stayed or appealed against within 15 Business Days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of the Customer or the Customer's assets; or
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the laws of any applicable jurisdiction.

## 15.6 Suspension of delivery of electricity

- (a) If the Seller gives a Customer Default Notice in accordance with Clause 15.1(a), then the Seller may, without limiting any other right which it may have against the Customer (including its right to terminate under Clause 15.2), by a further 10 Business Days' notice to the Customer, suspend the delivery of Electricity which it would otherwise be obliged to deliver under this Agreement. If the Seller suspends the delivery of Electricity, then the Customer:
  - (i) despite that suspension, continues to be liable to pay the Seller for the Electricity supplied under this Agreement; and

- (ii) acknowledges that the Seller is entitled to sell or dispose of Electricity to the market or any third party.
- (b) A suspension under Clause 15.6 will continue until the Customer has paid all amounts owing by it under this Agreement at that time (including all interest accrued on those amounts).

## 16. Termination other than by default or insolvency

### 16.1 Change of occupation of Property

- (a) In the event that the Customer ceases to occupy the Property, the Customer must:
  - (i) Use reasonable endeavours to procure that any person that enters into an agreement for the lease of all or any part of the Property in place of the Customer enters into a Deed of Accession to this Agreement under which that person assumes all of the rights and obligations of the Customer under this Agreement; or
  - (ii) If the Customer fails to procure the new occupier of the Property to assume all of the obligations of the Customer under this Agreement, this Agreement will terminate on the date on which the Customer ceases to occupy the Property or such later date as is agreed by the Seller, and the Customer must within 20 Business Days of the date of termination, pay the Removal Costs under clause 16.6.
- (b) In the event that the Customer ceases to occupy the Property after the Initial Fixed Price Period, the Customer may:
  - (i) enter into an Agreement on substantially the same terms as this Agreement, adjusted for quantities and pricing relevant to the new site, related to supply of electricity to a new site they are relocating to and assume all of the rights and obligations of the Customer under this Agreement; or
  - (ii) If the Customer enters into an Agreement described in 16.1(b)(i), they will pay 50% of the Removal Costs under clause 16.6, unless the percentage specified in the Specific Terms is different in which case that percentage shall apply.
- (c) If the Customer enters into a sub-lease agreement, the Customer shall remain responsible for performing the obligations in this Agreement unless the Agreement is assigned to the sub-lessee with the Seller's agreement.
- (d) If the Customer terminates this Agreement, or no longer takes supply through the ICP for any reason other than default by the Seller, termination of the LTO or a force majeure event, it shall use reasonable endeavours to appoint, or procure the Landowner to appoint, the Seller as the Retailer under the Code to sell Electricity into the energy market.

### 16.2 Customer demand

The Customer acknowledges and agrees that the Seller has designed the System based on the Customer's Forecast Demand for electricity to be used by the Customer at the Property. If at any time during the Supply Period, the amount of Electricity that is used by the Customer at the Property in any Accounting Month is less than 50% of the lower of:

- (a) the Customer's Forecast Demand; or
- (b) the Electricity for 6 consecutive Accounting Months,

the Seller may by giving not less than 30 days prior written notice to the Customer:



- (c) terminate this Agreement with effect from the date specified by the Seller in that notice, and the Customer must within 5 Business Days of the date of termination, pay the Removal Costs under clause 16.6; or
- (d) reduce the generation capacity of the System to match the Customer's reduced demand and charge the Customer for the Seller's actual, reasonable and necessary costs incurred on the System to reduce generation capacity of the System.

### 16.3 Termination for any other reason

If this Agreement is terminated for any reason other than clauses 3.6, 6, 13.5, 15, 16.1 and 16.2, including during the Initial Fixed Pricing Period, the Seller will remove the System from the Property in accordance with clause 16.5 and the Customer will pay the Seller the Removal Costs in clause 16.6 except the number of months specified in 16.6(b)(ii) shall be 6, or the average of the last 6 or less supply months multiplied by 6.

### 16.4 Removal of the System

Following termination of this Agreement for any reason, except for termination under clauses 6 or 15, the Seller will remove the System from the Property within a reasonable period of time and in a proper and professional manner make good any damage to the Property (fair wear and tear excepted).

### 16.5 Recovery of Removal Costs

- (a) If this Agreement is terminated prior to the End Date for any reason other than:
  - (i) default by the Seller;
  - (ii) a termination under clauses 6, 13.5, 15, 16.7 or 16.8; or
  - (iii) a termination of the Licence to Occupy, as outlined in clause 3.6, the Customer must pay to the Seller Removal Costs.
- (b) The Removal Costs shall be:
  - (i) the amount certified by the Seller (acting reasonably) to be the reasonable, actual and necessary costs of the Seller of removing the System from the Property including the cost of reinstating the roof and any other fittings as required by the Landowner. Such costs will be calculated based on the costs that would be incurred by an arms-length third party undertaking such works, plus
  - (ii) an amount equal to the last 6 months invoices under this agreement.

### 16.6 Termination on Price

If the Seller is unable to supply Electricity to the Customer at the Price at any time during the Supply Period, the Seller may remove the System from the Property at its cost in accordance with clause 16.5 and the Agreement shall be terminated, unless otherwise agreed by the parties.

### 16.7 Seller default

If the Seller breaches a material obligation under this Agreement, the Customer may give notice to the Seller with details of the Seller's breach (**Seller Default Notice**). If the breach is capable of being remedied and is not remedied by the Seller within 90 days (or such longer period as may be agreed between the parties) after a Seller Default Notice is given, or if the breach is not capable of being remedied, the Customer may terminate this Agreement by written notice to the Seller. Upon termination under this clause 16.8, the Seller will remove the System at its cost and reinstate the Property in accordance with clause 16.5.

## 17. Liability

### 17.1 Limitation of liability

- (a) Each party agrees that neither party is in any circumstances liable to the other party for:
  - (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or
  - (ii) any indirect or consequential loss; or
  - (iii) loss resulting from the liability of any other party to any other person howsoever and whensoever arising.
- (b) Clause 17.1(a) does not limit any express provision of this Agreement which provides for an indemnity or which expressly provides for any party to make a payment to another.
- (c) Except for the Seller's liability arising under clauses 3.6(b), 4.5, 4.8, 7.5(a), 16.5, 16.7 and 16.8, if notwithstanding clause 17.1(a) a party is found liable to the other party or any third party for any loss or damage, however caused (including through negligence), the parties maximum liability in aggregate will be limited to \$250,000.

## 18. Insurance

- (a) Unless advised otherwise by the Seller, the Customer must effect and maintain at all times throughout the Supply Period "Property All Risk" insurance policy (**Policy**) covering loss, destruction or damage to the System.
- (b) The Policy must be arranged, effected and maintained with insurers and on terms satisfactory to the Seller.
- (c) Unless otherwise stated in the Specific Terms, the Seller agrees to reimburse on a monthly basis to the Customer an amount that is proportionate to the annual premium payable by the Customer in relation to the insurance maintained under this clause 18. The proportion of the annual premium shall be the same proportion that the value of the System bears to the total insured value of the Customer's property under that insurance policy. The amount payable by the Seller under this sub-clause (c) will be reimbursed on a monthly basis through the Monthly Invoice outlined in clause 11.1, beginning 30 days after receipt by the Seller of a copy of the invoice for the annual premium and evidence of payment of the invoiced amount by the Customer to the insurer.
- (d) If the Customer fails to effect or subsequently maintain its Policy in accordance with Clauses 18(a) and 18(b), then the Seller may take out and maintain that Policy. The Seller's actual, reasonable and necessary administrative costs (excluding the premium) for taking out a separate policy will be payable by the Customer to the Seller on demand.
- (e) Subject to its obligations under the Financing Agreements, the Seller may apply any proceeds received under any Policy in reinstatement of the loss, destruction or damage to the System, or terminate this Agreement without cost, provided the conditions in Clause 16.4 are met.

## 19. Dispute Resolution

### 19.1 Notice of dispute

- (a) Each of the parties must endeavour to resolve any disputes or differences (**Dispute**) which arise between them under or in connection with this Agreement, by negotiation.
- (b) Where a Dispute arises, the party claiming the Dispute is to give notice in writing to the other party, including with reasonable details of the Dispute and the relief sought (**Dispute Notice**).

### 19.2 Reference to senior representatives

- (a) If the parties are unable to resolve the Dispute within 5 Business Days of the Dispute Notice (or such other period as the parties may agree) either party may require the matter to be put to the senior representatives (or nominees) of the parties for their resolution.
- (b) If the Dispute has not been resolved by the parties' senior representatives (or their nominees) within 20 Business Days of the Dispute Notice (or such other period as the parties may agree and whether or not the parties' senior representative (or their nominees) have attempted to resolve the Dispute), either party may by written notice of intention to commence arbitration to the other party refer the dispute to arbitration in accordance with Clause 19.3.
- (c) Unless otherwise agreed by the parties, neither party is able to commence arbitration proceedings prior to the date that is 20 Business Days after the Dispute Notice.

### 19.3 Mediation

- (a) If the parties are unable to resolve the question, dispute or difference by discussion and negotiation within ten (10) days of receipt of the written Dispute Notice from the first party, then the dispute shall be referred to Mediation. The Mediation shall in all respects be conducted in terms of the LEADR New Zealand Incorporated standard Mediation Agreement.
- (b) The Mediation shall be conducted by a Mediator in New Zealand and at a fee agreed by the Parties, failing agreement between the parties, the Mediator shall be selected, and the mediator's fee shall be determined by the Chair for the time being of the LEADR New Zealand Incorporated.

### 19.4 Arbitration

- (a) If the dispute remains unresolved fifteen (15) working days after commencement of the Mediation, the question, dispute or difference shall be referred to the arbitration of a single arbitrator to be appointed by the parties or failing agreement to be appointed by
- (b) the President for the time being of the Arbitrator's Institute of New Zealand Inc. Such arbitration shall be carried out in New Zealand and in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.
- (c) The arbitrator is obliged to proceed with expedition to deliver and award as soon as reasonably practicable and the parties agree to co-operate to achieve that end.
- (d) The parties further agree that the award of the arbitrator is, except in the case of manifest error, to be final and binding as between them and they and each of them waive any right to appeal against the award or to seek any review of it in any court.

## **19.5 Carry out obligations**

Despite any Dispute or the referral of that Dispute for resolution under any of the methods allowed in this Clause 19, the parties are to continue to perform their respective obligations under this Agreement as if that Dispute had not occurred.

## **19.6 Injunctive or urgent relief**

Nothing in this Clause 19 will prejudice the right of the Seller or the Customer to institute proceedings to seek urgent interlocutory or urgent injunctive relief.

# **20. Assignment and subcontracting**

## **20.1 Assignment**

- (a) The Customer may not assign, transfer, pledge, charge or mortgage any right, interest or claim under this Agreement without the prior written consent of the Seller. Any purported assignment, transfer, pledge, charge or mortgage in breach of this Clause 20.1(a) is void and of no effect.
- (b) The Seller may, without the consent of the Customer:
  - (i) assign, transfer, pledge, mortgage or charge its rights and interests under this Agreement as security in favour of the Lender in connection with obtaining financing (whether debt or equity and whether before or after the date of this Agreement) for the System; and
  - (ii) assign, novate or otherwise transfer its rights and/or obligations arising under this Agreement.
- (c) If the Customer is not the Landowner and the Landowner purchases the System or part of the System from the Seller, the Seller must ensure that the Landowner takes assignment of the Seller's obligations under this Agreement so that the Landowner is the Seller in relation to the System (or that part of the System purchased by the Landowner) and has all of the same obligations of the Seller under the Agreement.

## **20.2 Subcontracting**

The Seller will not subcontract any material obligation under this Agreement without the prior written consent of the Customer, such consent not to be unreasonably withheld.

# **21. Financing**

## **21.1 Acknowledgement of assignment**

If the Seller assigns or intends to assign its rights under or in connection with this Agreement to the Lender, the Customer shall, if requested by the Seller, execute an acknowledgement of assignment.

## **21.2 Contract privity**

This Clause 21 and all other Clauses of this Agreement which extend a benefit to the Lender are intended to confer a benefit on, and be enforceable by, the Lender for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

# **22. Confidentiality**

## **22.1 Confidential Information**

The parties agree that the following is Confidential Information:

- (a) all information in whatever form disclosed by or made available by or on behalf of any party to the other, other than that covered under Clause 12.3, and which shall include all information provided by Utilise Limited at the request of the Customer, (including, without limitation, any information, knowledge and/or material which any party has designated or may designate as proprietary and/or which relates to business methods; management systems; merchandising; services; techniques; products; programming; customer contracts; customer pricing; customer volumes; budgeting; advertising; financial, business or technical information; staff, contractors, suppliers and/or other parties with whom that party deals with commercially; computer software and data; research; contracts; estimates; forecasts; opinions; projections; interpretations; and all board papers, minutes and all other corporate governance documents and information).

## **22.2 Confidentiality**

The parties undertake and agree that during the term of this Agreement (and at all times after the termination of this Agreement) in respect of all Confidential Information, each will:

- (a) use Confidential Information only for the purposes for which it was disclosed; and
- (b) keep confidential all Confidential Information which is not freely available to the public and not divulge such Confidential Information or details thereof to any person or company (other than where necessary for the purposes of performing the obligations under this Agreement) without the prior written consent of the other party.

## **22.3 Exception**

- (a) Clause 22.1 will not apply to any information which is:
  - (i) in the public domain;
  - (ii) a necessary disclosure to the parties' professional advisers;
  - (iii) a necessary disclosure to the Lender or any potential lender and, in each case, each of their respective professional advisors; or
  - (iv) required to be disclosed to comply with statutory obligations, including, where appropriate, the rules of the New Zealand Stock Exchange or any other securities exchange.

## **23. Notices**

- (a) Any notice or document required to be given under this Agreement must be in writing and may be given by hand, post or email to the party's address for service of notices set out in the Companies Office Companies Register.
- (b) A notice or document is taken to have been received:
  - (i) if the notice or document is delivered by hand to the receiver, at the time of delivery;
  - (ii) if the notice or document is posted in a postage paid registered envelope addressed to the receiver, at the time when it would be received in the ordinary course of registered post then prevailing; or
  - (iii) if the notice or document is sent by email, at the time shown on the delivery receipt stating that the email was received by the recipient,

but if receipt is on a day which is not a Business Day or is after 5:00pm at the place of receipt, it is taken as received at 9:00am on the next Business Day.

- (c) A party may at any time change its address, postal address or email address by giving notice to the other party, such change of detail shall only be effective as from the time of receipt by the other party.

## **24. Miscellaneous**

### **24.1 Legal costs**

Subject to any express provision in this Agreement to the contrary, each party is to pay its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

### **24.2 Amendment**

This Agreement may only be varied or replaced by a document duly executed by the parties.

### **24.3 Waiver and exercise of rights**

A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.

A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **24.4 Rights cumulative**

Subject to any express provision in this Agreement to the contrary, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

### **24.5 Further assurance**

Each party is to promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

### **24.6 Governing law and jurisdiction**

- (a) This Agreement is governed and is to be construed under the laws in force in New Zealand.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### **24.7 Counterparts**

This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

### **24.8 Entire understanding**

- (a) This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of the PPA Documents.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of the PPA Documents are merged in and superseded by the PPA Documents and are to be of no force or effect whatever and no party is to be liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any other party to another is to:
  - (i) affect the meaning or interpretation of the PPA Documents, or

- (ii) constitute any collateral agreement, warranty or understanding between any of the parties.

## 24.9 Survival

This Clause 24.9 and Clause 22, shall survive the expiry or termination of this Agreement.

## 25. Defined terms & interpretation

In this Agreement, the following definitions shall have the following meanings:

**Accounting Month** means a calendar month.

**Agreement** means this power purchase agreement, including the Specific Terms, Business Services Agreement, Standard Terms and all Schedules and appendices.

**Authority** means any government or regulatory department, body, instrumentality, minister, agency or other authority and includes the Electricity Authority.

**Bank Bill Rate** means, on any day, the rate (expressed as a percentage per annum and rounded up to the nearest fourth decimal place) displayed on Reuters screen page BKBM (or its successor page) at or about 10.45 am on that day as the BID rate for three month bank accepted bills of exchange or, if no such rate is displayed or if that page is not available, the average (expressed as a percentage per annum and rounded up to the nearest fourth decimal place) of the bid rates for three month bank accepted bills of exchange quoted at or about 10.45 am on that day by each of the entities listed on that Reuters screen page when the rate was last displayed or, as the case may be, that page was last available, provided that if the rate determined by this definition is negative, the Bank Bill Rate will be zero.

**Business Day** means a day other than a Saturday or a Sunday on which banks are open for general banking business in Auckland and Wellington.

**Change in Law** means the occurrence of any of the following after the date of this Agreement:

- (a) the enactment of any new law or regulation which applies in New Zealand;
- (b) the repeal, modification or re-enactment of any existing law or regulation which applies in New Zealand;
- (c) the commencement of any law or regulation in New Zealand which has not yet entered into effect;
- (d) the imposition of a requirement for a Consent which did not exist as at the date of this Agreement;
- (e) a change (other than for cause) in the terms and conditions attaching to a Consent after it has been given or the attachment of any new terms or conditions to such Consent;
- (f) the revocation or cancellation (other than for cause) of any Consent;
- (g) a Change in Tax; or
- (h) the introduction of, modification of, or a change in, any regulatory capital requirements for New Zealand registered banks or a change in the interpretation or application of such requirements occurring or coming into effect.

**Change in Tax** means the occurrence of any of the following events after the date of this Agreement:

- (a) a Tax which did not apply as at the date of this Agreement becomes applicable;

- (b) a Tax which applied as at the date of this Agreement ceases to be applicable; or
- (c) the rate at which a Tax is levied as at the date of this Agreement is increased or decreased.

**Code** means the Electricity Industry Participation Code 2010 (NZ) (including all parts and sections) and includes all policies and documents incorporated into the Code by reference, any code of practice and any technical code and every amendment to, deletion of, or addition to, any of the rules, any schedules any code of practice or any technical code or any replacement of the Code in whole or in part during the Supply Period.

**Commencement Date** means the date on which both parties agree to be bound by this Agreement pursuant to clause 1.1.

**Commercial Operations Date** means the day on which the System has successfully completed all testing and commissioning requirements and is able to generate electricity.

**Confidential Information** has the meaning described in Clause 22.

**Consents** means all consents, licences, approvals, permits or other authorisations which are required to be granted by any Authority for the purposes of operating and maintaining the System.

**Customer** is the party named in the Specific Terms, and which is the purchaser of the Electricity pursuant to the Specific Terms.

**Customer Default Notice** has the meaning given to it in Clause 15.1.

**Default Rate** means an interest rate of 2% per annum above the Bank Bill Rate.

**Delivery Point** means the point at which the parties agree for Electricity to be transferred to the Customer as detailed in the Installation Drawings.

**Electricity** means electricity generated by the System and delivered to the Delivery Point.

**Electricity Act** means the Electricity Industry Act 2010 (NZ) and all regulations made under that act.

**Electricity Authority** means any independent entity responsible for the efficient operation of the New Zealand electricity market established under Part 2 of the *Electricity Industry Act 2010 (NZ)*.

**End Date** means the last day of the Fixed Price Period, including the Initial Fixed Price Period and any subsequent Fixed Price Periods.

**Export Revenue** means the amount the Seller pays to the Customer for Exports as defined in the Specific Terms.

**Exports** means Electricity not used by the Customer which is sold to third parties through the ICP pursuant to clause 12.2.

**Financing Agreements** means any facility, hedge, security and associated documentation for the financing of the System (whether initially or pursuant to any refinancing).

**Fixed Price Period** means the period of time described in the Specific Terms during which the price of Electricity sold to the Customer shall be fixed, including the Initial Fixed Price Period and each consecutive pricing period thereafter. The final Fixed Price Period ends on the last day of the Supply Period.

**Force Majeure Event** has the meaning given to it in Clause 13.6.

**Forecast Demand** means the estimated amount of the Customer's monthly electricity consumption based on its average consumption in the 12 months immediately prior to the Commencement Date.



**Grid** has the meaning given to it in the Code.

**Grid Exit Point** has the meaning given to it in the Code.

**GST** means goods and services tax payable pursuant to the GST Act.

**GST Act** means the Goods and Services Tax Act 1985.

**GST Amount** has the meaning given to it in Clause 11.3.

**ICP** has the meaning given to it in the Code.

**Income Tax** means any Tax on the net income of a corporation determined pursuant to the Tax Act or other similar tax payable in any jurisdiction outside New Zealand.

**Initial Fixed Price Period** means the first Fixed Price Period beginning on the Commencement Date and lasting for the period of time described in the Specific Terms.

**Initial Price** means the fixed price for Electricity sold by the Seller to the Customer under this Agreement during the Initial Fixed Price Period as specified in the Specific Terms.

**Insolvency Event** has the meaning given to it in Clause 15.5.

**Installation Drawings** means the drawings and specifications agreed between the Seller and the Customer identifying the location of the installation of the System and associated assets and cabling at the Property and any additional requirements for work to be undertaken by the Customer to enable the installation of the System.

**Landowner** means the lawful owner of the Property.

**Lender** means any person providing financial accommodation (including hedging facilities) under the Financing Agreements and any trustee or agent acting on that person's behalf.

**Licence to Occupy** means the licence described in Clause 3 granting the Seller a right to install the System at the Property.

**Local Network** has the meaning given to it in the Code.

**Metering Equipment** means the metering equipment installed, operated and maintained by the Seller pursuant to Clause 10.

**Metering Information** means information in such form as agreed from time to time between the parties regarding the Electricity delivered to the Customer in each Accounting Month and includes (without limitation) demand, energy, currents, loads and voltage.

**Monthly Invoice** has the meaning given to it in Clause 11.1.

**PPA Documents** means this Agreement, Business Services Agreement and any Specific Terms

**Price** means the Initial Price and then the subsequent price for each Fixed Price Period calculated according to the Specific Terms.

**Property** means the land where the System is located and includes any structure on the Property to which any part of the System is to be attached as identified in the Installation Drawings.

**Prudent Operating Practice** means the exercise of the practices, methods and acts which would reasonably be expected to be employed by appropriately skilled, experienced and qualified owners, operators or maintainers of facilities similar in size and operational characteristics to the characteristics of the System, including those involving the use of new concepts or technology, and having due regard to applicable electrical safety and maintenance codes and standards,

manufacturer's warranties, and applicable international, national, regional and local laws, regulations and ordinances.

**Retail Price** means the price, or schedule of prices, expressed in dollars per kWh that the Retailer supplies or is willing to supply electricity to the Customer's premises and includes any network charges, the effect of local losses in transporting electricity from the Grid Exit Point to the Customer's ICP, levies imposed by the Electricity Authority and any other levies, management and other kWh fees, and discounts offered by the Retailer such as prompt payment or bundle pricing discounts (if any).

**Retailer** means the electricity retailer providing electricity supply from the Local Network to the Customer's premises from time to time.

**Scheduled Outage** means a planned interruption or reduction of the generating capability of the System which has been scheduled by the Seller for the purposes of bona fide inspection, testing, preventative maintenance, corrective maintenance, repairs, replacement or improvement.

**Settlement Date** means the date on which the sale and purchase of the System occurs under Clause 6.1

**Seller** means Utilise Limited, or its assignee under Clause 20.

**Specific Terms** means the Power Purchase Agreement Specific Terms relating to the Customer.

**Standard Terms** means these Utilise Solar Standard Terms and Conditions.

**Supply Period** has the meaning given to it in Clause 2.1.

**System** means the solar photovoltaic array, and associated equipment, used for electricity generation and delivery, as constructed, owned and operated by the Seller at the Property.

**System Cost** means the size of the installed System in kilowatts multiplied by the price per kilowatt, specified in the Specific Terms.

**Tax Act** means the Income Tax Act 1994 and the Income Tax Administration Act 1994.

**Taxes** means taxes, GST, levies, imposts, deductions, charges, withholdings and duties (including, but not limited to, stamp and transaction duties), together with any related interest, penalties, fines and other statutory charges.

**Term** means the sum of the Initial Fixed Price Period and any subsequent Fixed Price Periods as defined in the Specific Terms.

## **Interpretation**

In this Agreement, unless the contrary intention appears:

A reference to an Act, statute, ordinance, code or other law includes regulations and other instruments under it.

No rule of construction (including the contra proferentem rule) applies to the interpretation of the Agreement to the advantage or disadvantage of any one party on the basis that a party prepared the Agreement or any relevant part of it.

The words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

Where a word or expression is defined in the Agreement, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

A reference to a document (including this Agreement) includes any variation or replacement of it.

A reference to a Clause, annexure or Schedule is a reference to a clause or annexure or schedule to the Agreement.

A reference to a particular person includes the person's executors, administrators, successors, transferees, substitutes (including persons taking by novation) and assigns.

A reference to a body or authority includes a reference, if that body or authority cease to exist, to the body or authority which has substantially the same functions and objects as the first body or authority.

A reference to anything (including any amount) is a reference to the whole and each part of it.

The expression "to the extent permitted by law" means to the fullest extent that is permitted by law.

The meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities.

The words "including" and "include" are to be construed without limitation;

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 exclusive of that day;

A reference to a time of day is a reference to the time in Auckland; and

A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.