

Schedule 1: General Terms and Conditions

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Administrator means the organisation with responsibility for administering the Code, being:

- (a) the Clean Energy Council (**CEC**);
- (b) the Administrator appointed by the NETCC Council; and
- (c) the Code Monitoring and Compliance Panel appointed by the NETCC Council.

Agreement means the agreement which comprises:

- (a) the Quote;
- (b) Schedule 1: (*General Terms and Conditions*);
- (c) **Error! Reference source not found.** (*Special Conditions*); and
- (d) **Error! Reference source not found.** (*Attachments*).

Approval means any authorisation, assessment, accreditation, determination, registration, clearance, permit, licence, consent, certificate or other approval obtained or required or applying in connection with anything required or permitted to be done by the Contractor under the Agreement (including any approval by the Energy Network).

Approved Financier means a credit provider (which may include the Contractor or a third party) that:

- (a) is licensed under the *National Consumer Credit Protection Act 2009* (Cth); and
- (b) has had its deferred payment contract and its internal policies and procedures approved in accordance with the Code.

Approved Seller means a signatory to the Code.

Australian Consumer Law means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Australian Standards means any Australian Standard (as amended or replaced) issued by Standards Australia applying to the Work.

Business Day means a day that is not a Saturday, Sunday or public holiday or bank holiday in the State or Territory in which the Premises is located.

Cancellation Fee means actual, reasonable direct loss incurred by the Contractor in the event this Agreement is terminated.

SAA-Accredited Installer means an installer of solar photovoltaic systems accredited in this capacity by Solar Accreditation Australia under Solar Accreditation Australia's 'Code of Conduct' and 'Requirements'.

Charges and Deductions means the charges and deductions specified in the Quote.

Code means the New Energy Tech Consumer Code.

Commencement Date means the commencement date specified in the Quote.

Completion means the stage where the Work has been installed in accordance with the Agreement and all relevant Laws, either without any omissions or Defects or apart from minor omissions or Defects.

Contractor means the contractor as specified in the Quote.

Contract Price means:

- (a) the New Energy Tech Price; and

- (b) the Charges and Deductions as specified in the Quote.

Cooling Off Right means the 'cooling off right' specified in the Quote.

Customer means the customer specified in the Quote.

Date for Completion means the date for Completion as specified in the Quote.

Design Documents means the 'design documents' specified in the Quote.

Defect means:

- (a) any error, deficiency, omission, non-conformity, fault, failure, safety hazard or malfunction in the Work or any performance characteristic of the New Energy Tech; or
- (b) any aspect of the Work or New Energy tech which is not in accordance with the requirements of the Agreement.

Deferred Payment Arrangement means a payment arrangement made in accordance with clause 7.4 which permits the Customer to defer or delay paying.

Deposit means the amount specified as the deposit in the Quote (if any).

Energy Network means any of Australia's principal energy transmission and distribution networks (including the energy networks known as 'South West Interconnected System', 'North West Interconnected System', 'Darwin-Katherine Electricity Network' and 'National Electricity Market').

Energy Supplier means any of Australia's public offer energy providers, including retailers and network businesses.

Fair Trading Body means the fair trading body specified in the Quote.

Force Majeure Event means:

- (a) war, hostilities (whether war be declared or not), invasion or act of foreign enemies;
- (b) rebellion, revolution, an undeclared terrorist incident for the purposes of the Terrorism Insurance Act 2003 (Cth), insurrection, military or usurped power, martial law or confiscation by order of any Authority or civil war;
- (c) ionising radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel within Australia not caused by the Contractor's use of such radiation or radio-activity;
- (d) fire emanating from outside the Site, 1 in 100 year flood, tsunami, explosion, landslide, earthquake or cyclone (as named by the Bureau of Meteorology);
- (e) riot or commotion by persons other than the Contractor's Related Persons; or
- (f) epidemic or pandemic and any resultant impacts (including COVID-19);

which prevents the Contractor from performing any of its obligations under this Agreement.

General Terms and Conditions and **T&C's** mean Schedule 1: of the Agreement.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Installation means the installation of the New Energy Tech at the Premises.

Instalment Payment Date means the date on which the Customer will commence paying the instalments in accordance with clause 7.3, as specified in the Quote.

Interest means the current official cash rate as determined by the Reserve Bank of Australia plus [2] percent.

Laws means:

- (a) acts, delegated legislation, legislative instruments, ordinances, regulations, by laws, orders, policies, guidelines, awards and proclamations of the jurisdiction in which the Premises is located; and
- (b) any licenses, permits and consents necessary for the Contractor to carry out and complete the Work;
- (c) principles of common law and equity established by decisions of courts; and
- (d) the accreditation compliance requirements published by SAA.

National Credit Code means Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth).

NETCC Council means the council which oversees the New Energy Tech Consumer Code.

New Energy Tech means the new energy tech as specified in the Quote.

New Energy Tech Price means the new energy tech price as specified in the Quote.

Operating Information means the operating information specified in **Error! Reference source not found. Error! Reference source not found.**

Owners Corporation means the body, however described, that has legal responsibility for the common property in a strata development.

Party means each party to the Agreement.

Personal Information has the meaning in the *Privacy Act 1988* (Cth).

Premises means the property specified as the premises in the Quote where the Work will be performed.

Quote means the document entitled Quote attached as the first part of the Agreement.

Relevant Criteria for materials means:

- (c) generally accepted practices or standards applied in the building industry for the materials; or
- (d) specifications, instructions or recommendations of the manufacturers or suppliers of the materials.

Residential Customer means where the Customer is purchasing New Energy Tech for personal, domestic or household purposes only (and includes an Owners Corporation for a residential strata property and the operator of a retirement village).

Special Conditions means the special conditions set out in **Error! Reference source not found.**

Supply means the supply of the New Energy Tech at the Premises.

Supply Date means the date for the Supply specified in the Quote.

Standards means any codes, specifications, policies, requirements, Australian Standards, Energy Network standards and other standards (as amended or replaced) set out in or referred to in the Work, or any other policy,

guideline, procedure, standard or requirement with which the Contractor must comply by law.

State Consumer Affairs office means the state consumer affairs office specified in the Quote.

Validity Period is the validity period specified in the Quote.

Warranty Period means the warranty period for the New Energy Tech specified in the Quote.

Work means the Supply and/or Installation of New Energy Tech (as is specified in the Quote).

1.2 Interpretation

In the Agreement, headings are only for convenience and do not affect interpretation unless the context requires otherwise:

- (a) any capitalised term in the Quote has the meaning as set out in the General Terms and Conditions;
- (b) "includes" means includes without limitation;
- (c) a reference to a time is a reference to the time in the State or Territory in which the Premises is located (as specified in the Quote);
- (d) a word that is derived from a defined word has a corresponding meaning;
- (e) a reference to "\$" is to be construed as a reference to Australian currency;
- (f) the singular includes the plural and vice-versa;
- (g) a reference to a Party to the Agreement includes that Party's personnel, successors and permitted assignees and novatees;
- (h) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
- (i) no rule of construction will apply to a clause to the disadvantage of a Party merely because that party put forward the clause or would otherwise benefit from it; and
- (j) the Parties' rights under the Agreement are cumulative and in addition to those at law.

2 PURCHASE OF NEW ENERGY TECH

2.1 Purchase of New Energy Tech and performance of Work

- (a) Subject to the Contractor's compliance with the terms of the Agreement, the Customer will pay the Contractor the Contract Price in accordance with clauses 6 and 7.
- (b) The Contractor agrees to perform the Work at the Premises.

2.2 Customer acknowledgements

- (a) The Customer acknowledges that the Contractor has:
 - (i) drawn the Customer's attention to any particular requirements of the Agreement that may cause confusion or disagreement (including in respect of the Contract Price, termination fees, end of Agreement payments and any difference between an earlier, verbal quote and the final price); and
 - (ii) clearly explained to the Customer the process for payment and trade of any government or regulatory certificates, or any relevant trading facility and any limitations.

3 WORK

3.1 Performance

- (a) The Contractor must carry out and complete the Work:

- (i) with due expedition and without delay, including to:
 - (A) Supply the New Energy Tech by the Supply Date; and
 - (B) achieve Completion by the Date for Completion;
 - (ii) with due care and skill and so that the New Energy Tech, once Supplied or Installed (if relevant), performs properly and in accordance with any performance specifications notified by the Contractor to the Customer;
 - (iii) in accordance with specific Customer needs specified in the Quote;
 - (iv) so that any information and communication used in the performance of the Work is secure and complies with the requirements of the *Privacy Act 1998* (Cth); and
 - (v) in accordance with the Agreement, any direction of the Customer and all Laws.
- (b) In performing the Work, the Contractor must perform all ancillary or other works (including the provision of materials) which are necessary for Completion, whether or not those works are specified in the Agreement.
- (c) If the Work includes physical Installation of the New Energy Tech, then the Contractor will:
- (i) install in accordance with all applicable Standards, the manufacturer's specifications and good industry practice; and
 - (ii) engage a suitably trained, competent and qualified or certified installer to undertake the Installation.
- 3.2 Design Documents**
- (a) If the Quote specifies that the Contractor must provide the Design Documents, then:
- (i) the Contractor must provide these Design Documents during the period in which the Customer has Cooling Off Rights; and
 - (ii) within 10 Business Days of receiving the Design Documents, the Customer must notify the Contractor as to whether or not it accepts the Design Documents, and if the Customer does not accept the Design Documents then clause 12.4(a)(iii) will apply.
- 3.3 Equipment**
- If the Contractor provides the Customer with New Energy Tech that involves the use of equipment that is owned by the Customer, then the Contractor must Install the New Energy Tech in a manner consistent with any manufacturer's instructions and warranty requirements relevant to the Customer's equipment which is provided to the Contractor by the Customer.
- 3.4 Operating Information**
- Prior to the activation of the New Energy Tech, the Contractor must provide the Customer with the Operating Information.
- 3.5 Compliance with Laws**
- (a) The Contractor must comply with all applicable Laws when performing the Work, including:
- (i) the *Renewable Energy (Electricity) Act 2000* (Cth);
 - (ii) the *Renewable Energy (Electricity) Regulations 2001* (Cth);
 - (iii) the *Do Not Call Register Act 2006* (Cth) and associated telemarketing standards including permitted hours for contacting consumers; and
 - (iv) the Australian Consumer Law.
- (b) If the Contractor is not obliged to comply with the *Privacy Act 1998* (Cth) when performing the Work, the Contractor will nonetheless take reasonable steps to ensure the protection of any of the Customer's Personal Information and will only use the Customer's Personal Information for:
- (i) the purpose of carrying out the Contractor's obligations under the Contract;
 - (ii) future marketing of other new energy tech or providing the Customer with information that the Customer might reasonably expect to receive from the Contractor; or
 - (iii) providing that Personal Information to a third party where the Customer has given the Contractor express permission to do so.
- 3.6 Approval from Energy Network**
- (a) If the Contractor is authorised by the Consumer to obtain Energy Network connection Approval for New Energy Tech on the Customer's behalf, then the Contractor will:
- (i) not Install or activate the New Energy Tech until Energy Network connection Approval is provided;
 - (ii) prepare and submit the requisite documentation to the Energy Supplier and for the reconfiguration of the Customer's meter (if required);
 - (iii) respond within a reasonable time to any additional compliance requests from the Energy Supplier, and consult with the Customer (if required);
 - (iv) keep the Customer informed as to the Contractor's progress in obtaining the Energy Network connection Approval (including any restrictions or limitations which may affect the Customer); and
 - (v) provide the Customer with a full refund if the Energy Network connection Approval is not obtained.
- (b) If the Customer is responsible for obtaining Energy Network connection Approval for New Energy Tech, then the Contractor will:
- (i) explain to the Customer the requirements of preparing and submitting the requisite documentation to the Energy Supplier (including information as to how to complete and submit papers or online forms);
 - (ii) provide the Customer with expected timeframes, relevant deadlines and any problems which may arise in respect of any step in the process identified in clause 3.6(a); and
 - (iii) provide the Customer with the Energy Supplier's relevant contact details.
- (c) If the Contractor supplies the Customer with any New Energy Tech which requires any other form of activation, the Contractor will notify the Customer as to the steps which must be taken (including responsibility for those steps) and will keep the Contractor updated as to progress of each step.

3.7 Warranties

- (a) The Contractor warrants to the Customer that:
- (i) Work will be performed with proper diligence and due care and using best trade practices, standards of workmanship and professional skill;
 - (ii) all materials supplied by the Contractor will be of good quality and suitable for the purpose for which they are used having regard to the Relevant Criteria, and that all materials used will be new unless the Agreement expressly provides otherwise; and
 - (iii) the work under the Agreement will be carried out in accordance with all Laws, manufacturer's specifications, Energy Network standards.
- (b) The Customer warrants to the Contractor that:
- (i) it is the owner of the Premises or has obtained written permission from the owner of the Premises for the Contractor to perform the Work;
 - (ii) it has obtained all consents and Approvals (including, if relevant, the Energy Network connection Approval) required for the Contractor to perform the Work at the Premises, including any written consent required from an Owners Corporation giving the Contractor permission to Install the New Energy Tech; and
 - (iii) all information provided to the Contractor in relation to the Premises is accurate and correct.
- (c) Nothing in the Agreement restricts or takes away the rights of a Party for breach of these warranties.

4 NEW ENERGY TECH OPERATION AND PERFORMANCE

4.1 Supplier and manufacturer warranties and liability

- (a) The Contractor will provide a warranty in respect of the performance and operation of the New Energy Tech for the Warranty Period from the day when Completion is achieved. Additional manufacturer warranties may also apply on the products forming part of the New Energy Tech (as applicable).
- (b) The Contractor will:
- (i) respond promptly to any warranty claim received from the Customer within the Warranty Period and, within a reasonable time, perform any rectification works set out under clause 4.1(e); and
 - (ii) provide the Customer with the name and contact details of any supplier of the New Energy Tech so that the Customer can pursue any claim against the supplier in the event it is unable to do so against the Contractor.
- (c) The Contractor's warranty above is in addition to any consumer guarantees which apply under the Australian Consumer Law and those guarantees are not excluded, replaced or otherwise modified by the Agreement.
- (d) The warranties set out in the Agreement, any manufacturer's warranty and the consumer guarantees which apply under the Australian Consumer Law will be the only warranties or guarantees in relation to the Agreement.
- (e) Unless prohibited by law (including section 64A of the Australian Consumer Law) the Contractor's

liability under the Agreement is limited, to the extent that it is fair and reasonable, to:

- (i) supply and make available a replacement of the New Energy Tech with an equivalent system or unit and install the equivalent New Energy Tech;
- (ii) enter into a contract with an appropriately qualified person to undertake repairs of the New Energy Tech;
- (iii) payment of the cost of:
 - (A) repairing or replacing the New Energy Tech with an equivalent system or unit, or remedying any service issue; or
 - (B) compensation for the drop in value of the New Energy Tech (including because the New Energy Tech is not performing as the Contractor guaranteed it would); or
- (iv) payment of the cost of having the New Energy Tech repaired.

4.2 Damage caused by Customer or third party

- (a) The Contractor will not be responsible for any loss or damage to the Customer's property or for any faults or Defects in the New Energy Tech due to misuse or damage caused by the Customer or a third party, or if the New Energy Tech fails to operate due to any of the following:
- (i) improper use of the New Energy Tech;
 - (ii) failure to comply with manufacturer instructions;
 - (iii) work on the New Energy Tech (including modifying, moving or relocating any part of the New Energy Tech, even if temporary) performed by someone who is not appropriately trained or qualified;
 - (iv) the Customer's failure to adhere to maintenance requirements set out in **Error! Reference source not found.** Attachment provided to the Customer by the Contractor;
 - (v) failure by the Customer to maintain the Premises to ensure that there is no obstruction to the operation of the New Energy Tech;
 - (vi) any act, omission, misuse, abuse, or damage (whether wilful, accidental or negligent) caused by the Customer or a third party;
 - (vii) flooding or water damage;
 - (viii) any extreme weather (for example lightning, floods) or changes at the Premises (pest damage, corrosion, land or building movement);
 - (ix) interference from other devices;
 - (x) a failure to promptly notify the Contractor of any Defects. The Customer is responsible for regularly checking the New Energy Tech is working properly; or
 - (xi) any other event beyond the Contractor's control which occurred after the New Energy Tech was Supplied.

5 TIME FOR WORK

5.1 Progress of Work

- (a) The Contractor must promptly commence the Work after the Commencement Date.

- (b) Subject to clause 5.2, the Contractor will ensure that the New Energy Tech is supplied by the Supply Date and the Work reaches Completion by the Date for Completion.

5.2 Delay

- (a) The Contractor will notify the Customer if it does not consider it will be able to:
 - (i) Supply the New Energy Tech by the Supply Date, in which case the Contractor will provide a new Supply Date; or
 - (ii) reach Completion by the Date for Completion, in which case the Contractor will provide a new Date for Completion.

6 CONTRACT PRICE

6.1 Contract Price

- (a) The Customer must pay the Contract Price in accordance with the Agreement, and such other amount as becomes payable in accordance with the Agreement.
- (b) The Contract Price will not be adjusted except in accordance with the Agreement (including clauses 6.2, 6.3 and 13).
- (c) Notwithstanding clause 6.1(b), the Customer acknowledges the portions of the Contract Price that are specified in the Quote as approximations, and acknowledge that the Contract Price may change for such items once actual costs are known.

6.2 Adjustment to Contract Price for additional fees

- (a) Subject to clause 12, the Customer must pay any additional fees and charges associated with the Work:
 - (i) as notified by the Contractor during a pre-installation Premises inspection (if a pre-installation Premises inspection is conducted) or on the Commencement Date (if a pre-installation Premises inspection is not conducted); or
 - (ii) because of Premises conditions and circumstances beyond the Contractor's control, as specified in the Quote.
- (b) The Customer acknowledges that the Contractor is not able to determine or account for the fees and charges described at clause 6.2(a) at the date the Agreement is executed, and accordingly that these additional fees are not accounted for in the initial Contract Price.

6.3 Adjustment to Contract Price for periodic or intermittent charges

If the Work includes periodic or intermittent charges (as specified in the Quote), then from time to time the Contractor may adjust the value of those periodic or intermittent charges by 20 Business Days written notice to the Customer.

6.4 Payment by Contractor to Customer

- (a) If the Contractor is obliged to make any payment to the Customer in accordance with the Agreement (including by way of offsetting an amount owed by the Customer), then the Contractor must make that payment in accordance with the Agreement.
- (b) If any of the Contractor's payments identified in clause 6.4(a) are made using a formula or calculation which is not disclosed to the Customer, then the Contractor must ensure that its payment calculation system is regularly audited by a registered company auditor to ensure that its payments are accurately calculated.

7 PAYMENT

7.1 Payment methods

- (a) The Customer may pay for the Work:
 - (i) by direct payment to the Contractor, in accordance with clause 7.2;
 - (ii) if the Contractor offers the Customer to do so, by way of progressive instalments to the Contractor, in accordance with clause 7.3; or
 - (iii) if the Contractor offers the Customer to do so, by way of a Deferred Payment Arrangement, in accordance with clause 7.4.
- (b) The Contractor will provide the Customer with a receipt for any amount the Customer pays in accordance with the Agreement.

7.2 Direct payment

If the Customer elects to pay the Contractor directly by way of a lump sum payment:

- (a) if applicable, a Deposit is due and payable in the amount and in accordance with the Quote. The Contractor (or its nominee) will debit the Customer's credit card or, if applicable, present the Customer's cheque and hold the Deposit on and subject to the terms set out in the Agreement;
- (b) subject to clause 12, the Deposit is non-refundable after the Cooling Off Right expires (if a Cooling Off Right is applicable);
- (c) the Customer authorises the Contractor (or its nominee) to apply any applicable Deposit payable for the Work, in or towards payment of the Contract Price for the Work when the Work has reached Completion;
- (d) the remaining outstanding part of the Contract Price is due and payable:
 - (i) if the Quote identifies that the Works solely comprise Supply of the New Energy Tech, then within 14 days of the date on which the New Energy Tech is Supplied; and
 - (ii) if 7.2(d)(i) does not apply, then immediately following Completion.
- (e) the Contract Price must be paid in the manner specified in the Quote.

7.3 Payment by instalments

- (a) The Contractor may offer the Customer to pay the Contract Price by way of instalments commencing on the Instalment Payment Date, which instalments must not:
 - (i) extend beyond a period of 6 months; and
 - (ii) include any additional amount or fee (including interest) or otherwise increase the Contract Price, except as provided for in the Agreement.

7.4 Payment by a Deferred Payment Arrangement

- (a) The Contractor may offer the Customer the option to pay the Contract Price by way of a deferred payment arrangement (**Deferred Payment Arrangement**).
- (b) If the Contractor offers the Customer a Deferred Payment Arrangement and the Customer is a Residential Customer, then:
 - (i) the Customer may accept the Deferred Payment Arrangement but is under no obligation to do so;
 - (ii) the Deferred Payment Arrangement must be offered via an Approved Financier:

- (iii) the term of the Deferred Payment Arrangement must not be longer than the expected life of the New Energy Tech (as set out in **Error! Reference source not found.** Attachment);
 - (iv) the Contractor must provide the Customer with:
 - (A) the name of the Approved Financier to whom the Customer will be contracted with for the purposes of the Deferred Payment Arrangement;
 - (B) the proposed total costs under the Deferred Payment Arrangement compared to the cost of purchasing the New Energy Tech in accordance with clause 7.2;
 - (C) any disclosures required under the National Credit Code (including any fees and charges), irrespective of whether the Deferred Payment Arrangement will be regulated under the National Credit Code; and
 - (D) whether, at the conclusion of the Deferred Payment Arrangement, the Customer will own any part of the New Energy Tech, have an entitlement to ongoing services or pricing, or have an option to purchase any portion of the New Energy Tech (including relevant details and costs);
 - (v) the Customer acknowledges that any questions or complaints about the Deferred Payment Arrangement must be directed to the Approved Financier;
 - (vi) the Customer does not need to pay a Deposit for the Work;
 - (vii) the Customer consents to the Contractor disclosing its contact details (which may include Personal Information) to the Approved Financier who will then assess the Customer's application for finance;
 - (viii) the Approved Financier will provide the Contractor with written confirmation if it approves the Customer's application for finance;
 - (ix) if approved under clause 7.4(b)(viii), the Contractor will proceed with the Work and instruct the Approved Financier to pay it the Contract Price on the Customer's behalf on the day of Completion; and
 - (x) if the Approved Financier does not approve the Customer's application for finance, the Contractor will notify the Customer and the Customer may elect to pay for the Work in accordance with clause 7.2 or the Customer may terminate the Agreement.
 - (c) Clause 7.5 does not apply if:
 - (i) the Deferred Payment Arrangement is provided by a government agency; or
 - (ii) the Administrator is satisfied that the Agreement is a power purchase agreement.
- 7.5 Failure to pay**
- (a) Except where the Customer is paying under a Deferred Payment Arrangement, if the Customer fails to pay any amount that is due and payable

under the Agreement, the Contractor will be entitled to:

- (i) Interest on the unpaid amount from the due date until the date it is paid; and
 - (ii) any reasonable costs incurred by the Contractor associated with recovering the unpaid amount (including legal costs).
- (b) If the Customer notifies the Contractor that the Customer is experiencing financial hardship, then the Contractor may provide assistance by:
 - (i) offering the Customer a payment plan; or
 - (ii) advising the Customer of relevant governmental schemes which may assist the Customer.

8 ACCESS

8.1 Access to the Premises

- (a) The Customer must provide the Contractor reasonable access to the Premises:
 - (i) to conduct one or more Premises inspections, if the Contractor considers necessary; and
 - (ii) from the Commencement Date so that the Contractor may perform the Work.
- (b) The Customer must:
 - (i) ensure the Contractor and its subcontractors (if applicable) have convenient and safe access to all parts of the Premises necessary to conduct any required Premises inspections or to perform the Work;
 - (ii) not hinder or obstruct this access; and
 - (iii) ensure the Premises is sound and able to accommodate the New Energy Tech.
- (c) During the performance of the Work, the Contractor will permit the Customer to:
 - (i) have reasonable access to the Premises; and
 - (ii) view any part of the Work upon the Customer's reasonable request to do so.
- (d) Where the New Energy Tech has the technical capability for the Contractor to access it remotely, the Customer authorises the Contractor to remotely access the New Energy Tech in order to collect data in connection with the Customer's use of the New Energy Tech and use it for the Contractor's business purposes, monitor performance of the New Energy Tech, provide remote diagnostic support, provide alerts to the Customer, upgrade software in the New Energy Tech and provide other services from time to time.

8.2 Interface with others

- (a) The Contractor acknowledges that it will not have exclusive access to or possession of the Premises.
- (b) The Contractor must fully cooperate with and coordinate and interface the Work with the work of other contractors (if applicable) and the Customer so as not to cause any nuisance, disruption, delay, hindrance, damage or interference with any activities at the Premises.

9 OWNERSHIP AND RISK

9.1 Passing of title

- (a) All rights, title and ownership in each part of the New Energy Tech passes to the Customer upon the earlier of:

- (i) the point in time immediately before the New Energy Tech is Installed at the Premises (if applicable); and
 - (ii) payment in full of the Contract Price for the New Energy Tech.
- (b) The passing of title in clause 9.1(a) will occur free of any encumbrance, condition, charge or other possessory right.
- (c) Risk in the New Energy Tech will pass to the Customer upon the earlier of when the New Energy Tech is Supplied and/or Installed at the Premises (as applicable).

10 ASSIGNMENT, NOVATION AND SUBCONTRACTING

10.1 Assignment and novation

Neither Party may assign its rights, novate its obligations, or otherwise deal with the whole or part of the Agreement without the prior written consent of the other Party, which is not to be unreasonably withheld or delayed.

10.2 Subcontracting

- (a) The Contractor may subcontract any of its obligations under the Agreement to a third party, provided that:
- (i) if the Contractor subcontracts any obligation:
 - (A) it will ensure the relevant subcontractor is competent, appropriately qualified and has completed any relevant safety training modules required by Law (including by the Administrator), and performs all subcontracted obligations in accordance with the requirements of the Agreement;
 - (B) it will continue to be liable to the Customer for the performance of its obligations under the Agreement, even though it has subcontracted one or more of those obligations; and
 - (C) it will be liable to the Customer for the acts and omissions of its subcontractors, as if the acts and omissions were its own; and
 - (ii) the Contractor's obligations in relation to the design or Installation of the New Energy Tech can only be subcontracted to a SAA-Accredited Installer.

10.3 Relocation from Premises

- (a) If, under the Agreement:
- (i) the Contractor provides the Customer with a service that is not transferrable from the Premises to another premises; and
 - (ii) the Customer has agreed to a lock-in period and the Agreement imposes a Cancellation Fee,
- and the Customer relocates from the Premises, then:
- (iii) if the new occupier of the Premises agrees to novate the Agreement, then the Contractor will consent to such novation and will not charge the Customer a Cancellation Fee, unless the Contractor has reasonable grounds for refusing to consent to the novation with the new occupier of the Premises; or

- (iv) if the new occupier of the Premises does not agree to novate the Agreement, then the Customer will pay the Cancellation Fee.

11 DEFECTS

11.1 Defective or unsafe New Energy Tech

- (a) If the Contractor becomes aware, or the Customer notifies the Contractor, of any Defect, the Contractor will:
- (i) promptly notify the Customer and offer to rectify the Defect if possible; or
 - (ii) remove the Defective New Energy Tech from the Premises and provide reasonable compensation to the Customer.
- (b) The Contractor must comply with clause 11.1(a) at its own cost within a reasonable time.
- (c) If the Contractor fails to comply with clause 11.1(a), the Customer may perform the relevant work or arrange for a third party to perform the relevant work, the cost of which will be a debt due from the Contractor to the Customer.

12 TERMINATION

12.1 General

A right to terminate the Agreement is additional to any other right, power or remedy a Party might have.

12.2 Termination of the Agreement without cause

The Customer may terminate the Agreement at any time and for any reason (or no reason) by issuing a notice of termination to the Contractor upon 5 Business Days' notice. When the Contractor receives a notice of termination from the Customer under this clause, the Contractor must:

- (a) stop all Work to the extent required by the notice of termination;
- (b) take such action as necessary or as the Customer directs for the transfer, protection and preservation of the Customer's property; and
- (c) use its best endeavours to minimise the cost of termination of the Agreement (as applicable) to the Customer.

12.3 Compensation for termination without cause

- (a) Where the Customer terminates the Agreement pursuant to clause 12.2, the Customer must pay the Contractor the amount due for the Work that has been completed by the Contractor in accordance with the Agreement prior to the date of such termination.
- (b) Such payment will constitute the full and final compensation payable by the Customer to the Contractor under or in connection with the Agreement and the Contractor will have no claim against the Customer in relation to such termination and the Customer will not be liable to the Contractor for any amounts in addition to those set out in 12.3(a).

12.4 Termination for cause

- (a) The Customer may terminate the Agreement without being required to pay a Cancellation Fee and to receive a full refund of the amount the Customer has paid towards the Contract Price if:
- (i) the Contractor has not:
 - (A) supplied the New Energy Tech; or
 - (B) achieved Completion,
 within 4 weeks after the original Supply Date or Date for Completion (as relevant), then unless the Supply Date or Date for Completion has been delayed by Premises conditions or circumstances beyond the

- Contractor's control beyond (as specified in the Quote);
- (ii) the Agreement is for Supply and physical Installation and either of the following applies:
 - (A) the Contractor proposes to significantly change the New Energy Tech Installation design from that previously provided prior to entry to the Agreement or as provided in accordance with clause 3.2; or
 - (B) the Customer is advised either during the pre-installation Premises inspection (if a pre-installation inspect is conducted) or on the Commencement Date (if no pre-installation Premises inspection is conducted) that additional fees subject to clause 6.2 are payable in order to Install the New Energy Tech;
 - (iii) the:
 - (A) New Energy Tech requires physical Installation;
 - (B) the Contractor has agreed to provide the Design Documents as an initial deliverable under the Agreement in accordance with clause 3.2; and
 - (C) within 10 Business Days of receiving the Design Documents, the Customer does not accept the Design Documents.
 - (b) If the Customer is responsible for obtaining Energy Network connection Approval for the New Energy Tech and the Customer's application is rejected following the execution of the Agreement, the Customer may terminate the Agreement and the Contractor will provide the Customer a refund less a reasonable amount for the Work provided up until the time the Agreement was terminated. The amount will not exceed the amount the Contractor would have been entitled to receive under the Agreement.

12.5 Notice of termination

If either Party chooses to terminate the Agreement, that Party must notify the Contractor of its decision to terminate the Agreement, by telephone in order for cancellation to take effect.

12.6 Termination by Contractor

- (a) The Contractor may terminate the Agreement, remove the New Energy Tech supplied to the Customer and return the Premises to its former state, if:
 - (i) the Customer has not obtained the necessary consents and approvals required by clause 3.7(b)(ii); or
 - (ii) the Customer is otherwise in material default under the Agreement.
- (b) The Customer is not entitled to any refund, and must reimburse the Contractor for the reasonable costs of removal and restoration of the Premises, where the Contractor has failed to obtain consent from the Owner's Corporation in accordance with clause 12.6(a)(i).

12.7 Cancellation Fee

- (a) If the Agreement is terminated for any reason (unless an applicable Cooling Off Right expires or

the Agreement is otherwise terminated in accordance with clause 12.4), then the Customer must pay to the Contractor the Cancellation Fee.

- (b) The Parties agree that the Cancellation Fee is a genuine pre-estimate of the loss that the Contractor is likely to suffer in the event the Customer terminates the Agreement.

13 GOVERNMENT REBATES AND ENVIRONMENTAL RIGHTS

13.1 Entitlement to government rebates and environmental rights

The Customer may be entitled to receive a grant, rebate or other benefit from the Commonwealth or State government or create environmental rights (including, renewable energy certificates) as a result of the Supply or Installation of the New Energy Tech. The Contractor does not warrant that the Customer will necessarily receive that grant, rebate, other benefit or be entitled to create the environmental rights.

13.2 Impact on Contract Price

- (a) If the Agreement incorporates a cash reduction off the Contract Price on the basis that the Contractor will receive payment of the grant, rebate or other benefit, the Customer authorises the Contractor to apply for that grant, rebate or other benefit in the Customer's name and to receive payment of that grant, rebate or benefit on the Customer's behalf. The Customer agrees to sign whatever documents the Contractor may reasonably require, and to take whatever other action the Contractor may reasonably require, in order to obtain payment of that grant, rebate or other benefit.
- (b) If the Contractor does not receive the payment of that grant, rebate or benefit incorporated in the Contract Price (excluding the assignment of any environmental rights), for any reason whatsoever, the Contractor may adjust Contract Price to incorporate an amount that equals the cash reduction previously applied within **[21 days]** of the Contractor notifying the Customer of the additional amount being payable.
- (c) The Customer acknowledges that, in certain circumstances, the Commonwealth or State government may require it to repay the grant, rebate or other benefit. The Contractor will have no responsibility to the Customer in the event that the Customer is required to repay the grant, rebate or other benefit.

13.3 Assignment of government rebates and environmental rights

If the Contract Price incorporates a cash reduction on the basis that the Customer assigns any environmental rights the Customer is eligible to create to the Contractor (or another person as directed by the Contractor), the reduction in the Contract Price is conditional on the Customer assigning its rights to create environmental rights as the Contractor directs.

14 NEW ENERGY TECH CONSUMER CODE

The Contractor must:

- (a) comply with the Code (including in respect of any customer service standards imposed within); and
- (b) ensure that its employees, subcontractors, contractors, agents and representatives comply with the Code, and will be responsible for any of these parties' non-compliance with the Code.

15 GST

All prices stated are inclusive of all taxes but exclusive GST.

16 INTELLECTUAL PROPERTY

- (a) Any material (including any intellectual property rights in that material) owned by the Customer or the Contractor at the Commencement Date will continue to be owned by the Customer or the Contractor respectively.
- (b) The Customer grants the Contractor a non-exclusive, royalty-free, revocable, worldwide and perpetual licence including the right to sublicense the licence to the Contractor's subcontractors to use the Customer's intellectual property rights referred to in clause 16(a) above for the sole purpose of performing the Work.
- (c) If any material is developed or created during the performance of the Agreement, the Contractor will own all rights in that material, including intellectual property rights. The Customer agrees that all intellectual property rights developed for the purpose of the Work vests in the Contractor and the Customer will assign all rights in that material to the Contractor on creation and do anything further required by the Contractor to give effect to such assignment.

17 COMPLAINT HANDLING

17.1 Making a complaint

If the Customer has a complaint relating to the New Energy Tech or the Work, the Customer can make a direct complaint to the Contractor by contacting the Contractor in writing or by telephone via the contact details specified in the Quote, and the following process will apply:

- (a) the Contractor will acknowledge receipt of the Customer's complaint as soon as possible and notify the Customer as to when the Contractor reasonably anticipates it will be able to respond to the Customer's complaint;
- (b) the Contractor will log the Customer's complaint in a complaint register and promptly begin investigating the issues;
- (c) within 15 Business Days of receiving the Customer's complaint, the Contractor will:
 - (i) provide the Customer with a response to the Customer's complaint; or
 - (ii) if the Contractor cannot resolve the Customer's complaint in accordance with clause 17.1(c)(i), keep the Customer notified as to the Contractor's progress in resolving the Customer's complaint;
- (d) within 25 Business Days of receiving the Customer's complaint, the Contractor will provide the Customer with a final response to the Customer's complaint unless the parties otherwise agree to a further extension.

17.2 If the Customer is still not satisfied

If the Customer is not satisfied with the Contractor's response to the complaint, the Customer is entitled:

- (a) to access an external dispute resolution scheme;
- (b) escalate the complaint to the Administrator; and
- (c) escalate the complaint to the relevant Fair Trading Body or State Consumer Affairs office.

In order for the Customer to access external escalation avenues, the Contractor must take reasonable steps to

draw this information to the Customer's attention and provide them with the relevant contact details.

18 INFORMATION, PRIVACY AND MARKETING

18.1 Use of information

- (a) The Contractor may collect, use, hold and disclose the Customer's information, including Personal Information, in accordance with the *Privacy Act 1988* (Cth) for the purposes of the Agreement and for the purpose of the Contractor marketing its products and services to the Customer that relate to the New Energy Tech.
- (b) The Contractor may disclose this information to:
 - (i) its agents and contractors (such as subcontractors, Approved Financier, mail houses, data processors and debt collectors);
 - (ii) relevant government authorities;
 - (iii) the Customer's Energy Supplier; and
 - (iv) other Energy Suppliers,for these purposes and more broadly in connection with the Agreement.
- (c) The Contractor may disclose this information to its related bodies corporate for any reason.

19 FORCE MAJEURE EVENT

- (a) If a Force Majeure Event prevents the Contractor from performing the Works, the Contractor must notify the Customer of the Force Majeure Event and the anticipated impact on the Contractor's performance of the Works within 10 Business Days of it becoming aware of such Force Majeure Event. The parties' non-financial obligations under this Agreement will be suspended to the extent that the Force Majeure Event or its effects prevents or delays their performance.
- (b) If a Force Majeure Event continues for more than 90 Business Days in the aggregate, either party may terminate this Agreement by written notice to the other without liability for damages of any kind, including for consequential loss.

20 MISCELLANEOUS

20.1 Governing law

The Agreement is governed by the laws of the State or Territory in which the Premises is located (as specified in the Quote) and each Party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

20.2 Unenforceable provision

If a provision or part of a provision in the Agreement is wholly or partly invalid or unenforceable, the provision or part must, to that extent, be treated as deleted from the Agreement. This does not affect the validity or enforceability of the remaining provisions.

20.3 Entire Agreement

The Agreement supersedes all previous agreements in respect of its subject matter and the Agreement embodies the entire agreement between the Parties.

20.4 Variations

Any variation or amendment of the Agreement must be in writing and signed by both Parties.

20.5 Waiver

A Party may only waive a right under the Agreement in writing.

20.6 Execution

- (a) The Agreement may be executed by or on behalf of the Parties affixing electronic signatures to the Agreement.
- (b) If executed by electronic method, an electronic copy of the Agreement duly executed by both parties will be taken to be an original.