

LARGE-USE GAS SUPPLY

Standard Terms and Conditions for Gas Supply

NON-STANDARD
CONTRACT



Perth Energy

STANDARD TERMS AND CONDITIONS FOR GAS SUPPLY

NON-STANDARD CONTRACT

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PARTIES

This Agreement is made between:

Perth Energy Pty Ltd (ABN 39 087 386 445) of Level 24, 221 St Georges Terrace, PERTH WA 6000 (**Perth Energy**);

and

The Buyer identified in the Commercial Terms (**Buyer**).

INTRODUCTION

- A. Perth Energy is a gas supplier in Western Australia.
- B. The Buyer wants to purchase gas.
- C. This Agreement sets out the agreement for the supply of gas by Perth Energy to the Buyer.

TERMS AND CONDITIONS

1. Interpretation and Definitions

1.1 Definitions

In this Agreement, unless inconsistent with the context:

Adjustment Date is defined in clause 6.

Affected Obligation is defined in clause 14.1(a).

Affected Party is defined in the definition of Force Majeure.

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

Agreed Annual Quantity means the quantity, expressed in GJ as set out in the Commercial Terms.

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

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

ATCO Tariff means the ATCO Gas Australia Pty Ltd reference tariff forming part of the Network Charges in relation to a Meter at the Delivery Point, as published by the Economic Regulation Authority of Western Australia from time to time.

Australian Consumer Law means schedule 2 to the *Competition and Consumer Act 2010* (Cth) as in force as a law of the Commonwealth under that Act, and as in force as a law of Western Australia under the *Fair Trading Act 2010* (WA).

Billing Period means, for the Site, the period within the Supply Period for which Contract Charges for the Site are invoiced by Perth Energy to the Buyer as specified in the Commercial Terms. If no Billing Period is specified in the Commercial Terms then the Billing Period shall be each consecutive period of one calendar month commencing on and from the end of the first Billing Period where the first Billing Period shall be from the Contract Start Date to the end of the calendar month of the Contract Start Date.

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

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

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

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

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

Change in Law is defined in clause 10.

Change in Law Notice is defined in clause 10.2.

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

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

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

Code means the latest version of the Gas Marketing Code as published by the Economic Regulation Authority of Western Australia from time to time.

Commercial Terms means the terms of the document executed by the Parties entitled "Perth Energy Gas Supply Agreement Application and Commercial Terms".

Compendium means the latest version of the Compendium of Gas Customer Licence Obligations published by the Economic Regulation Authority of Western Australia from time to time.

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

Contract Charges means the charges payable under clause 5 and any other charges determined as payable under this Agreement.

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

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

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

Control means:

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

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

Controller means, in relation to a Change of Control of the Buyer, the person or body corporate to whom Control will pass or has passed in the case of a Change of Control that has already occurred (as the case requires).

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

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

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

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

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

Day means a period of 24 consecutive hours beginning 8.00am Western Standard Time.

Delivery Point means the point at the Site at which gas will be supplied by Perth Energy to the Buyer under this Agreement, as specified in the Commercial Terms.

Direct Liability means all Liability other than any Indirect Liability.

Dispute Notice is defined in clause 15.2(a).

Energy Data means a measurement of gas taken at the Delivery Point over a period of time, and includes Estimated Data or Substituted Data.

Estimated Data means Energy Data which has been estimated by the Network Operator in accordance with the relevant Regulations.

Excess Gas Charge means the amount determined in accordance with clause 5.8(b).

Excess Gas Price means the price applied to the Excess Gas Quantity as specified in the Commercial Terms.

Excess Gas Quantity means the Gas Consumption in excess of the Maximum Annual Quantity in a Contract Year.

Facilities and Equipment means, in relation to the Delivery Point, the apparatus, equipment, plant and buildings used for or in relation to any of the storing, consuming and transporting of gas at the Delivery Point.

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

Financial Default means the failure of the Buyer to:

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

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

Gas Charge is the charge payable by the Buyer as calculated in accordance with clause 5.2.

Gas Consumption means the amount of energy supplied at the Site, as determined by the volume of gas supplied, measured by the Network Operator's Metering Equipment at the Site, adjusted by a Heating Value. The Gas Consumption is calculated by the Network Operator and provided to Perth Energy in the form of Units.

Gas Customer Safety Awareness Programme means that programme, available on request from Perth Energy, and as submitted by Perth Energy as required by section 10.5A of the Compendium and as may be updated by Perth Energy from time to time.

Gas Price means the price payable by the Buyer to Perth Energy per GJ of Gas Consumption as specified in the Commercial Terms.

GJ means gigajoule of gas.

GJ/Day means gigajoule of gas per day.

Heating Value means the amount of energy in a given volume of gas as determined by the Network Operator from time to time.

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

Indirect Liability means any liabilities, losses, Costs or expenses (whether arising in contract, tort (including negligence) or equity) suffered by a Party that cannot reasonably be considered to arise naturally from a breach of this Agreement or event or events giving rise to the losses and including, whether or not foreseeable, loss of (or loss of anticipated) use, production, revenue, income, profits, goodwill, contract, business and savings or business interruption.

Late Payment Administration Charge is defined in clause 9.4.

Law means the laws in force in Western Australia from time to time including any Legislation and any Western Australian or Commonwealth statute, regulation (including the Regulations), ordinance, code, licence, rule, permit, registration, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment, determination or order and includes the common law and equity.

Legislation means any "written law", as that term is defined in the *Interpretation Act 1984* (WA), having application to the matters contemplated by this Agreement.

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

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

Maximum Annual Quantity means the maximum amount of gas that may be taken by the Buyer at the Delivery Point in a Contract Year, as specified in the Commercial Terms.

MDQ means the maximum daily quantity, expressed in GJ as specified in the Commercial Terms, that the Buyer is permitted to take at the Delivery Point in accordance with clause 3.4.

Meter means, for the Site, the gas meter, as defined by the Compendium, operated and maintained by the Network Operator to measure the gas transferred at the Delivery Point for the Site.

Metering Data means the data specific to the Delivery Point and associated Meter(s) held by the Network Operator.

Metering Equipment means the Meter and associated equipment used to measure and record gas transferred from the Network at the Delivery Point.

Minimum Annual Quantity means the quantity, expressed in GJ, that the Buyer is obligated to purchase from Perth Energy at the Delivery Point in a Contract Year, as specified in the Commercial Terms.

MIRN means the meter installation registration number for a Meter at the Delivery Point as specified in the Commercial Terms.

Network means the gas distribution system used to distribute gas (as described in section 3 of the *Energy Coordination Act 1994 (WA)*) to the Delivery Point.

Network Access Arrangements means all arrangements to access the Network pursuant to the *National Gas Access (Western Australia) Act 2009 (WA)* including any access arrangements awaiting approval by the Economic Regulatory Authority of Western Australia and any agreements between Perth Energy and the Network Operator.

Network Charges means the charges payable by Perth Energy to the Network Operator from time to time for gas transmission, distribution and access services and which are payable by the Buyer to Perth Energy either as:

- (a) Bundled within the Gas Price; or
- (b) unbundled as a pass through cost in accordance with clause 5.3(a), as specified in the Commercial Terms.

Network Operator means the person who owns and / or operates the Network and includes the Network Operator's authorised agents and servants.

Network Outage means any partial or total interruption, disturbance or fluctuation in the supply or quality of gas to the Delivery Point as a result of any Network event, including any significant plant or equipment failure or leakage.

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

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

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

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

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

and either as:

- (c) Bundled within the Gas Price; or
- (d) unbundled as a pass through cost in accordance with clause 5.3(b),

as specified in the Commercial Terms.

Parties means Perth Energy and the Buyer.

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

Perth Energy means Perth Energy Pty Ltd (ABN 39 087 386 445).

PPSA means:

- (a) the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under that Act, including the *Personal Property Securities Regulations 2010* (Cth); and

(b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a) of this definition.

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

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

Regulations means the prevailing Legislation governing the distribution, supply and sale of gas in the gas industry in and the gas market of Western Australia.

Regulatory Charge means the Network Charges and Other Regulatory Charges.

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

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

Shortfall Gas Charge means the amount determined by multiplying the Shortfall Gas Price by the Shortfall Gas Quantity.

Shortfall Gas Price means the price to be applied to the Shortfall Gas Quantity as specified in the Commercial Terms.

Shortfall Gas Quantity means, where the actual Gas Consumption for that Contract Year is less than the Minimum Annual Quantity, the difference between the actual Gas Consumption in a Contract Year and the Minimum Annual Quantity.

Site means the premises at which gas is to be supplied by Perth Energy under this Agreement at the Delivery Point and is identified by the MIRN, as described in the Commercial Terms.

Small Use Customer has the meaning of "customer" as defined in Code and the Compendium.

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

Standard Terms and Conditions means these "Standard Terms and Conditions for Gas Supply – Non-Standard Contract" terms and conditions.

Substituted Data means Energy Data which has been substituted by the Network Operator in accordance with the relevant Regulations.

Supplier Works has the meaning given to it in clause 23.14(a).

Supply Period has the meaning given in clause 3.3(a).

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

Tax Invoice means an invoice issued under clause 9.1 or clause 19.7(b)(i), as the case requires.

Unit means one (1) gigajoule of energy contained in gas.

Variance means, in relation to MDQ, an amount of Gas Consumption which is lower than 10% less than the amount as specified for MDQ in the Commercial Terms or which is greater than 10% more than the amount as specified for MDQ in the Commercial Terms (as the case requires).

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

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

1.2 Interpretation

In this Agreement, unless inconsistent with the context:

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

- (k) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (l) general words are not to be given a restrictive interpretation by reason of them being preceded or followed by words indicating a particular class of acts, matters or things;
- (m) **“under”** includes by, by virtue of, pursuant to, and in accordance with;
- (n) **“maintain”** includes repair, renew and replace;
- (o) the phrase **“in relation to”** or **“in respect of”** has the widest possible import and encompasses the phrases “in connection with”, “in respect of”, “arising out of”, “caused by” and “resulting from”;
- (p) a reference to a right includes a benefit, remedy, discretion or power;
- (q) a reference to a monetary amount means that amount in Australian currency;
- (r) if a period of time is specified and commences from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (s) if a day stipulated for payment is not a Business Day, the payment must be made on the next Business Day;

- (t) a reference to “writing” or “written” includes any electronic transmission or communication by facsimile;
- (u) whenever the approval, consent, certification, notification or agreement of any person is required, it must be in writing or be given or obtained by electronic communication in accordance with the *Electronic Transactions Act 2011* (WA) and obtained before implementing the action to which it relates; and
- (v) nothing in this Agreement is to be interpreted against a Party solely because that Party put forward, or seeks to rely on, this Agreement or any part of it.

1.3 New References

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

- (a) the Parties will adopt a new Reference, or will amend as appropriate the basis on which they apply the existing Reference;

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

2. Term of this Agreement and termination of prior agreements

2.1 Term

This Agreement commences on the date that Perth Energy accepts the offer made by the Buyer (as evidenced by the Perth Energy's execution of the Commercial Terms), and ends at 8.00am on the Contract End Date, unless it ends earlier under the terms of this Agreement.

2.2 Termination of Prior Agreements

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

3. Gas Supply

3.1 Sale and Purchase

From 08:00 hours on the commencement of the Supply Period, the Buyer will buy and Perth Energy will supply to the Buyer, gas at the Delivery Point on the terms set out in this Agreement.

3.2 Title to Gas

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

3.3 Supply Period

- (a) Subject to clause 3.3(b), the Supply Period for the Site commences on the later of:
 - (i) the Contract Start Date; and
 - (ii) 8.00am following the last to occur of:
 - A. the date that gas is available at the Meter;

- B. the date the Meter for the site is replaced or reconfigured (if this is necessary because of any Regulation or is required by the Network Operator or the Buyer);
- C. for a premises which has not previously been supplied with gas, the date a Meter for the Site is installed and gas is able to be supplied at the Delivery Point; and
- D. the date any transfer request transferring the Site from another gas retailer to Perth Energy becomes effective,

and the Supply Period ends at the same time as this Agreement ends, in accordance with clause 2.1.

- (b) Perth Energy may, with no less than 10 Business Day's written notice to the Buyer, terminate this Agreement if:
 - (i) no gas is made available at the Meter for the Site within 10 Business Days following the Contract Start Date;
 - (ii) where the Meter for the Site is to be replaced or reconfigured, for any reason described in clause 3.3(a)(ii)B, or installed in order to allow Perth Energy to supply any gas to the Buyer at the Site and this has for any reason not occurred within 10 Business Days following the Contract Start Date; or
 - (iii) a transfer request transferring the Site from another gas retailer to Perth Energy does not become effective within 10 Business Days following the Contract Start Date.

3.4 Gas Consumption

- (a) Perth Energy is not obliged to make available:
 - (i) on any Day, a quantity of gas in excess of the MDQ; and
 - (ii) during any Contract Year, a quantity of Gas in excess of the Maximum Annual Quantity.
- (b) The Buyer must use best endeavours to ensure that the rate at which gas is taken from the Network does not exceed:
 - (i) on any Day, a quantity of gas in excess of the MDQ; and
 - (ii) during any Contract Year, a quantity of Gas in excess of the Maximum Annual Quantity.
- (c) The Buyer agrees that the Gas Charge in this Agreement may be / has been based on the:
 - (i) historical Gas Consumption (including the timing of that Gas Consumption); and
 - (ii) representations (including any representations made by or on behalf of the Buyer) concerning the future Gas Consumption (including the timing of that Gas Consumption), at the Site.

- (d) If at any time Perth Energy reasonably forms the view that there is, has been or may in future be, any Variance in the MDQ at the Site, Perth Energy may by notice to the Buyer increase the Contract Charges to preserve the commercial effect of this Agreement.
- (e) The Buyer must notify Perth Energy in writing as soon as practicable if it anticipates or becomes aware of any, or any likely future change in its Gas Consumption which might become a Variance in the MDQ at the Site.

3.5 Section not applicable

3.6 Section not applicable

4. The Network and the Network Operator

4.1 Responsibility for Delivery of Gas

- (a) The Network Operator, not Perth Energy, operates, maintains and controls the Network and the Delivery Point.
- (b) The gas supplied under this Agreement is transported to the Delivery Point by the Network Operator, under the Network Access Arrangements.
- (c) The gas delivered to the Buyer by Perth Energy will generally have the same quality and specification as other gas within the Network. The Buyer acknowledges that the gas in the Network has been supplied by other parties and Perth Energy has no control over the quality, temperature or pressure of the gas in the Network.
- (d) The quality, temperature and pressure at which gas is delivered to the Delivery Point, and the continuity of its delivery, is within the control of the Network Operator and is not within the control of Perth Energy.
- (e) The Buyer acknowledges and agrees that:
 - (i) the Network Operator may from time to time interrupt or limit the supply of gas at the Delivery Point;
 - (ii) Perth Energy, acting reasonably, may interrupt or limit the supply of gas to the Buyer at the Delivery Point for any operational, maintenance or safety reason or for any interruption of the supply of gas under the Network Access Arrangement; and
 - (iii) where this Agreement states that Perth Energy must or may do something, the Network Operator may do it either under the terms of the Network Access Arrangements or at Perth Energy's request.
- (f) To the maximum extent permitted by law, but subject to clause 13.11, Perth Energy gives no warranty that the gas supplied under this Agreement will be of any particular quality, supplied at any particular rate, temperature or pressure, or be free of interruptions. Perth Energy gives no warranty regarding the quality of the gas or the suitability of the gas for the Buyer's purposes.

(g) The Buyer acknowledges and agrees that Perth Energy will not be responsible for and, to the extent permitted by law, but subject to clause 13.11, have no liability for any loss or damage that may occur as a result of:

- (i) any defect in the gas supplied to the Buyer;
- (ii) any failure of the gas to comply with any specification or requirement; or
- (iii) any interruption or limit on the supply of gas, including where such interruption or limit occurs because of the exercise of any right or power given under this Agreement.

4.2 Section not applicable

4.3 Section not applicable

4.4 Parties to comply with all Laws

The Parties must comply with all applicable Laws and all directives from the Network Operator made to either Party made under any Law or the Network Access Arrangements.

4.5 Buyer not to cause breach of Network Access Arrangements.

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

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

4.6 The Network Operator's Access to Sites

The Buyer must allow or procure for the Network Operator or its authorised agents and servants reasonable access to the Site:

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

4.7 Non-Interference with Network Equipment

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

4.8 Maintenance of Buyer's Equipment

- (a) The Buyer must ensure that the Buyer's Facilities will be designed and installed to the Network Operator's technical requirements and, to ensure suitability of purpose and continuing safe operation, must properly maintain the Site and the Buyer's Facilities in accordance with:
 - (i) Perth Energy's Gas Customer Safety Awareness Programme;
 - (ii) all applicable Regulations; and
 - (iii) best practice for facilities maintenance.
- (b) The Buyer is responsible for protecting the Buyer's Facilities and all of its other property from damage resulting from the quality, nature and other properties of the gas supplied by Perth Energy.
- (c) The Buyer must notify Perth Energy in advance of any changes to the Buyer's Facilities.
- (d) The Buyer must ensure that, to the extent any other person must do anything in order for the Buyer to comply with clause 4.8(a) to clause 4.8(c) (inclusive), the Buyer will ensure that it procures that assistance to comply with this clause 4.8.

4.9 Network Access Arrangements

- (a) If the Network Access Arrangements, or other arrangements between Perth Energy and the Network Operator ("**New or Amended Arrangement**"), or Regulations change either the Buyer's or Perth Energy's obligations in relation to the use of the Network and that change is, to any extent inconsistent with any term of this Agreement, then the Buyer and Perth Energy agree that Perth Energy may, by written notice to the Buyer, amend this agreement (with effect on and from receipt of the notice, or after that time, in accordance with the terms of the notice), to remove any such inconsistency as soon as possible after Perth Energy becomes aware of the inconsistency. In removing any inconsistency, Perth Energy must use reasonable endeavours to minimise any adverse impact of any New or Amended Arrangement (including by seeking to procure from the Network Operator a reasonable period for the Buyer and Perth Energy to comply with the amendments arising out of the New or Amended Arrangement).
- (b) Any amendments notified under clause 4.9(a) will be binding on Perth Energy and the Buyer.

4.10 Reporting

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

4.11 Indemnities in relation to the Network

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

- (a) any:
 - (i) Liability suffered by the Network Operator; or

- (ii) Liability that the Network Operator incurs to a third party in respect of any Liability suffered by that third party,

to the extent that such Liability results from or is in relation to the negligence or breach of this Agreement by the Buyer, the Buyer's Users or anyone acting under the control or direction of the Buyer; and

- (b) any Liability that the Network Operator may incur to the Buyer or the Buyer's Users in respect of any Liability suffered by the Buyer or the Buyer's Users, in relation to the Network Operator's provision of or failure to provide Network services.

5. Contract Charges

5.1 Buyer must pay the Contract Charges

- (a) Each Billing Period, the Buyer must pay to Perth Energy:
 - (i) the Contract Charge for each Site, being the aggregate of each of the following charges:
 - (b) the Gas Charge;
 - (c) the Network Charge (unless Bundled into the Gas Charge);
 - (d) any Other Regulatory Charges (unless Bundled into the Gas Charge);
 - (i) any Excess Gas Charge for a Contract Year (if applicable);
 - (ii) any Shortfall Gas Charge for a Contract Year (if applicable); and
 - (iii) any other amounts owing to Perth Energy under this Agreement.
 - (e) The Buyer acknowledges and agrees that each Contract Charge and any other amount payable under this Agreement will be that charge as may be adjusted, escalated, added to and otherwise changed or amended as expressly set out in this Agreement.

5.2 Calculation of Gas Charge

The Gas Charge for the Site is equal to:

$$GC = (GP \times G) + (DC \times D \times M)$$

where:

GC = the Gas Charge payable under clause 5.2.

GP = the Gas Price.

G = the Gas Consumption for the Site during the relevant Billing Period.

DC = the Daily Supply Charge.

D = the number of days in the relevant Billing Period.

M = the number of Meters for the Site.

5.3 Calculation of Regulatory Charges (if not Bundled)

- (a) Unless it is Bundled into the Gas Price, the Network Charges for the Site for a Billing Period are the sum of all charges, prices and other amounts payable or otherwise incurred by Perth Energy from time to time under the Network Access Arrangements for gas transmission, distribution and access services in respect of the Site, including charges incurred by Perth Energy under the Network Access Arrangements due to a breach by the Buyer or the Buyer's Users of the Buyer's obligations under this Agreement.
- (b) Unless it is Bundled into the Gas Price, the Other Regulatory Charges for the Site for a Billing Period are the sum of all Costs imposed by any government, or any governmental, semi-governmental or other regulatory or supervisory agency, organisation or body authorised by a Law, which is specific to the energy industry and is imposed on Perth Energy relating to the sourcing, purchase, transmission, delivery, supply or sale of gas under this Agreement, or the acquisition or Cost of goods, services, or materials used in relation to this Agreement, other than the Network Charge:
- (i) including any payments, charges, levies, credits or refunds payable under any Law; but
 - (ii) not including income tax, capital gains tax or fringe benefits tax,

including charges incurred by Perth Energy due to a breach by the Buyer or the Buyer's Users of the Buyer's obligations under this Agreement.

5.4 Section not applicable

5.5 Section not applicable

5.6 Section not applicable

5.7 Section not applicable

5.8 Calculation of Excess Gas Charge and Shortfall Gas Charge

- (a) At the end of the final Billing Period for each Contract Year, Perth Energy will calculate the actual Gas Consumption for the Contract Year.
- (b) If the Commercial Terms specify a Maximum Annual Quantity and the Gas Consumption in that Contract Year exceeds the Maximum Annual Quantity for that Contract Year, then the Buyer will

pay Perth Energy an Excess Gas Charge for that Contract Year, calculated in accordance with the following:

$$EGC = EGP \times (AGC - MxAQ)$$

where:

EGC = the Excess Gas Charge payable for the Contract Year.

EGP = the Excess Gas Price.

AGC = The total quantity of Gas Consumption for the Contract Year

MxAQ = the Maximum Annual Quantity

- (c) If the Commercial Terms specify a Minimum Annual Quantity and the Gas Consumption in that Contract Year is less than the Minimum Annual Quantity for that Contract Year, then the Buyer will pay Perth Energy a Shortfall Gas Charge for that Contract Year in accordance with the following:

$$SGC = SGP \times (MnAQ - AGC)$$

where:

SGC = the Shortfall Gas Charge payable for the Contract Year.

SGP = the Shortfall Gas Price.

AGC = The total quantity of Gas Consumption for the Contract Year

MnAQ = the Minimum Annual Quantity

- (d) If this Agreement terminates before the end of the Supply Period other than under clause 19.2 for Perth Energy's Non Financial Default, Perth Energy will invoice to the Buyer, and the Buyer must pay to Perth Energy, the Shortfall Gas Charge for each Contract Year remaining in the Supply Period (or part thereof).

5.9 Material Adverse Event

- (a) If at any time, there is a Material Adverse Event, then Perth Energy may give the Buyer a notice:
- (i) advising the Buyer that there has been a Material Adverse Event including, if requested by the Buyer, reasonable information in relation to:

- A. the Material Adverse Event; and
 - B. the effect of the Material Adverse Event on Perth Energy;
- (ii) proposing an adjustment or adjustments to any one or more of the Contract Charges, which adjustment or adjustments must be no more than is necessary to, by the Contract End Date, put Perth Energy in a position as if its costs of performing its obligations under this Agreement had not been subject to a Material Adverse Event ("**Material Adverse Event Adjustment**"); and
 - (iii) specifying a date (which must be at least one month after the date of the notice given under this clause 5.9(a)) on which the Material Adverse Event Adjustment is to take effect ("**Material Adverse Event Adjustment Date**").
- (b) The Buyer must within 10 Business Days after the date of the notice given under clause 5.9(a) notify Perth Energy whether the Buyer:
 - (i) accepts the Material Adverse Event Adjustment; or
 - (ii) does not accept the Material Adverse Event Adjustment.
 - (c) If the Buyer gives Perth Energy a notice under clause 5.9(b)(i), then the terms of this Agreement will be adjusted in accordance with Material Adverse Event Adjustment and those adjustments will take effect on and from the Material Adverse Event Adjustment Date.
 - (d) If the Buyer gives Perth Energy a notice under clause 5.9(b)(ii), or the Buyer does not respond within the time set out under clause 5.9(b), then Perth Energy may elect to terminate this Agreement and if Perth Energy so elects, then this Agreement will terminate with effect on and from the Material Adverse Event Adjustment Date, and:
 - (i) Perth Energy will have no Liability to the Buyer in connection with the election to terminate (including, to avoid doubt, in connection with the Buyer's Cost of obtaining any supply of gas after termination); and
 - (ii) clause 5.4 and clause 19.4 will not apply in relation to termination under clause 5.9(d).
 - (e) Any Costs used in the calculation of a Material Adverse Event Adjustment must not be recovered under any clause of this Agreement other than this clause 5.9.

6. Price Escalation

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

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

where:

A = the Price payable from and including the relevant Adjustment Date.

B = the Price specified in the Commercial Terms.

CPI_n = the CPI for the quarter ending immediately before the Adjustment Date.

CPI_b = the CPI applying on the Price Review Base Date specified in the Commercial Terms.

7. Change in Regulatory Charges

- (a) The Parties agree that if the Commercial Terms specify that a Regulatory Charge is Bundled into any part of the Contract Charges:
- (i) the Contract Charges have been calculated to reflect the value of the relevant Regulatory Charge at the time Perth Energy provided to the Buyer the pricing proposal upon which the prices in this Agreement are based; and
 - (ii) subject to clause 7(b), no additional amount is payable in respect of the relevant Regulatory Charge.
- (b) If a Regulatory Charge is Bundled into any part of the Contract Charges and at any time there is:
- (i) any increase in the Regulatory Charge; or
 - (ii) any increase in a component by reference to which that Regulatory Charge is calculated,
- when compared with the Regulatory Charge at the time Perth Energy provided to the Buyer the pricing proposal upon which the prices in this Agreement are based (“**Change in Regulatory Charge**”), then Perth Energy may adjust the relevant part of the Contract Charges to pass through to the Buyer, on a full pass-through at Cost basis, the net Cost increase to Perth Energy in respect of the Change in Regulatory Charge, on and from the date that the Change in Regulatory Charge takes effect.
- (c) Subject to clause 7(d), if the Network Charge is Bundled into the Gas Charge as calculated at the time Perth Energy provided to the Buyer the pricing proposal upon which the prices in this Agreement are based and at any time a fixed daily charge component of the Network Charge increases, then Perth Energy may adjust the Daily Supply Charge to pass through to the Buyer, on a full pass-through at Cost basis, the net Cost increase to Perth Energy in respect of the increase in the Network Charge, from the date that the increase in the Network Charge takes effect.
- (d) To the extent an increase in the Network Charge has been taken into account in any adjustment made to the Gas Price under clause 7(b), it must not also be taken into account in calculating any increase to the Daily Supply Charge under clause 7(c).
- (e) Perth Energy will provide the Buyer with reasonable information as to any Change in Regulatory Charge if requested by the Buyer.

8. Section not applicable

9. Invoices and Payment

9.1 Tax Invoice

- (a) Subject to clause 12.3(c), Perth Energy will, within 10 Business Days after the end of a Billing Period, issue to the Buyer a Tax Invoice for the Site for the Billing Period.
- (b) If the Buyer and Perth Energy have entered into any other gas supply agreement in relation to any other premises, Perth Energy may issue one Tax Invoice for gas delivered at any one or more premises. If Perth Energy exercises its rights under this clause 9.1(b), the Parties acknowledge and agree that the issue of any Tax Invoice so far as it relates to any one premises, will be governed by the agreement between the Parties in relation to that premises

9.2 Content

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

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

9.3 Payment

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

9.4 Late Payment

If the Buyer does not comply with clause 9.3, Perth Energy may, subject to any Law, charge the Buyer a fee for the extra service provided by Perth Energy of administering the late payment, the fee being equal to the greater

of \$50 and 2.5% of the amount of the total of the Tax Invoice that is still outstanding (“**Late Payment Administration Charge**”).

9.5 Interest

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

9.6 Adjustments for Error

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

9.7 Other Adjustments

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

9.8 Final Invoice

If:

- (a) the Network Operator provides Energy Data for the Delivery Point within 12 months after the end date of the Supply Period; and
- (b) the Energy Data differs from any data used in preparing any Tax Invoice during the Supply Period,

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

9.9 Disputed Invoices

Any dispute regarding a Tax Invoice:

- (a) will not suspend or otherwise modify or affect the Buyer’s obligation to pay the Tax Invoice in full on the Payment Due Date; and
- (b) must be referred for resolution by negotiation in accordance with clause 15, and if the dispute cannot be resolved by negotiation, then notwithstanding clause 15.2(c)(i), either Party may commence litigation in relation to the dispute.

9.10 Application to Contract Charges

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

10. Change in Law

10.1 Change Events

(a) For the purpose of this clause 10, Law:

(i) includes any and all Law which, directly or indirectly, in whole or in part:

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

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

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

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

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

10.2 Perth Energy's Notice

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

10.3 Parties to Cooperate

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

10.4 Disputes of Change in Law

Any dispute regarding a Change in Law:

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

11. GST

11.1 Definitions

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

11.2 Consideration is GST Exclusive

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

11.3 GST payable on Taxable Supply

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

12. Meter Readings

12.1 Metering Equipment

The amounts of gas supplied by Perth Energy to the Site are measured by the Metering Equipment situated at the Site.

12.2 Metering Data

- (a) The Buyer acknowledges that Perth Energy calculates the Contract Charges (including the Regulatory Charges) using the Metering Data.
- (b) The Buyer consents to Perth Energy requesting the Network Operator to release and the Network Operator releasing the Metering Data to Perth Energy.
- (c) Where the release of the Metering Data requires consent of any Buyer’s Users, then the Buyer must obtain such consent and provide it to Perth Energy in sufficient time as to allow both Parties to comply with their obligations under this Agreement.

12.3 Estimated or Substituted Data

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

that Billing Period for a further 5 Business Days or until such time as Perth Energy receives the Metering Data.

12.4 Metering Errors and Verification

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

12.5 Maintenance of Metering Equipment

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

12.6 Cost of Meter and Meter Upgrades

The Party specified in the Commercial Terms must pay for the installing, operating, upgrading, reconfiguring and maintaining of any Metering Equipment charged by the Network Operator. If no Party is specified, then the Buyer must pay for any installing, operating, upgrading, reconfiguring and maintaining of the Metering Equipment charged by the Network Operator (and whether or not charged to the Buyer).

13. Liability and Indemnities

THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 No Several Liability

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

13.2 Liability for Direct Liability

- (a) Subject to clause 13.2(b), a Party who:

- (i) is negligent; or
- (ii) breaches this Agreement,

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

- (b) A Party will not be liable under clause 13.2(a) to the extent:
 - (i) the Party is expressed under this Agreement to not be liable for that Liability; or
 - (ii) another Party is expressed under this Agreement to be liable for that Liability.

13.3 Buyer's Indemnities

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

- (a) the negligence or breach of this Agreement by the Buyer, the Buyer's Users or anyone acting under the control or direction of the Buyer;
- (b) any expectation or reliance on the part of the third party (including by way of any agreement between the Buyer and any third party) as to the continuity, reliability, specification or quality of the supply of gas to the Buyer by Perth Energy; or
- (c) the entry by the Buyer to this Agreement.

13.4 Exclusion of Indirect Liability

Subject to clause 13.4(a) and clause 13.4(b), to the maximum extent permitted by Law, except where a Party is expressed to be liable for Liability in all its respects in relation to any cause, circumstance or condition arising (denoted in this Agreement by a reference to "all Liability" or "any Liability" or similar phrases) under this Agreement, a Party has no Liability to the other Party for any Indirect Liability.

- (a) A Party who would otherwise have the benefit of the exclusion of Liability for Indirect Liability under this Agreement, will not have the benefit of that exclusion where the Liability results from that Party's fraud or wilful default of the terms of this Agreement.
- (b) The Parties acknowledge and agree that:
 - (i) the shortfall charges payable under clause 5.8(c), and the liquidated damages payable under clause 19.5 are deemed to be Direct Liability and are deemed not to be Indirect Liability; and
 - (ii) the indemnities under clause 4.11, clause 13.3 and clause 23.7 do not have the benefit of any exclusion of Indirect Liability of a Party under this Agreement.

13.5 Apportionment of Liability

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

13.6 Mitigation of Loss

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

13.7 Limitation of Liability

To the extent permitted by Law, Perth Energy's Liability to the Buyer in relation to the non-supply of gas under this Agreement is limited, at Perth Energy's election, to either:

- (a) the re-supply of an amount of gas equivalent to that which has not been supplied in accordance with this Agreement; or
- (b) instead of the re-supply of the gas which has not been supplied in accordance with this Agreement, a payment for the difference between the cost of the replacement gas procured by the Buyer and the cost of the gas at the rates and prices applicable in this Agreement.

13.8 Express Waiver

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

- (a) section not applicable;
- (b) the operation of the Network or any part of the Network, or the Network Operator's provision of services it provides in relation to the Network, the transport of gas through the Network, the Metering Equipment or the Delivery Point; and
- (c) any Liability of the Buyer or the Buyer's Users to any third party except to the extent that such Liability is in relation to Perth Energy's fraud or wilful default.

13.9 Legitimate interests

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

13.10 Exclusion of warranties

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

13.11 Consumer Guarantees

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

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

14. Force Majeure

14.1 Consequences of Force Majeure

- (a) Subject to this clause 14, to the extent that, and for as long as, Force Majeure prevents, delays or hinders the Affected Party in performing an obligation ("**Affected Obligation**") under this Agreement:
 - (i) the Affected Obligation is suspended; and
 - (ii) the Affected Party is not liable for its failure to perform the Affected Obligation.
- (b) For the purpose of this clause 14, Perth Energy is deemed to be prevented or delayed in the performance of its obligations under this Agreement by Force Majeure if any of the following occur:
 - (i) a Network Outage;
 - (ii) a regulated gas pipeline outage, where a regulated gas pipeline is that defined by the Economic Regulatory Authority of Western Australia and that outage affects Perth Energy's ability to supply gas; or
 - (iii) a failure by any third party supplier in its obligations to supply gas to Perth Energy for any reason (except to the extent the failure is caused by Perth Energy's breach of any relevant obligation to the third party).
- (c) If the Buyer is the Affected Party then Perth Energy's obligations to supply gas under this Agreement are suspended to the extent and for the duration of the Force Majeure.

- (d) If an Affected Obligation is suspended under clause 14.1(a)(i) for more than 3 months, either Party may terminate this Agreement by written notice to the other Party.

14.2 Notification Obligations

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

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

14.3 Reasonable Endeavours

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

14.4 Obligation to Pay Money

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

- (ii) unless one or more Regulatory Charges are Bundled into any part of the Contract Charges, the Buyer must continue to pay all applicable Regulatory Charges that Perth Energy continues to pay during the Force Majeure Event without deduction; and
- (iii) if one or more of the Regulatory Charges are Bundled into any part of the Contract Charges and Perth Energy continues to pay any such Regulatory Charges during the Force Majeure Event, the Buyer must pay to Perth Energy the total amount of such Regulatory Charges as reasonably determined by Perth Energy on a full pass-through at Cost basis.

15. Dispute Resolution

15.1 Parties to Continue to Perform their Obligations

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

15.2 Disputes Within the Scope of this Agreement

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

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

15.3 Matters Outside Scope of this Agreement

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

15.4 Parties Agree to be Bound

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

16. Expert Determination

16.1 Appointment of Expert

- (a) Where a dispute under this Agreement is referred for expert determination, the Parties must seek in good faith to agree on an appropriately qualified person to be appointed as the expert within 5 Business Days of the dispute being referred for expert determination.
- (b) The expert:
 - (i) must have no interest or duty which conflicts, or which may conflict, with his or her function as the expert; and
 - (ii) must not be a former or current employee or representative of any Party.
- (c) If:
 - (i) the Parties fail to agree on a person to be appointed as the expert within the time specified in this clause 16.1(a); or
 - (ii) the person on which the Parties have agreed:
- (d) is unavailable;
- (e) declines to act;
- (f) does not respond within 5 Business Days to a request by one or both Parties to act as the expert; or
- (g) does not make a determination within the time required under any agreement with the Parties,
either Party may apply to the President (for the time being) of the Institute of Arbitrators & Mediators Australia, or his or her nominee, to appoint an appropriate expert.
- (h) Unless the expert determines otherwise, the expert's costs must be shared equally between the Parties.

16.2 Agreement

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

- (a) the expert:
 - (i) must act as an expert and not as an arbitrator;
 - (ii) will not be bound by the rules of evidence;
 - (iii) subject to observing procedural fairness, will have the power to inform himself or herself independently as to the facts to which the dispute relates and to take such measures as he or she thinks fit to expedite the determination of the dispute;
 - (iv) will be entitled to refer aspects of the dispute to a third person for the purpose of taking advice on a specific matter relating to the dispute and must ensure that any third party,

agent or consultant of the expert is subject to the same obligations of confidentiality as set out in clause 16.3;

- (v) must make his or her determination without delay and in any event within 28 days of being appointed as an expert unless the Parties otherwise agree in writing;
 - (vi) must disclose fully to the Parties, before entering into the expert determination agreement, any interest or duty which may conflict with his or her position; and
 - (vii) must not communicate with one Party without the knowledge of the other; and
- (b) each Party:
- (i) may be legally represented at any hearing before the expert;
 - (ii) may produce to the expert any materials or evidence which that Party believes is relevant to the dispute;
 - (iii) subject to any privileges under Law, must make available to the expert all materials requested by him or her and all other materials which are relevant to his or her determination; and
 - (iv) agrees to be bound and abide by any resolution of a dispute achieved in accordance with this clause 16.

16.3 Confidentiality

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

16.4 Determination

The determination of the expert will:

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

16.5 Unresolved Dispute

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

17. Assignment & novation

17.1 Assignment and novation

- (a) The Buyer must not assign its rights, novate its obligations or otherwise transfer any interest under this Agreement (an "**Assignment**") to any other person (an "**Assignee**") without the prior written approval of Perth Energy, which approval will not be unreasonably withheld or delayed.
- (b) It will not be unreasonable for Perth Energy to withhold its approval for an Assignment:
 - (i) if Perth Energy:

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

18. Change of Control

18.1 Prohibition

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

18.2 Notice

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

18.3 Further Information

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

18.4 Response

Perth Energy will, within a reasonable period, provided it considers it has received sufficient information under clause 18.3, inform the Buyer whether Perth Energy consents to the proposed or actual Change of Control of the Buyer (as the case requires).

18.5 Factors to consider

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

- (a) the Controller is not solvent or reputable;
- (b) the Change of Control is to take effect or takes effect prior to the end of the first Contract Year;
- (c) the Controller has an interest which conflicts in a material way with the interests of Perth Energy or the Controller is involved in a business or activity which is incompatible or inappropriate in relation to the subject matter of this Agreement;
- (d) the Controller does not have a sufficient level of financial, managerial and technical capacity to perform the terms of this Agreement than that of the person or entity it is replacing or from whom it is taking Control; or
- (e) the Change of Control causes or would cause (as the case requires) a Material Adverse Event affecting Perth Energy.

19. Default and Termination

19.1 Financial Default

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

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

19.2 Non Financial Default

- (a) Without prejudice to any other right or remedy of the non-defaulting Party under this Agreement or at Law, if a Party commits a Non Financial Default, the non-defaulting Party may:
- (i) send a written notice to the defaulting Party requesting the defaulting Party to remedy the Non Financial Default within 10 Business Days of the date of the notice; and
 - (ii) if the defaulting Party fails to remedy the Non Financial Default within the period noted in clause 19.2(a)(i) or any lesser period if the Non Financial Default is incapable of remedy, by written notice to the defaulting Party either:
 - A. immediately terminate this Agreement; or
 - B. suspend this Agreement, in which case the non-defaulting Party is not obliged to perform its obligations under this Agreement and may take any action to stop the defaulting Party exercising any right under this Agreement (including, if the Buyer is the defaulting Party, Perth Energy may take the same actions set out at clause 19.1(b)(ii) and clause 19.1(b)(iii)), until the defaulting Party has remedied the Non

Financial Default.

- (b) If the Buyer is the defaulting Party, during any suspension period under clause 19.2(a)(ii)B the Buyer must continue to pay the Contract Charges and any other amount payable under this Agreement, provided that the Contract Charges for the suspension period will be calculated on the basis of:
 - (i) the actual Gas Consumption; or
 - (ii) if that is not available, the Gas Consumption for the same period in the previous year; or
 - (iii) if that is also not available, the average Gas Consumption of the Buyer based on an aggregate of the Energy Data for the number of days or months prior to the suspension period, as applicable;

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

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

19.3 Termination on Insolvency

If:

- (a) a Party goes into liquidation, passes a winding-up resolution, or receives or applies for a deregistration notice under the Corporations Act;
- (b) a petition or other process for winding-up or dissolution is presented or threatened against a Party or circumstances exist which would give rise to such a petition, demand or other similar process;
- (c) a writ of execution is issued against a Party or any property of a Party or there are circumstances which justify such a writ;
- (d) an administrator, receiver, receiver and manager, administrative receiver or controller (as defined in the Corporations Act) or similar officer is appointed or is threatened or expected to be appointed to any part of the undertaking or assets of a Party, or circumstances exist which would justify such an appointment;
- (e) a Party is unable to pay its debts as and when they become due and payable, is taken under the Corporations Act to be unable to pay its debts, stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts, or circumstances exist which would require a court to presume that a Party is insolvent under the Corporations Act;

- (f) a Party enters into or takes steps to enter into any arrangements, compromise or assumption with, or assignment for the benefit of, its creditors or a class of them; or
- (g) the Buyer fails to make any payment under this Agreement by the Payment Due Date for three consecutive Billing Periods (but has otherwise made that failed payment at any time before the commencement of the next immediate Billing Period),

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

19.4 Termination if the Buyer becomes a Small Use Customer

- (a) Where the Buyer is a Small Use Customer then the Buyer may terminate this Agreement in accordance with the requirements for a "non-standard contract" as defined in the Compendium and the Code as the case may be.
- (b) Where the Buyer is not a Small Use Customer then the Buyer may only terminate with no less than the Notice Period specified in the Commercial Terms.
- (c) Nothing in this clause 19.4 is intended to alter the rights and obligations of a Party upon termination of this Agreement.

19.5 Liquidated Damages for Early Termination

- (a) This clause 19.5 does not apply where the Commercial Terms specify a Minimum Annual Quantity.
- (b) If this Agreement is terminated:
 - (i) owing to a Financial Default or Non Financial Default of the Buyer; or
 - (ii) by Perth Energy under clause 19.3, then:

in addition to any other amounts payable under this Agreement, the Buyer must pay to Perth Energy an amount of liquidated damages calculated using the following formula:

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

where:

LD	=	the amount of liquidated damages payable under this clause 19.5.
M	=	the number of months from the date of termination to the end of the Supply Period, rounded up to the nearest number of whole months.
CC	=	the amount of the Contract Charges in the most recent

Tax Invoice, whether or not the Contract Charges have been paid at the date of termination.

19.6 Expiry

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

19.7 Consequences of Termination

- (a) The Parties' respective rights and obligations under this Agreement will cease immediately upon its termination, except that:
 - (i) any rights and obligations under any clause expressed in clause 23.11 to survive termination; and
 - (ii) any right or claim, including any right to receive payment, which arises on or before termination of this Agreement,

will survive and continue after any termination.

- (b) If this Agreement is terminated:
 - (i) Perth Energy may arrange for a final Meter reading and for disconnection of the Site from the Network (in which case the Buyer must pay any associated Costs incurred by Perth Energy);
 - (ii) Perth Energy may issue a final Tax Invoice to the Buyer; and
 - (iii) Perth Energy or the Network Operator may remove the Meter and any other equipment located upstream of the Meter that is used for or in relation to the supply of gas to the Buyer under this Agreement for which purpose the Buyer must provide safe and unrestricted access to the Site.

19.8 Cross-Default

Without limiting in any way Perth Energy's rights and remedies, any default by the Buyer under this Agreement shall be deemed to be the same default by the Buyer under all other gas or electricity supply contracts that the Buyer has with Perth Energy and shall entitle Perth Energy to exercise rights and remedies under those contracts.

20. Security

- (a) At Perth Energy's request, the Buyer must, at its own cost:
 - (i) provide and maintain Security up to the amount which Perth Energy estimates will be the Contract Charges payable by the Buyer for the next two (2) Billing Periods; and
 - (ii) enter into such documentation as Perth Energy reasonably requires to record the terms on which the Security is provided and maintained.

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

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

21. Supply after the Contract End Date

- (a) Prior to the end of the Supply Period, Perth Energy may notify the Buyer in writing of:
- (i) the Contract End Date;
 - (ii) any new gas supply agreement that Perth Energy is prepared to offer the Buyer, including new prices, terms and conditions ("**New Offer**"); and
 - (iii) the terms and conditions of any other arrangement on which Perth Energy is prepared to supply gas to the Buyer after the Contract End Date.
- (b) If a New Offer is submitted to and accepted by the Buyer by signing and returning a copy of the New Offer to Perth Energy (and otherwise in accordance with the terms of the New Offer), the terms and conditions of the New Offer will apply in accordance with the terms of the New Offer.
- (c) Unless the Parties agree otherwise, after the Contract End Date Perth Energy may, if requested in writing by the Buyer and at Perth Energy's sole discretion, continue to supply gas to the Buyer. If Perth Energy exercises its discretion to supply gas to the Buyer then Perth Energy will supply and the Buyer agrees that the Buyer will buy gas on the same terms and conditions of this Agreement, except that:
- (i) the Contract End Date will be the date at the end of the Notice Period, unless terminated earlier by Perth Energy under this Agreement, in which case the Contract End Date will be the date for termination under this Agreement;
 - (ii) if a New Offer was submitted to the Buyer but was not accepted before the Contract End Date, the Contract Charges and any other amounts payable under this Agreement after the Contract End Date will be based on those specified in the New Offer;
 - (iii) if no New Offer was submitted to the Buyer, and as consideration for Perth Energy agreeing to continue to supply gas beyond the Contract End Date specified in the Commercial Terms, the Gas Charge will be the "Standard Continuing Gas Tariff" as published on Perth Energy's website from time to time, effective from the first day after the Contract End Date specified in the Commercial Terms, and will increase by a further 30% on each subsequent anniversary of the Contract End Date specified in the Commercial Terms for as long as Perth Energy continues to supply gas to the Buyer under this clause 21; and
- (d) Continued supply of gas under this clause 21 is at Perth Energy's sole discretion, and Perth Energy may terminate the continued gas supply on 30 days' written notice to the Buyer;
- (e) section not applicable; and
- (f) Nothing in this clause 21 operates to extend this Agreement or delay its termination under clause 19.

22. Warranties

The Buyer represents and warrants to Perth Energy that:

- (a) it has full power and authority to enter into and perform its obligations under this Agreement;
- (b) if it is a corporation, it is registered and validly existing under the Corporations Act and has the corporate power to own its assets and to carry on its business as it is now carrying on that business;
- (c) an obligation under this Agreement is legal, valid, binding and enforceable against it;
- (d) it has taken the action necessary to authorise the execution and performance of this Agreement; and
- (e) on each Day on and from the date the Buyer executes the Commercial Terms until the Contract End Date, the Buyer is not a Small Use Customer.

23. Miscellaneous

23.1 Nature of Relationship

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

23.2 Estimates of Anticipated or Actual Loss

- (a) The Parties desire to avoid the difficulties of proof of damages and agree that at the date they entered this Agreement:
 - (i) the Late Payment Administration Charge under clause 9.4;
 - (ii) the interest chargeable under clause 9.5;
 - (iii) the Excess Gas Charge under clause 5.8(b);
 - (iv) the Shortfall Gas Charge under clause 5.8(c);
 - (v) the Shortfall Gas Charge calculated for the remaining Supply Period under clause 5.8(d); and
 - (vi) the liquidated damages for early termination under clause 19.5,

each:

- (vii) represent a reasonable and genuine estimate of the anticipated or actual loss likely to be suffered by Perth Energy in each of the respective circumstances; and
 - (viii) are not out of proportion to any payment that could be made in that context, nor would any such payment be extravagant or unconscionable to any extent.
- (b) To the extent permitted by Law, the Buyer relinquishes any right it may have at Law to make any Claim, before any person or body (including any Court, or under either of clause 15 or clause 16) which could have the effect of making this clause unenforceable or void to any extent.

23.3 Legal Costs and Duty

- (a) Each Party must pay its own legal costs in relation to the preparation and negotiation of this Agreement.

- (b) The Buyer is responsible for all duty payable in relation to this Agreement.

23.4 Trusts

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

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

23.5 Notices

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

23.6 Governing Law & Jurisdiction

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

23.7 Confidential Information

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

23.8 Entire Agreement

- (a) Subject to clause 23.8(b):
 - (i) this Agreement constitutes the entire agreement between the Parties and, subject to clause 2.2, supersedes all previous agreements, arrangements, representations or understandings in relation to its subject matter; and
 - (ii) any tender documentation issued by Perth Energy as part of a tender process is superseded by the terms of this Agreement.
- (b) Any pricing proposal upon which the prices in this Agreement are based, given by Perth Energy to the Buyer, will not be affected by the operation of clause 23.8(a).

23.9 Amendment

Any amendments to this Agreement must be in writing and executed by both Parties.

23.10 Severance

If a provision of this Agreement is void, invalid, illegal or unenforceable, then that provision is severed from this Agreement, but only to the extent of the invalidity, illegality or unenforceability and the remaining part of that provision and each other provision of this Agreement remains in full force and effect.

The Parties shall in this event seek to agree, in good faith, upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void, invalid, illegal or unenforceable.

23.11 Clauses that Survive Termination of this Agreement

Each clause and any other provision of this Agreement which is intended to survive the termination or expiration of this Agreement will remain in force after the termination of this Agreement including the following clauses:

- (a) clause 1 (Interpretation and Definitions);
- (b) clause 4 (The Network and the Network Operator);
- (c) clause 5 (Contract Charges);
- (d) clause 9 (Invoices and Payments);
- (e) clause 11 (GST);
- (f) clause 13 (Liability and Indemnities);
- (g) clause 15 (Dispute Resolution);
- (h) clause 16 (Expert Determination);
- (i) clause 19.7 (Consequences of Termination);
- (j) clause 21 (Supply after the Contract End Date); and
- (k) this clause 23 (Miscellaneous).

23.12 Complaints procedure

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

23.13 Non-Standard Contract

The Parties acknowledge and agree that:

- (a) the Buyer is a sophisticated purchaser of gas and has conducted a process in order to select its gas supplier for the Site;

- (b) at the date of entering this Agreement the Buyer is not a Small Use Customer;
- (c) if because of the change in Gas Consumption, the Buyer becomes a Small Use Customer, then this Agreement is a non-standard contract for the purposes of the Code and Compendium;
- (d) the Code and Compendium together regulate the conduct of gas retailers, network operators and gas marketing agents. The Code and Compendium are designed to protect the interests of Small Use Customers;
- (e) matters covered by the Code and Compendium include gas marketing, billing, connection, payment difficulties and financial hardship, disconnection, reconnection, pre-payment meters, information and communication, dispute resolution, record keeping and compensation payments to customers for breaches of the Code or Compendium;
- (f) subject to Perth Energy's right to terminate this Agreement, Perth Energy will supply gas to the Buyer under this Agreement in compliance with the Code and the Compendium, except where the Code or Compendium do not apply or have been expressly amended (where permitted by Legislation) by this Agreement. Accordingly, where the Buyer is a Small Use Customer and this Agreement deals with a subject matter that is covered by the Code and/or Compendium, then Perth Energy will act consistently with the relevant provisions of the Code and/or Compendium to the extent not amended by this Agreement; and
- (g) notwithstanding clause 19.4, immediately upon the Buyer becoming a Small Use Customer, the Parties will commence negotiation in good faith to attempt to agree terms on which they wish to continue a supply and purchase of gas beyond the date the Buyer has become a Small Use Customer. If the Parties cannot agree suitable terms within 20 Business Days of commencing negotiation under this clause 23.13(g), then either Party may elect to terminate this Agreement with 20 days notice to the other Party. Termination under this clause 23.13(g) will not alter any other rights and obligations of a Party upon termination of this Agreement.

23.14 Supplier Works

- (a) The Buyer shall provide to Perth Energy or the Network Operator, as the case may be, access free of charge to such Sites, areas, communication lines and supplies of power for all plant, equipment and works used or required to be used in connection with the supply of gas to the Buyer, including any Metering Equipment ("**Supplier Works**") as Perth Energy or the Network Operator may reasonably require.
- (b) The Buyer shall provide and maintain such restrictions on access by anyone other than Perth Energy or the Network Operator to the Supplier Works (including the exclusive occupancy of the Sites, if required) as Perth Energy or the Network Operator may reasonably require.
- (c) Notwithstanding that any of the Supplier Works may become fixed to any part of the Site, title to them does not pass to the owner of the Site or to any other person with an interest in the Site and Perth Energy's or the Network Operator's title to the Supplier Works, at all times, remains with Perth Energy or the Network Operator, as the case requires. Perth Energy or the Network Operator may at any time by its officers, servants, agents, consultants or representatives enter the Site and lay, maintain, inspect, install, modify, read, reconfigure, operate or remove any of the Supplier Works.

- (d) The Buyer shall not less than 10 Business Days before disposing of any part of the Site in which any part of the Supplier Works is placed, or at any time if so requested by Perth Energy, grant to Perth Energy or the Network Operator such easements or other rights in such form as Perth Energy may reasonably require to establish or confirm the rights granted by this clause.
- (e) The Buyer must safeguard and not cause damage to the Supplier Works on the Site. Perth Energy and the Network Operator shall have the right of access at all times, without charge, to all mains and service pipes, Meters and other apparatus on the Site for the purposes of this Agreement including for the removal of the Metering Equipment and any apparatus owned by Perth Energy or the Network Operator. The Buyer shall ensure that such access may be obtained safely at all times.

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