Renewable Energy Buyback Scheme

Terms & conditions for purchase of renewable source electricity
1. Definitions

When used in these terms and conditions these terms mean the following:

**2020 Ministerial Direction** means “Electricity Corporations (Electricity Generation and Retail Corporation – Renewable Energy Buyback Scheme) Direction 2020” made by the Minister under s 111 of the EC Act on 19 August 2020;

**application form** means the Synergy form titled “Renewable Energy Buyback Scheme Application”, or another form designated by Synergy from time to time, as amended in accordance with clause 15.

**AEMO** has the meaning in the market rules.

**balance** means the amount on the **bill** payable by Synergy to the **customer** which exceeds the amount owed by the **customer** to Synergy.

**bill** means the invoice that Synergy sends the **customer** for the supply of electricity under the electricity supply agreement.

**billing period** means the length of the period covered by each **bill**.

**combined rate** means the **REBS buyback rate** and, in addition, if the **customer** is a **qualified feed in tariff customer**, the **subsidy rate**.

**committed customer** means a residential customer who submits to Synergy a **valid feed in tariff application** by 5:00 pm western standard time on 14 October 2011 (including but not limited to statutory declarations stating a contractual commitment to purchase a small renewable energy system prior to 8:00 am western standard time on 1 August 2011) where that application is approved by Synergy.

**contract** means:

- an **application form** incorporating these Synergy Renewable Energy Buyback Scheme Terms and Conditions for Purchase of Renewable Source Electricity, which is completed and signed by the **customer** and approved by Synergy; and

- (where applicable) a **feed in tariff** application incorporating these Synergy Renewable Energy Buyback Scheme Terms and Conditions for Purchase of Renewable Source Electricity, that was completed and signed by the **customer** and was approved in accordance with clause 17.3,

as amended from time to time in accordance with clause 15.
**customer** means the person who has lodged an *application form*, and whose *application form* has been approved by Synergy.

**connection point** means an exit or entry point on the **Western Power network** identified in Synergy’s Electricity Transfer Access Contract with Western Power.

**EC Act** means the *Electricity Corporations Act 2005*, as may be amended or replaced from time to time.

**EI Act** means the *Electricity Industry Act 2004*, as may be amended or replaced from time to time.

**electricity supply agreement** means a contract for the supply of electricity by Synergy to the **customer** referred to in clause 2.

**eligible customer** has the same meaning given in the **2020 Ministerial Direction**.

(Note: as at 31 August 2020, the 2020 Ministerial Direction provides that the definition of ‘eligible customer’ is the same as in the Electricity Industry (Licence Conditions) Regulations 2005 and, at the same date, the Regulations contain the following definition:

**eligible customer** means —

(a) a customer —

(i) to whom electricity is supplied for residential purposes; and

(ii) who consumes not more than 50 MWh of electricity per annum;

(b) a customer that is a school, university or other educational institution; or

(c) a customer that is a non-profit making organisation;)

**ETAC** means the agreement between **Synergy** and **Western Power** called the Electricity Transfer Access Contract, dated on or around 1 July 2016, as amended or replaced from time to time.

**feed in tariff application** means a Synergy form (as published by Synergy and as amended from time to time in accordance with clause 15) for applying for the payment of the net feed in tariff.

**GST** has the meaning given to that term in the **GST Act**.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as may be amended from time to time.

**GST Law** has the meaning given to that term in the **GST Act**.

**GSTR 2000/10** means the Goods and Services Tax Ruling *Goods and services tax: recipient created tax invoices*, as may be amended or replaced from time to time.

**market rules** means the rules created in accordance with 123 of the **EI Act**.

**meter** has the same meaning given in the *Electricity Industry Metering Code 2005*.

**Minister** means the Minister who administers the **EI Act**.

**Ministerial Direction** means:

- the 2020 Ministerial Direction; and
- any future direction given by the Minister under s 111 of the **EC Act** that expressly or impliedly requires Synergy to amend a term of this contract, including price.

**Minister required amendment** means a proposed amendment to this **contract** approved by the **Minister** under clause 18 of the 2020 Ministerial Direction.

**net export** means the amount of **renewable energy exported** into the **Western Power network**, which is surplus to the consumption at the **premises**, as recorded by the **meter**.

**Net feed in tariff terms and conditions** means the terms and conditions set out in clause 17 (including, but not limited to, the Subsidy scheme criteria) and applicable to **customers** who wish to receive the subsidy rate for the sale of **renewable energy exported**.

**non-residential customer** means any **customer** other than a **residential customer**.

**qualified feed in tariff customer** means a **customer** who, in accordance with clause 17, has been approved by Synergy as meeting the Subsidy scheme criteria.

**premises** means the **premises** nominated in the *application form*, which must be the same as the **premises** set out in the **electricity supply agreement**.

**REBS Application Closure Date** has the meaning given in the 2020 Ministerial Direction.

(Note: as at 31 August 2020, the 2020 Ministerial Direction provides that the definition of ‘REBS Application Closure Date’ means 7 September 2020.)

**REBS and Net feed in tariff price schedule** means the **REBS buyback rate**, the **subsidy rate**, **Synergy REBS fees** and other costs and charges applicable to the **contract**, as published by Synergy from time to time.

**REBS buyback rate** means **renewable energy exported** purchase rates payable by Synergy from time to time as set out in the **REBS and Net feed in tariff price schedule**, as amended from time to time in accordance with clause 15.

**renewable energy exported** means electricity generated by the system and transferred into the **Western Power network** through the **connection point** as recorded on the **meter** (in kWh) on a **net export** basis.

**residential customer** means a **Synergy customer** who is supplied electricity under an electricity supply agreement solely for domestic use by that **customer**.

**small renewable energy system** has the same meaning given in the 2020 Ministerial Direction.
small renewable energy system means —

❖ a system of photovoltaic arrays; or
❖ a system of wind turbines; or
❖ a hydro power system; or
❖ another system for the generation of electricity from a renewable energy source,

that has a generating capacity exceeding 500 W but not exceeding 5 kW).

SSES application form means the Western Power form entitled “Application to connect Small Scale Renewable Energy systems to the Western Power network” as amended or replaced by Western Power from time to time.

subsidy rate means the net feed in tariff subsidy rate (in cents per kWh) set by the subsidy scheme and published by Synergy from time to time in the REBS and Net feed in tariff price schedule. The subsidy rate credited to a qualified feed in tariff customer’s bill is subject to change from time to time and is additional to the REBS buyback rate.

subsidy scheme means net feed in tariff subsidy scheme including the subsidy rate and Subsidy scheme criteria announced by the Minister for Energy on 27 May 2010 (as amended from time to time) to encourage ownership by residential customers participating in the Renewable Energy Buyback Scheme.

Subsidy scheme criteria means the criteria set by the state government from time to time determining the eligibility of a customer to be a qualified feed in tariff customer. The current Subsidy scheme criteria are set out in schedule 1.

subsidy scheme suspension means 8:00am western standard time on 1 August 2011.

Storage works has the meaning given in the EI Act.

(Note: as at 31 August 2020 the EI Act contains the following definition:

Storage works means any wires, apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, or to control, a storage activity.)

system means a small renewable energy system and connection approved by Western Power for the provision of electricity by the customer into the Western Power network through a connection point.

technical rules has the meaning given to it in clause 1.3 of the Electricity Networks Access Code 2004.

valid feed in tariff application means a feed in tariff application that is duly completed and signed by the customer and received by Synergy.

Western Power means the Electricity Networks Corporation trading as Western Power ABN 18 540 492 861.

Western Power network means the electricity network owned, operated and maintained by Western Power within the South West Interconnected System.

South West Interconnected System or SWIS has the meaning given to it in section 3 of the EI Act.

Synergy means the Electricity Generation and Retail Corporation trading as Synergy ABN 58 673 830 106 of 219 St Georges Terrace, Perth WA 6000.

2. Electricity supply agreements

2.1 If the customer has an existing electricity supply agreement with Synergy for the supply of electricity by Synergy to the customer at the premises (whether under a written contract or pursuant to the EI Act or the EC Act, clause 3.2(a) of this contract) does not apply.

3. Condition precedent

3.1 The terms and conditions of this contract (other than clauses 1 and 2 and this clause 3) are subject to, and are of no force and effect, until the following condition precedent has been fulfilled:

(a) if the customer does not already have an existing electricity supply agreement to purchase electricity from Synergy, then the customer and Synergy entering into an agreement for the supply of electricity by Synergy to the customer at the tariff rate nominated by the customer and otherwise on the terms and conditions set out in a contract that complies with the requirements of Part 3 of the EI Act (if applicable);

(b) unless Synergy advises the customer in writing that the application is not required, the customer has applied to Western Power to connect the system to the Western Power network; and

(c) the system has been connected to the Western Power network at a connection point located at the premises.

3.2 If the condition precedent in:

(a) clause 3.1(a) has not been satisfied by a date which is 90 days after the date of Synergy approving the customer’s application form then
either party may terminate this contract by giving the other party not less than 10 days prior written notice;

(b) clause 3.1(b) has not been satisfied by a date which is 90 days after the date that Synergy received the customer’s application, then this contract is terminated from that date; and

(c) clause 3.1(c) has not been satisfied by a date which is 180 days after the date Western Power approves the customer’s application, made in accordance with clause 3.1(b), to connect the system to the Western Power network, then this contract is terminated from that date.

4. Commencement date

4.1 Sale of electricity by the customer in accordance with this contract shall commence on the date which is the later of:

(a) the date of satisfaction of the condition precedent set out in clause 3.1; and

(b) the date on which the system, and the necessary meter and meter related equipment as determined by Western Power or requested by Synergy, have been installed and are ready to import and export electricity from and to the Western Power network through the connection point.

4.2 In the event of any defect in the system and/or meter and meter related equipment or any delay in the installation of any of them, then subject to clause 11.3, Synergy shall have no liability for any loss (either direct or indirect) suffered or incurred by the customer, whether arising out of or in connection with Synergy’s breach of contract, its breach of statutory duty, its negligence or otherwise.

5. Renewable energy sale rates

5.1 Subject to the terms of this contract, Synergy will purchase renewable energy exported by the customer at the REBS buyback rate.

5.2 For the avoidance of doubt, this contract governs the sale of renewable energy exported by the customer to Synergy only. The purchase of electricity by the customer from Synergy is governed by the terms of the electricity supply agreement.

6. System and other obligations

6.1 Without limiting the customer’s obligations under clause 7.1 in any way, the customer at its cost must ensure that the system, including the output of the system, complies with all relevant laws, including the technical rules. In addition, the customer must pay all costs associated with the installation and maintenance of the system.

6.2 Without limiting the customer’s obligations under clause 7.1 in any way, the customer’s system may be disconnected from the Western Power network, or otherwise curtail the output of the system, for operational reasons or for planned maintenance.

6.3 Without limiting the customer’s obligations under clause 7.1 in any way, the customer’s system may be disconnected, or otherwise curtailed, from the Western Power network at any time without notice in an Emergency. In this clause, Emergency means an actual or imminent situation that in Synergy’s or Western Power’s opinion, or in the opinion of or any other person or regulatory or statutory body with jurisdiction over such matters would or is likely to jeopardise network integrity of all or any part of the Western Power network or public or personal safety.

6.4 If the Western Power network is unable or not permitted to accept electricity exported from the system for any reason then no amounts are payable to the customer. Synergy will only purchase (and pay for) renewable energy exported at the connection point.

6.5 So that the meter can be read as part of the meter reading procedures applicable under the electricity supply agreement, the customer must facilitate safe and free access to the meter for this purpose.

6.6 The customer must provide additional safe and secure space that meets the system compliance requirements specified in the SSES application form, for the installation and operation of the system.

6.7 If a qualified feed in tariff customer wishes to receive the subsidy rate the customer is bound by and must comply with the Subsidy scheme criteria and the Net feed in tariff terms and conditions.

6.8 For the avoidance of doubt, the customer’s obligations under this contract, including under this clause 6, are unaffected if the system is owned by a third party.

7. Laws, approvals, liaison and information

7.1 The customer must at all times comply with all applicable laws, including, without limitation, by obtaining and maintaining all necessary licences, permits and/or approvals from all relevant authorities (including building and planning approvals) required for it to generate electricity and to export electricity into the Western Power network.

7.2 Without limiting the customer’s obligations under clauses 6.1 or 7.1 in any way, the customer must maintain the system (and all associated equipment) in good working and
reliable order and available for export of electricity to the Western Power network.

7.3 The customer must:

7.3.1 submit a Synergy “Renewable Energy Buyback Scheme Change of System Application” form (as amended or replaced by Synergy from time to time); and

7.3.2 obtain Synergy’s consent in writing to the change, before any change is made to the system (including, but not limited to, any operational, structural or functional change); including in particular, but not limited to, any change in the system generation capacity or its export capacity. Failure to do so may result in, but is not limited to, the customer being ineligible for the subsidy rate, the REBS buyback rate and/or termination of this contract. Any such consent given by Synergy does not in any way limit, remove, vary or waive (or condone or ratify any breach of) any of the customer’s obligations under the contract (including, but not limited to, the customer’s obligations under clauses 6.1, 7.1 or 7.2).

7.4 The customer must provide Synergy with information Synergy reasonably requires for the purposes of the contract (i.e. REBS and subsidy scheme related matters); or which relates to the contract; or in relation to complying with a Ministerial Direction.

7.5 In the event Synergy requests information:

7.5.1 the customer must ensure all information provided to Synergy is true, correct and not misleading or deceptive.

7.5.2 Synergy reserves its rights, including, but not limited to, contract termination, if information provided by a customer is incorrect, misleading or deceptive.

7.5.3 The customer must provide the information in the required format and by the specified deadline. Failure to do so may result in contract termination or the customer being ineligible for the REBS buyback rate and/or the subsidy rate.

7.6 Synergy is permitted to use information provided by the customer as necessary for Synergy to comply with its obligations under the contract or for purposes relating to the contract and in accordance with applicable law. The customer must bear its own costs in relation to performance of its obligations under this contract and applicable law.

7.7 Synergy is permitted to disclose information to the state and federal governments and regulatory authorities, including AEMO, for the purposes of or relating to the contract. Such information includes but is not limited to customer details, confirmation of system installation, customer and system eligibility, reporting of customer uptake and the amount of renewable energy exported.

7.8 The customer consents to Synergy obtaining any information relating to the system from third parties, including Western Power, that Synergy reasonably considers is relevant to this contract.

8. Payment for renewable energy exported

8.1 Synergy is required to issue a bill for electricity consumed by the customer under the electricity supply agreement. On that bill, Synergy will also set out the amounts payable by Synergy to the customer for the purchase by Synergy of renewable energy exported from the system. Those amounts will be determined and paid by Synergy in accordance with:

8.1.1 if the customer is a residential customer or a non-residential customer not registered for GST, clauses 8.2 and (if applicable) clause 8.3; or

8.1.2 if the customer is a non-residential customer who is registered for GST, clauses 8.4, 8.5 and 13.

Payments for residential customers and non-residential customers not registered for GST

8.2 Synergy will pay a residential customer or a non-residential customer not registered for GST for the renewable energy exported by providing a credit on the bill for the amount of renewable energy exported during the relevant billing period (which, subject to clause 8.7, is to be based on a reading of the meter) multiplied by the combined rate.

The subsidy rate (if applicable) and the REBS buyback rate will be set out as separate line items on the bill.

8.3 Subject to clause 8.10, if the balance on a residential customer’s bill exceeds $100, then within 14 days of receipt of a written request from the residential customer or such other notification as agreed to by Synergy, Synergy must pay the balance to the residential customer. Synergy may charge a fee to recover its reasonable administration costs of making this payment.

Payments to non-residential customers registered for GST

8.4 If a customer is a non-residential customer who is registered for GST, then that customer and Synergy agree that the bill issued in accordance with clause 8.1 will be accompanied by a recipient created tax invoice for the purposes of the GST Law and the GSTR 2000/10 (“RCTI”) in respect of the purchase by Synergy of renewable energy exported from the system.
8.5 Synergy will, after setting off any amounts permitted under clause 8.10, pay the non-residential customer the amount of the renewable energy exported by providing a credit on the bill for the amount of renewable energy exported during the relevant billing period (which, subject to clause 8.7, is to be based on a reading of the meter) multiplied by the REBS buyback rate.

Terms applicable to all customers

Refund of balance

8.6 Subject to clauses 8.3 and 8.10, Synergy may (on terms acceptable to it) offer to pay the customer all or part of the balance. If the customer accepts the offer (and any terms), Synergy must pay the balance to the customer.

Estimating renewable energy exported

8.7 Synergy may estimate the quantity of renewable energy exported in accordance with the provisions of the electricity supply agreement or any applicable law (including but not limited to, where the export meter is faulty or consumption and export flows are not properly recorded or (contrary to clause 6.5) safe and free access to the meter has been denied).

Over crediting and under crediting

8.8 Subject to clause 8.10, if Synergy under credits a customer for any reason (including where the meter has been found to be defective or one or more estimated readings have been followed by an actual reading), then Synergy will credit the amount of that under credit to the customer’s account.

8.9 Subject to clause 8.10, if Synergy over credits the customer for any reason (including where the meter has been found to be defective, as a result of breach of this contract by the customer, or Synergy determines that the customer is no longer eligible to receive part or all of the combined rate or one or more estimated readings have been followed by an actual reading) then Synergy may require the customer to make a correcting payment or may add the amount owed to the customer’s bill under the electricity supply agreement. In doing so, Synergy may offer the customer the option to pay the correcting payment by instalments.

Synergy’s set-off rights

8.10 Nothing in this contract limits Synergy’s ability at law to set off:

8.10.1 any balance or amount Synergy owes to the customer under this contract against any amount the customer owes to Synergy under the customer’s electricity supply agreement or under another contract the customer has with Synergy;

8.10.2 any amount the customer owes to Synergy under this contract or under the customer’s electricity supply agreement or under another contract the customer has with Synergy against any amount Synergy owes to the customer under this contract.

Final payment to customer on termination of the contract

8.11 On termination of the contract Synergy will, at the customer’s election:

8.11.1 credit any balance set out in the last bill, to any new account the customer establishes with Synergy; or

8.11.2 pay the customer any balance set out in the last bill by electronic funds transfer (“EFT”) to the bank account nominated by the customer.

Change in GST registration status

8.12 If a non-residential customer who is not registered for GST subsequently becomes registered, the non-residential customer must immediately notify Synergy in writing of this change, and clauses 8.4, 8.5 and 13.7 of this contract will apply from the time the notice is given.

No interest payable on balances or credits for renewable energy exported

8.13 Nothing in this contract requires Synergy to pay interest on the amount of any balance or other payment under this contract.

9. Termination

9.1 The customer may terminate this contract at any time by giving at least the same period of notice as is required to be given by the customer for termination under the electricity supply agreement.

9.2 Synergy may terminate this contract at any time if any of the following occurs:

9.2.1 the customer sells or transfers or vacates the premises;

9.2.2 the customer notifies Synergy that it elects to terminate the contract;

9.2.3 the customer fails to comply with any of clauses 6.1, 7.1, 7.2 or 7.3;

9.2.4 the customer’s premises or system or both cease to be connected to the Western Power network at a connection point;

9.2.5 Western Power ceases to provide sufficient network services to Synergy to enable Synergy or the customer or both to:

9.2.5.1 comply with any or all of their obligations; or
9.2.5.2 utilise any or all of their rights, under this contract.

9.3 The contract terminates on the day that:

9.3.1 the electricity supply agreement with the customer for the premises ends for any reason;

9.3.2 if the Minister makes a Ministerial Direction, or another change in law occurs, that has the effect that Synergy is no longer required to offer contracts to customers that are the same, or substantially similar, to this contract;

9.3.3 the customer enters into a new agreement with Synergy that governs the operation of the system and/or the purchase of net energy exported at the premises;

9.3.4 the customer ceases to be an eligible customer; or

9.3.5 the system ceases to be a small renewable energy system,

such termination is subject and without prejudice to any earlier expiry or other termination of all or any part of the contract for any reason (including, but not limited to, expiry or other termination for any reason of the part of the contract formed by approval of a feed in tariff application approved in accordance with clause 17.3).

9.4 If the customer sells, transfers or vacates the premises, the customer must before the date the customer’s electricity supply agreement ends, inform the new owner or occupant that it must submit a new application form for acceptance and approval by Synergy if the new occupant or owner wants to sell renewable energy exported to Synergy under a contract on the same, or similar, terms as this contract. For the avoidance of doubt, Synergy is under no obligation under this contract to enter into such a contract with the new owner or occupant;

9.5 If after REBS Application Closure Date, the customer makes an application under clause 7.3 to change the system to:

9.5.1 upgrade their existing small renewable energy system including, but not limited to, by increasing the capacity of that system;

9.5.2 install storage works at the premises that have the capability to export electricity to the Western Power network; or

9.5.3 install apparatus or equipment at the premises that enables storage works comprised in an electric vehicle to have the capability of exporting electricity to the Western Power network,

then, unless the change to the system is a replacement of the photo-voltaic panels or inverter on a like-for-like basis, this contract is terminated on the day Synergy approves the change to the system.

9.6 If the customer fails to comply with any of its obligations under this contract, Synergy may give a notice in writing to the customer requiring the customer to remedy the default and if the customer fails to remedy the default within the time specified by Synergy, Synergy may terminate this contract by giving 14 days’ notice in writing.

9.7 Upon termination of this contract, the customer must ensure that no electricity is exported through the connection point to the Western Power network from the system or otherwise from the premises. Synergy may at the customer’s cost and expense (payable on demand) take appropriate action (including disconnection of the meter or reprogramming of the meter) to ensure that no electricity is exported.

9.8 Synergy must pay to the customer any outstanding amount payable to the customer under this contract within 29 days of termination of this contract.

9.9 Clauses 1, 6, 7, 9.7, 9.8, and 12 continue to have force and effect after the termination of this contract until the date any of the following occurs:

9.9.1 the customer enters into a new contract with Synergy governing the operation of the system;

9.9.2 provided the customer is the registered owner of the premises, the customer permanently vacates the premises and either:

9.9.2.1 the system is disconnected from the Western Power network; or

9.9.2.2 a new customer occupies the premises; or

9.9.3 the customer becomes the customer of a retailer other than Synergy and the connection point at which the system is connected is removed from Synergy’s ETAC.

9.10 Clause 11 continues to have force and effect after the termination of this contract for any actions or omissions that occur prior to the date any of the events in clauses 9.9.1 to 9.9.3 occur.

9.11 For the avoidance of doubt, the termination of this contract does not affect the continued operation of the electricity supply agreement.
10. Meter

The customer must pay all costs associated with the supply, reprogramming, modification and installation of any metering equipment when such supply, reprogramming, modification and installation is required in order for the customer to comply with any of its obligations under this contract. The current charges are set out in the REBS and Net feed in tariff Price Schedule. These charges are subject to change from time to time. The customer should check the current charges prior to signing the application form.

10.2 The meter always remains the property of Western Power.

11. Liability for damage

The customer is responsible for the system and its use. Subject to clause 11.3, the customer agrees that Synergy will not be liable for any loss, damage or injury that may be caused by the system or its use.

Without limiting the customer’s obligations under clauses 6.1, 7.1 or 7.2 in any way, the customer must install adequate protection devices to protect the system from faults (including without limitation, power surges) on the Western Power network. Subject to clause 11.3, Synergy will not accept liability for any loss or damage to the customer’s system or for any injury arising as a result of the customer failing to install such protection device.

11.3 Subject to clause 12, but otherwise despite any other provision in this contract, nothing in this contract is to be taken to exclude, restrict or modify:

11.3.1 any rights of recovery or to compensation the customer may have under law (including, but not limited to under the Australian Consumer Law, where applicable); or

11.3.2 any other condition, warranty, guarantee or right the customer may have under law (including, but not limited to any consumer guarantee under the Australian Consumer Law, where applicable),

to the extent that Synergy is prohibited by law from excluding, restricting or modifying them. All other conditions, warranties, guarantees and rights (including, but not limited to, any rights of recovery or to compensation), whether or not implied by law, are, to the extent permitted by law, excluded to the fullest possible extent.

11.4 Subject to clauses 11.3 and 12, but otherwise despite any other provision in this contract and to the extent permitted by law, Synergy will not be liable to the customer for any consequential or indirect loss or for any business interruption loss, lost profits, loss of an opportunity or the customer’s liability to third parties under a contract or otherwise arising from, or in connection with, a breach of this contract by or negligence of Synergy.

11.5 Subject to clauses 11.3 and 12, the customer is liable for, and must indemnify Synergy against any loss or damage caused by, consequent upon or arising out of or in connection with any intentional, reckless or negligent acts and omissions of the customer including, but not limited to:

11.5.1 a breach of any term of this contract by the customer; or

11.5.2 a breach of the technical rules by the customer.

12. Application of legislation

Nothing contained in this contract:

12.1 excludes, restricts or prejudices in any way any of Synergy’s rights or remedies under any Act or regulations (including, but not limited to, the Energy Operators (Powers) Act 1979 (WA), the EC Act, EI Act, and the Electricity Industry Metering Code 2005 (WA)); or

12.2 excludes, restricts or modifies any obligations of a party under any Act or regulations to the extent that the party is prohibited by law from excluding, restricting or modifying them.

13. Goods and services tax (GST); other taxes

Definitions

13.1 Unless otherwise defined in this clause 13 or in the “Definitions” section of this contract, terms defined in the GST Act have the same meaning when used in this clause.

GST exclusive amounts

13.2 Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under this contract are exclusive of GST.

GST gross up

13.3 If there is a taxable supply under or in connection with this contract, then the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply in addition to the payment for the taxable supply required to be made under this contract.

Tax invoice

13.4 Subject to clause 13.7, a party need not make a payment for a taxable supply made under this contract until it receives a tax invoice for the supply to which the payment relates.
Reimbursements

13.5 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 13.3.

Adjustments

13.6 If a party becomes aware of an adjustment event, that party agrees to notify the other party as soon as practicable after becoming so aware, and the parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part thereof) is paid as soon as is practicable but no later than 14 days after the supplier (that is, the party who made a supply for the purposes of the GST Act) has satisfied itself that the adjustment event has occurred.

Recipient created tax invoices

13.7 If a customer is a non-residential customer who is registered for GST, the customer and Synergy agree that:

13.7.1 Synergy will issue a recipient created tax invoice in respect of the amount payable by Synergy to the non-residential customer for the purchase by Synergy of renewable energy exported from the system;

13.7.2 the non-residential customer will not issue tax invoices to Synergy in respect of any supply of renewable energy exported under or in connection with this contract;

13.7.3 Synergy will issue the non-residential customer an adjustment note for any adjustment event in accordance with clause 13.6;

13.7.4 the non-residential customer acknowledges that it is registered for GST and that it will immediately notify Synergy in writing if it ceases to be registered;

13.7.5 Synergy acknowledges that it is registered for GST and that it will immediately notify the non-residential customer in writing if it ceases to be registered; and

13.7.6 if either Synergy or the non-residential customer cease to be registered for GST, clause 13.7 will cease to apply to Synergy and the non-residential customer as and from the date the party notifies the other of its changed GST status.

13.8 The customer will be solely liable for payment of all taxes (including but not limited to corporate taxes, personal income tax, fringe benefits tax, payroll tax, stamp duty, withholding tax, PAYG, turnover tax and excise and import duties, and any subcontractor’s taxes) which may be imposed in relation to renewable energy exported, the system or payments made under the contract.

14. Miscellaneous

14.1 If the whole or part of any of this contract (a “provision”) is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of the contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this contract or is contrary to public policy. The parties acknowledge and agree that:

14.1.1 clause 15 is central to the basic nature of this contract as a contract giving effect to Government policy, which policy is subject to change in a manner that would otherwise adversely impact Synergy if this contract was not amended to reflect the change in policy;

14.1.2 severance of any part of clause 15 alters the basic nature of this contract; and

14.1.3 if any part of clause 15 is void, unenforceable or illegal in any jurisdiction, this contract is terminated.

14.2 This contract is governed by the law in force in Western Australia from time to time, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

14.3 This contract constitutes the entire agreement between the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

14.4 The rights, powers and remedies provided in this contract are cumulative with and not exclusive of the rights, powers, or remedies provided by law independently of this contract.

14.5 Subject to clause 15, no amendment or waiver of any of this contract shall be valid or effective unless made in writing and duly executed by all parties, in the case of an amendment, or by the party giving the waiver.

14.6 The failure of any party to enforce at any time any provision of this contract or to exercise any right, power or remedy provided by this contract shall in no way be construed to be a waiver of such provision nor in any way to affect the validity of this contract or any part thereof or the right of any party to enforce thereafter each and every term of this contract and to exercise any such right. No waiver of any breach of a provision of this contract shall be held to be a waiver of any other or subsequent breach.
15. Amendments

15.1 The customer and Synergy agree that these “Renewable Energy Buyback Scheme Terms and Conditions for Purchase of Renewable Source Electricity” (including any prices contained therein) can change in accordance with this clause 15 as required or directed by the Minister in a Ministerial Direction or a Minister required amendment.

15.2 In the event that any changes to these “Renewable Energy Buyback Scheme Terms and Conditions for Purchase of Renewable Source Electricity” are required or directed by the Minister in a Ministerial Direction or a Minister required amendment, then Synergy will notify the customer of such change and, subject to clause 15.3, the contract is amended to reflect that change on and from the date that the change is notified to the customer.

15.3 Clause 15.2 has no force or effect to the extent that any amendment to this contract arising from the Ministerial Direction or the Minister required amendment (as relevant) results in this contract providing for Synergy to purchase renewable source electricity on terms and conditions that are not fair and reasonable.

15.4 Without limiting the generality of clause 9.1, if the customer does not agree with any amendment to this contract made under this clause 15, the customer may terminate this contract in accordance with clause 9.1.

16. Adjustments for a change in law and network access costs

16.1 If a change in law occurs, Synergy may adjust the charge applicable under this contract to the extent necessary to place Synergy in the position it would have been under the contract if it had not been for the change in law.

16.2 Without limiting the generality of clause 16.1, if a change in network charges occurs, or a new network charge is imposed, Synergy may charge the customer an amount to the extent necessary to reflect that proportion of the effect of the new network charge or change in network charge which Synergy estimates in good faith is fairly attributable to or payable by the customer.

16.3 If the customer changes the amount or rate at which it exports electricity, Synergy may, subject to prior notice to the customer, charge the customer an amount to the extent necessary to reflect that proportion of any increase in network charges which Synergy estimates in good faith is fairly attributable to the customer.

17. Net Feed-in Tariff terms and conditions

17.1 Recital

(a) The subsidy scheme is a Western Australian government initiative and is subject to change from time to time.

(b) The subsidy rate credited to a qualified feed in tariff customer’s bill is separate and additional to the Synergy REBS buyback rate.

(c) Unlike the Synergy REBS buyback rate which is the amount Synergy pays for electricity purchased from a customer, the subsidy rate is an amount credited on a qualified feed in tariff customer’s bill by Synergy, on behalf of the state government to encourage small renewable energy system uptake. The subsidy rate is not used by Synergy to acquire energy – the Synergy REBS buyback rate is for that purpose.

(d) The state government is responsible for funding the payment by Synergy of the subsidy rate and setting the Subsidy scheme criteria for determining whether a customer is a qualified feed in tariff customer. The state government is also solely responsible for determining the subsidy rate and the duration of the subsidy scheme. The state government may change the Subsidy scheme criteria, subsidy rate and Net feed in tariff terms and conditions at any time and therefore the contract will be subject to change from time to time and any such change may, without limitation, have retrospective effect.

(e) The state government has requested Synergy to implement and administer the subsidy scheme in the SWIS on behalf of the state government. Accordingly, all functions carried out by Synergy in relation to the implementation or administration of the subsidy scheme are carried out by Synergy acting solely as agent for and on behalf of the Western Australian state government.

(f) On 19 May 2011 the state government announced a reduction in the subsidy rate from 40c/kWh to 20c/kWh for new qualified feed in tariff customers who applied for the feed in tariff after 30 June 2011 and introduced a subsidy scheme installed capacity limit of 150MW.
17.3 Subsidy scheme duration

17.3.1 (a) The maximum duration for payment of the subsidy rate to a qualified feed in tariff customer is 10 years calculated from the date of the commencement of the first contract applicable to the premises under which the subsidy rate is payable. For qualified feed in tariff customer with a contract that started prior to 1 August 2010, the subsidy duration starts on 1 August 2010.

(b) Unless the state government advises Synergy otherwise in writing, a qualified feed in tariff customer cannot elect to suspend the payment duration of the subsidy scheme for any period under any circumstances.

17.3.2 With respect to a valid feed in tariff application received by Synergy during the period 19 May 2011 to 30 June 2011 and which is approved by Synergy as meeting the Subsidy scheme criteria, the date of commencement of the first contract applicable to the premises under which the subsidy rate is payable is as follows:

(a) if the meter and meter related equipment is installed at the premises after the date of system installation, then the contract commencement date is the date of installation of the meter and meter related equipment; or

(b) if the meter and meter related equipment is installed before the installation of the system, then subject to (c), below, the contract commencement date is the date of installation of the meter and meter related equipment; or

(c) if the meter and meter related equipment is installed before the installation of the system and if at the time of system installation the customer informs Synergy prior to 1 November 2011 of the date of that system installation, then the contract commencement date is the date of system installation.

17.3.3 With respect to a valid feed in tariff application received by Synergy during the period from 1 July 2011 until on or before 5:00pm 14 October 2011 that is approved by Synergy as meeting the Subsidy scheme criteria, the date of commencement of the first contract applicable to the premises under which the subsidy rate is payable is the date of installation of the meter and meter related equipment.

17.3.4 (a) Synergy will accept for assessment a valid feed in tariff application submitted after 5:00pm 14 October 2011 if instructed in writing by the state government to do so.

(b) In the event Synergy receives a written instruction from the state government in accordance with paragraph (a) and approves that valid feed in tariff application as meeting the Subsidy scheme criteria, the date of commencement of the first contract applicable to the premises under which the subsidy rate is payable is the later of the date:

(i) on which the valid feed in tariff application is so approved by Synergy; or

(ii) following such approval by Synergy of a valid feed in tariff application, installation of the meter and meter related equipment.

17.2 Synergy right to discontinue and amend

(a) In the event the state government withdraws or amends the subsidy scheme Synergy may:

(i) amend the subsidy rate, Subsidy scheme criteria and/or Net feed in tariff terms and conditions; or

(ii) cease crediting of the subsidy rate to the customer.

(b) In the event paragraph (a)(ii) applies these Net feed in tariff terms and conditions cease to apply.

(c) In the event paragraph (a) or (b) applies, Synergy shall have no liability for any loss (either direct or indirect), and even if Synergy was aware of the possibility of the qualified feed in tariff customer suffering that loss.

(g) On 1 August 2011 the state government announced:

(i) the subsidy scheme installed capacity limit of 150MW had been reached.

(ii) no new feed in tariff applications would be accepted beyond the subsidy scheme suspension unless the customer is a committed customer.

(iii) existing qualified feed in tariff customers would not be affected by the subsidy scheme suspension and would continue to receive the subsidy rate for the duration of their 10 year payment period.

(h) The state government has instructed Synergy to cease approving feed in tariff applications unless instructed in writing by the state government to do so.

17.2 Synergy right to discontinue and amend

(a) In the event the state government withdraws or amends the subsidy scheme Synergy may:

(i) amend the subsidy rate, Subsidy scheme criteria and/or Net feed in tariff terms and conditions; or

(ii) cease crediting of the subsidy rate to the customer.

(b) In the event paragraph (a)(ii) applies these Net feed in tariff terms and conditions cease to apply.

(c) In the event paragraph (a) or (b) applies, Synergy shall have no liability for any loss (either direct or indirect), and even if Synergy was aware of the possibility of the qualified feed in tariff customer suffering that loss.

(g) On 1 August 2011 the state government announced:

(i) the subsidy scheme installed capacity limit of 150MW had been reached.

(ii) no new feed in tariff applications would be accepted beyond the subsidy scheme suspension unless the customer is a committed customer.

(iii) existing qualified feed in tariff customers would not be affected by the subsidy scheme suspension and would continue to receive the subsidy rate for the duration of their 10 year payment period.

(h) The state government has instructed Synergy to cease approving feed in tariff applications unless instructed in writing by the state government to do so.
17.3.5 If the customer is not the first qualified feed in tariff customer at the premises it acknowledges and agrees that it is not entitled to receive the subsidy rate for the full 10 year period specified in clause 17.3.1(a), but will receive it for the balance remaining of that 10 year period at the premises.

17.3.6 After 10 years the subsidy rate will cease. However, the qualified feed in tariff customer may continue to receive REBS buyback rate.

17.3.7 Subject to clause 7.3, 17.3.8 and 17.3.9 if a qualified feed in tariff customer expands its small renewable energy system capacity then the subsidy rate can be applied to the renewable energy exported from the expanded system provided the system following that expansion still constitutes a small renewable energy system. However, the 10 year duration still applies from the date of the original installation not 10 years from the date of the expansion.

17.3.8 A qualified feed in tariff customer must not after the subsidy scheme suspension expand its small renewable energy system capacity by increasing the size of the existing inverter, installing a new inverter or expanding inverter capacity by any other means unless approval has been granted in accordance with clause 7.3 prior to the subsidy scheme suspension.

17.3.9 A qualified feed in tariff customer must not after subsidy scheme suspension, increase the capacity of the system inverter. Increasing inverter capacity after the subsidy scheme suspension will result in the qualified feed in tariff customer being ineligible to continue to participate in the subsidy scheme.

17.3.10 A qualified feed in tariff customer who has been removed from the subsidy scheme in accordance with clause 17.3.9 will not have their eligibility for the subsidy scheme re-instated at the premises if they reduce the small renewable energy system capacity to or below the capacity originally approved by Synergy under the subsidy scheme.

17.4 Tampering

A qualified feed in tariff customer must not tamper with, bypass, circumvent, modify or otherwise interfere with the system or meter or do anything that produces and exports electricity in a way that was not intended by the system manufacturer or Western Power.

17.5 Notification of a change in a qualified feed in tariff customer’s circumstance

Without prejudice to clause 7.3, a qualified feed in tariff customer must notify Synergy immediately of any change in circumstance whereby the qualified feed in tariff customer or the system no longer meets the Subsidy scheme criteria.

17.6 Compliance with Net feed in tariff terms and conditions

A qualified feed in tariff customer is responsible for ensuring compliance with these terms and conditions.

Subsidy scheme criteria – Schedule 1

Customer eligibility

1. The subsidy scheme only applies to a residential customer.

2. A customer must be a residential customer at the premises from which the qualified feed in tariff customer wishes to receive the subsidy rate.

3. A residential customer must generate and sell electricity to Synergy under a Renewable Energy Buyback Scheme contract.

4. A residential customer must occupy the premises in which a system has been installed.

5. A residential customer can receive the subsidy rate at only one residential premises at a time.

6. A residential customer must own the system located at the premises.

7. A residential customer must have submitted a valid feed in tariff application:

   7.1 by the subsidy scheme suspension, which is approved by Synergy as meeting the Subsidy scheme criteria; or

   7.2 if the customer is a committed customer, by 5:00 pm western standard time on 14 October 2011, which is approved by Synergy as meeting the Subsidy scheme criteria; or

   7.3 by any other date the state government in its discretion allows and instructs Synergy in writing to accept for assessment in respect of any particular valid feed in tariff application, which is subsequently approved by Synergy as meeting the Subsidy scheme criteria.

Note: a residential customer who occupies a premises may be a different person to the residential customer who owns the system (e.g. rental situations).

8. A residential customer who submits a feed in tariff application for a premises after subsidy scheme suspension is not eligible to participate in the subsidy scheme unless there was a qualified feed-in tariff customer for those premises immediately prior to the residential customer submitting its feed in tariff application relating to those premises. In the event the feed in tariff application is approved by Synergy the subsidy rate will be only payable for the balance remaining of the 10 year period specified in clause 17.3.1(a).
System eligibility

9. The subsidy scheme only applies to a small renewable energy system which utilises photovoltaic, wind turbine or hydro power system technologies.

10. The system and necessary metering equipment must have been installed at a residential customer’s premises and be ready to import and export electricity to and from the Western Power network.

11. Subject to clauses 7.3, 17.3.7, 17.3.8 and 17.3.9 system expansion at a residential customer’s premises is permitted provided the system following that expansion still constitutes a small renewable energy system.

Note: it is very important that customers read clauses 7.3, 17.3.7, 17.3.8 and 17.3.9 before making any decision concerning expansion of their small renewable energy system.

12. The system must be new at the time of installation. Second hand systems (either in whole or in part) do not qualify for the subsidy scheme.

13. A residential customer who relocates their small renewable energy system to a place or premises other than the premises is not eligible to participate in the subsidy scheme at that other place or premises using that small renewable energy system.

14. A residential customer must own the system located at the premises.

15. The system must be designed and installed by a Clean Energy Council accredited designer and installer on and from 1 August 2010.

Applicable subsidy rate

16. The subsidy rate applicable to a qualified net feed in tariff customer is specified within the REBS and Net feed in tariff price schedule.