



# Distributed Energy Buyback Scheme (DEBS)

Terms & conditions for purchase  
of Distributed Energy

Electricity Industry (Licence  
Conditions) Regulations 2005  
Dated 14 February 2022



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# Terms & conditions for purchase of distributed energy.

## 1. Definitions

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

**application form** means the *Synergy* form titled “Distributed 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*.

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

**contract** means an *application form* incorporating these Distributed Energy Buyback Scheme Terms and Conditions for Purchase of Distributed Energy – Electricity Industry (Licence Conditions) Regulations 2005, which is completed and signed by the *customer* and approved by *Synergy*, as amended from time to time in accordance with clause 15.

**contract maximum quantity** means, for each day, 50 kWh of *distributed energy exported*.

**Coordinator** means the Coordinator of Energy, the head of Energy Policy WA.

**customer** means the person who has lodged an *application form*, and whose *application form* has been approved by *Synergy*.

**DEBS price schedule** means the *DEBS buyback rates*, *Synergy DEBS fees* and other costs and charges applicable to the *contract*, as published by *Synergy* from time to time.

**DEBS buyback rates** means the *distributed energy exported* purchase rates payable by *Synergy* from time to time, where such rates may be different at different times of the day or under different circumstances, as set out in the *DEBS price schedule*, as amended from time to time in accordance with clause 15.

**distributed 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.

**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 or 3 (as applicable).

**eligible customer** has the same meaning given in the *Electricity Industry (Licence Conditions) Regulations 2005*.

*(Note: as at 14 February 2022, the Electricity Industry (Licence Conditions) Regulations 2005 contains 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; or
- (b) a customer that is a school, university or other educational institution; or
- (c) a customer that is a non-profit making organisation;]

**Emergency** has the meaning given in clause 6.3 of this *contract*.

**ESM** means emergency solar management.

**ESM system** means the systems and processes *Synergy* and/or *Western Power* have in place from time to time that are used to increase load in all or part of the *SWIS* by disconnecting, curtailing or reconnecting end use customers' distribution-connected photovoltaic systems, including the *customer's system*, in response to an instruction to do so by *AEMO*. At the time of this *contract*, the ESM systems are intended to include:

- (a) *Western Power's* processes and systems for issuing a *WP ESM direction* to *Synergy* to increase load in the *SWIS*, or in a particular area of the *SWIS*, by disconnecting, curtailing or reconnecting end use customers' distribution connected photovoltaic systems, including the *customer's system*; and
- (b) *Synergy's* use of:
  - (i) Its systems and processes and includes systems and processes of its agents or contractors; and/or
  - (ii) *Western Power's* systems and processes,

to disconnect, curtail or reconnect end use customers' distribution-connected photovoltaic systems, including the *customer's system* as applicable, as *Synergy* considers

is required or convenient in order to give effect to a *WP ESM direction* or otherwise.

**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.

**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.

**Law** means common law, principles of equity, laws made by parliament (which includes laws made by a State, Territory and Commonwealth parliament, regulations and other instruments under law or regulations, and consolidations, amendments, re-enactments or replacement of any of them), and the terms of any binding guideline, licence, approval, authorisation or direction issued by a governmental authority.

**Loss** means all loss, liability, penalty, cost, damage, claim or expense (including legal costs, disbursements and expenses of whatsoever nature or description) and including all direct, indirect and consequential loss (including loss of revenue or profit, loss of business opportunity or goodwill and any claims for indirect, special or punitive damages).

**market rules** means the rules created in accordance with s 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*.

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

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

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

**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 *Electricity Industry (Licence Conditions) Regulations 2005*.

*(Note: as at 14 February 2022, the Electricity Industry (Licence Conditions) Regulations 2005 contains the following definition:*

**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.)

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

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

**Storage works** has the meaning given in the *EI Act*.

{Note: as at 14 February 2022, 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.)

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

**Synergy DEBS fees** means any fees *Synergy*, acting reasonably, determines the *customer* is required to pay *Synergy* as compensation for *Synergy* performing administrative tasks necessary under this *contract*, for example the charge the *customer* is required to pay under clause 7.3 when it submits an application form under clause 7.3 to change the *system*.

**system** means a *small renewable energy system* and/or *storage works* 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*.

**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*.

**WP ESM direction** means a direction that *Western Power* gives to *Synergy* in accordance with the *technical rules*, the connection conditions, a contractual right between *Western Power* and *Synergy* and/or any other *Law*, that requires or requests *Synergy* to increase load in the *SWIS*, or in a particular area of the *SWIS*, by disconnecting, curtailing or reconnecting

end use customers’ distribution-connected photovoltaic systems, including the *customer’s system*.

## 2. Electricity supply agreements

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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 *Electricity Corporations Act 2005*), clause 3.2(a) of this *contract* does not apply.

## 3. Condition precedent

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3.1 The terms and conditions of this *contract* (other than clauses 1, 2, 9.1 and 10.1 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 form*, 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

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- 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* 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. Distributed energy sale rates

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- 5.1 Subject to the terms of this *contract*, including but not limited to clause 5.3, *Synergy* will purchase *distributed energy exported* by the *customer* at the *DEBS buyback rate*.
- 5.2 For the avoidance of doubt, this *contract* governs the sale of *distributed 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*.
- 5.3 Notwithstanding anything to the contrary in the *contract*, for any day, *Synergy's* obligation to purchase *distributed energy exported* by the *system* at the *premises* is limited to the *contract maximum quantity*. To the extent that, on any day, the quantity of *distributed energy exported* exceeds the *contract maximum quantity (Excess Amount)*, then, to the extent permitted by *Law*, *Synergy* will not be liable to the *customer* for any moneys or compensation, nor will *Synergy* be exposed to any other remedy, in respect of the *Excess Amount*.
- 5.4 *Synergy* and the *customer* may enter into another agreement in relation to payment for any *distributed energy exported* by the *system* above the *contract maximum quantity*.

#### 6. System and other obligations

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- 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) *distributed 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 For the avoidance of doubt, the *customer's* obligations under this *contract*, including under this clause 6:
- 6.7.1 are unaffected if the *system* is owned by a third party; and
  - 6.7.2 apply in relation to the *system* at all times irrespective of the level of *distributed energy exported*, including but not limited to when that level is equal to 0 kWh or greater than 50 kWh.

#### 7. Laws, approvals, liaison and information

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- 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* "Distributed Energy Buyback Scheme Change of System Application" form (as amended or replaced by *Synergy* from time to time);

7.3.2 pay any *Synergy DEBS fees* associated with *Synergy* processing this form; and

7.3.3 obtain *Synergy's* consent in writing to the change, before it makes any change 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, storage capacity or its export capacity. Failure to do so may result in, but is not limited to, the *customer* being ineligible for the *DEBS 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 or relates to the *contract* or in relation to the *Electricity Industry (Licence Conditions) Regulations 2005*.

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 *DEBS buyback 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 *distributed 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*.

7.9 Nothing in this *contract*, including but not limited to clause 17.3.2.5, limits or excludes in any way the consent the *customer* is deemed to have given under section 46(9) of the *Energy Operators (Powers) Act 1979* (WA).

## 8. Payment for distributed energy exported

### Synergy's payment obligation

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 *distributed 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*, clause 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 Subject to clause 5.3, *Synergy* will pay a *residential customer* or a *non-residential customer* not registered for *GST* for the *distributed energy exported* by providing a credit on the *bill* for the amount of *distributed 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 relevant *DEBS buyback rate*.

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 *distributed energy exported* from the system.
- 8.5 Synergy will, subject to clause 5.3 and after setting off any amounts permitted under clause 8.10, pay the *non-residential customer* the amount of the *distributed energy exported* by providing a credit on the *bill* for the amount of *distributed 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 relevant DEBS 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 *distributed energy exported*

- 8.7 Synergy may estimate the quantity of *distributed 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,
- 8.9.1 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 one or more of the DEBS buyback rates or one or more estimated readings have been followed by an actual reading); then
- 8.9.2 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 *distributed 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

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- 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 any of the following occur:
- 9.3.1 the *electricity supply agreement* with the *customer* for the *premises* ends for any reason;
- 9.3.2 if a 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* and *Synergy* provides a notice of this to the *customer*;
- 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* or *storage works*;
- 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.
- 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 *distributed 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 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.
- 9.6 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.
- 9.7 *Synergy* must pay to the *customer* any outstanding amount payable to the *customer* under this *contract* within 29 days of termination of this *contract*.
- 9.8 Clauses 1, 6, 7, 9.6, 9.7, and 12 continue to have force and effect after the termination of this *contract* until the date any of the following occurs:
- 9.8.1 the *customer* enters into a new contract with *Synergy* governing the operation of the *system*;
- 9.8.2 provided the *customer* is the registered owner of the *premises*, the *customer* permanently vacates the *premises* and either:
- 9.8.2.1 the *system* is disconnected from the *Western Power network*; or
- 9.8.2.2 a new customer occupies the *premises*; or
- 9.8.3 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.
- 9.9 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 9.8.1 to 9.8.3 occur.
- 9.10 For the avoidance of doubt, the termination of this *contract* does not affect the continued operation of the *electricity supply agreement*.

## 10. Meter

- 10.1 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 to give effect to this contract. The current charges are set out in the *DEBS 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

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- 11.1 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 *Loss* that may be caused by the *system* or its use including any loss, damage or injury caused by the disconnection, curtailment or reconnection of the *system* as a result of *Synergy's* good faith use, management or operation of the *ESM system*.
- 11.2 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 *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* 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*.

- 11.6 The *customer* agrees *Synergy* will not incur any liability to the *customer* for any *Loss* relating to or in connection with *Synergy's* good faith use, management or operation of the *ESM system*, including *Synergy's* good faith reliance on any *WP ESM direction*.

## 12. Application of legislation

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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 *Electricity Corporations Act 2005 (WA)*, the *El Act*, the *Electricity Industry (Licence Conditions) Regulations 2005 (WA)* 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

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### 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 *distributed 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 *distributed 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 *distributed 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 if any of clauses 11.6, 17.2 or 17.3 apply to the *customer*, each clause is central to the basic nature of this *contract* as a contract giving effect to Government policy;
- 14.1.3 severance of any part of clauses 11.6, 15, 17.2 or 17.3 alters the basic nature of this *contract*; and
- 14.1.4 if any part of clauses 11.6, 15, 17.2 or 17.3 are void, unenforceable or illegal in any jurisdiction, *Synergy* may terminate this *contract*.
- 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.

- 14.7 A reference to legislation means includes that legislation as amended or replaced from time to time.
- 14.8 If a period of time dates from a day, the period of time is calculated exclusive of that day and inclusive of the last day of that period of time.

## 15. Amendments

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- 15.1 The *customer* acknowledges that these “Distributed Energy Buyback Scheme Terms and Conditions for Purchase of Distributed Energy – Electricity Industry (Licence Conditions) Regulations 2005” (including, but not limited to the *DEBS buyback rate*) are subject to change as required or permitted by *Law* (including but not limited to changes arising from any of the *El Act* and regulation 8A of the Electricity Industry (Licence Conditions) Regulations 2005 (WA)), and any such change may, without limitation, have retrospective effect.
- 15.2 In the event that any changes to these “Distributed Energy Buyback Scheme Terms and Conditions for Purchase of Distributed Energy – Electricity Industry (Licence Conditions) Regulations 2005” are approved by the *Coordinator* or the *Minister* then *Synergy* will notify the *customer* of such change and the *contract* will be deemed to be amended to reflect that change on and from the date that the change is approved by the *Coordinator* or *Minister* (as relevant).

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

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- 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 charges 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. ESM

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### 17.1 Recital

This clause 17 is intended to:

- 17.1.1 enable *Synergy* to give effect to the State Government’s *ESM* policy that requires all new or upgraded distribution-connected photovoltaic systems within the *SWIS* with an inverter capacity of 5kW or less to be the subject of *ESM* for short periods in response to a *WP ESM* direction. The new arrangements took effect on 14 February 2022; and
- 17.1.2 otherwise enable *Synergy* and the *customer* to comply with their obligations in relation to the *system* being connected to the *Western Power network*, including under the *ETAC* and the connection conditions.
- 17.2 Without limiting the *customer*’s obligations under clause 7.1 in any way, and consistent with *Western Power*’s connection conditions, the *customer* agrees it will participate in the *ESM system*.
- 17.3 Without limiting the *customer*’s obligations under clause 7.1 in any way, the *customer* acknowledges and agrees to the following.
- 17.3.1 *Synergy* will use the *ESM system* to disconnect, curtail and reconnect the *customer*’s *system* in the manner *Synergy* considers is required or convenient to:
- 17.3.1.1 implement a *WP ESM direction* or otherwise comply with the connection conditions applicable to the *customer*;
- 17.3.1.2 commission, test or maintain the *ESM system*; or
- 17.3.1.3 otherwise comply with any of its obligations under its *ETAC* or obligations under any *Law*.
- 17.3.2 The *customer* will, at its risk and cost, do all things *Synergy* or *Western Power* reasonably requires it to do in connection with the matters in clause 17.3.1 including, without limitation,
- 17.3.2.1 installing and maintaining any relevant hardware or software at the *system*’s inverter (or other location as required or agreed to by *Western Power* or *Synergy*);

- 17.3.2.2 ensuring any relevant hardware or software is connected to the internet, if required for operation of the *ESM system* applicable to the *customer*, and the *system* otherwise remains available to be disconnected, curtailed or reconnected by the *ESM system*;
- 17.3.2.3 disconnecting, curtailing or reconnecting the *system* for the safe and/or efficient operation of the *ESM system*;
- 17.3.2.4 notifying *Synergy* as soon as practicable, if there is, or is likely to be, any circumstances that may adversely impact the operation of the *ESM system*, including any actual or expected changes to the *customer's system* or if the *customer* considers the *system* will, or is likely to, not remain available to be disconnected, curtailed or reconnected by the *ESM system* for any reason; and
- 17.3.2.5 providing *Synergy* or persons nominated by it (including *Western Power*) with safe and unrestricted access to the *premises* when *Synergy* needs it and without having to give the *customer* notice, at all reasonable times and at any time in an *Emergency*, for the purposes of ensuring compliance by the *customer* with this *contract*.
- 17.3.3 A person entering the *premises* on *Synergy's* behalf will clearly display identification that identifies the person as *Synergy's* employee or agent and show his or her identification to the *customer* if the *customer* asks to see it.
- 17.3.4 The *customer* must not tamper with, bypass, circumvent or otherwise interfere with the *ESM system*, or do anything that will prevent *Synergy* or *Western Power* from using the *ESM system*.
- 17.3.5 If the *customer* fails to comply with this clause 17.3 *Synergy*, in addition to any other legal remedy available to it, or *Western Power*, may permanently disconnect the *customer's system* until such time as *Synergy* is satisfied the breach has been remedied.
- 17.4 Clauses 11.6, 14.1.2, 17.1, 17.2 and 17.3, only apply to customers that:
  - 17.4.1 entered into or amended an agreement to install or modify the *system*, other than a replacement under warranty or on a like-for-like basis, on or after 14 February 2022;
  - 17.4.2 entered into or amended an agreement to install or modify the *system*, other than a replacement under warranty, before 14 February 2022 and had the *system* installed or modified after 14 March 2022; or
  - 17.4.3 are otherwise required under contract or by *Law*, either directly or indirectly, to participate in the *ESM system* or a similar system.

[synergy.net.au/DEBS](https://synergy.net.au/DEBS)