

## TERMS AND CONDITIONS

Effective Date: 3 June 2025

### Introduction

These are binding terms between **Superpower Energy Limited (Supa)** and the Customer whereby Supa will provide the Customer with Supa's Community Energy System.

### 1. Definitions

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In these Terms and Conditions, the following definitions apply:

**Agreement** means the combination of these Terms and Conditions and the Sales Order.

**Community Energy System** is the name given to the components of a solar powered energy producing system comprising the design specification, a solar array with batteries and a power management system on the Customer's premises, all as detailed in the Sales Order;

**Community Revenue Order** means a Sales Order whereby the Parties have elected to adopt the system sharing Community User Revenue as defined and outlined in Schedule 2;

**Community Users** means electricity users who receive their electricity via Supa as part of the Community Energy System installed at the Customer's premises;

**Electricity Only Agreement** refers to the separate agreement between the Customer and Supa whereby Supa provides only energy to the Customer following Termination in accordance with Section 9 of these Terms.

**Electricity Usage Charge** refers to a charge for the amount of electricity used by any party for any period, incorporating all relevant fixed third party charges for the supply of that electricity, as well as any variable charges for electricity consumed at the relevant site as measured by data within an installed inverter.

**Energy Retailer** means a third party that is in the business of selling electricity;

**Finance Lease** means the lease with the Financier included in the Sales Order, if required;

**Financier** means Customer's chosen finance company, which will purchase the Community Energy System from Supa and lease it to the Customer on the terms of the Finance Lease, if that is required;

**Grid** means the nationwide system of electric power transmission in New Zealand;

**GST** means the tax payable under the Goods and Services Tax Act 1985;

**Incumbent Energy Retailer(s)** means the third party that was supplying electricity to the Customer (or as relevant, the Community Users) prior to the date of the Sales Order.

**Installer** means the third party, verified by Supa, chosen to install the Community Energy System;

**Intellectual Property** means all intellectual property, proprietary and industrial rights (whether existing in statute, at common law or in equity), including all copyright, know-how, trade secrets, trade marks, business names, inventions, patents, design rights, and all allied, similar and associated rights, whether registered or unregistered, registrable or unregistrable, and all applications for any of the foregoing rights;

**kWh** is an abbreviation for a kilowatt-hour, being a unit of energy specifically measuring an amount of electricity used;

**Network** means the electricity network operated by Supa's chosen provider;

**Premises** means the land and building(s) owned by the Customer;

**Price** means the price of the Community Energy System, as set out in the Sales Order;

**Production Revenue Order** means a Sales Order whereby the Parties have elected to adopt the system sharing Production Revenue as defined and outlined in Schedule 1;

**Sales Order** means the order form or other confirmation authorised or executed by the Customer in respect of the Community Energy System;

**Specifications** means the specifications for the Community Energy System described in the Sales Order;

**Term** is included in the Sales Order and refers to the number of years from the date that the installation of the Community Energy System is completed.

All amounts are New Zealand Dollars (NZD, \$).

### 2. Community Energy System Design, Sale and Installation

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2.1. Supa will design the Community Energy System in accordance with the Specifications.

2.2. On completion of the design, EITHER:

2.2.1. The Customer will arrange for the Financier to buy the Community Energy System from Supa at the Price; and

2.2.2. The Customer will enter into a Finance Lease with the Financier for the same period as the Term and otherwise on the terms of the document incorporated into the Sales Order;

2.2.3. Whereby ownership of the Community Energy System may pass to the Financier;

OR:

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- 2.2.4. The Customer will arrange for other financing or funds with which to buy the Community Energy System from Supa at the Price;
- 2.3. Whereby ownership of the Community Energy System will pass to the Customer.
- 2.4. On transfer of ownership of the Community Energy System under clause 2.2, the Customer will:
  - 2.4.1. give access to the Premises to an Installer, to enable the Community Energy to be installed; and
  - 2.4.2. obtain any third-party consents needed for the installation of the Community Energy System;
- 2.5. The Customer will:
  - 2.5.1. arrange for the Community Energy System to be insured for its full replacement value with an insurer pre-approved by Supa;
  - 2.5.2. provide Supa with evidence of the insurance; and
  - 2.5.3. not do anything to prejudice the insurance.
- 2.6. On transfer of ownership of the Community Energy System under clause 2.2, Supa will arrange for the Community Energy System to be installed on the Premises in the manner agreed with the Customer.
- 2.7. At the commencement of installation, the Customer will facilitate the installation of an appropriate energy, smart or import/export meter (the "Meter") from the Incumbent Energy Retailer. Supa may assist the Customer in ensuring that the Meter is installed in a timely manner. The Price does not include any cost for the Meter, which will be borne by the Customer.
- 2.8. Following installation:
  - 2.8.1. the Customer will sub-lease the Community Energy System to Supa in accordance with clause 3;
  - 2.8.2. Supa will:
    - 2.8.2.1. arrange for the Community Energy System to be connected to the Network; and
    - 2.8.2.2. operate and manage the Community Energy System in accordance with clauses 3, 4 and 5.
- 2.9. The Customer may not sell or dispose of the Community Energy System or the Premises during the Term without the prior written consent of Supa, which will only be given if the buyer or other third party assumes all of the Customer's rights and obligations under this Agreement.

### **3. Community Energy System Sub-lease**

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- 3.1. The Customer will sub-lease the Community Energy System to Supa for the Term on the terms of this Agreement, incorporating details from either a Sales Order, a Community Revenue Order or a Production Revenue Order.
- 3.2. During the Term, Supa will also:
  - 3.2.1. be responsible for the repair and maintenance of the Community Energy System;
  - 3.2.2. subject to clause 3.3, ensure that suitably qualified personnel maintain the Community Energy System;
  - 3.2.3. comply with all laws relating to the operation of the Community Energy System.
- 3.3. If the Customer has a preferred maintenance contractor, it may, with Supa's prior approval, continue to use that contractor to maintain the Community Energy System.
- 3.4. The parties will review the sub-lease, management and operation of the Community Energy System annually, including, as required, performance in supplying power to Community Users and hardware;
- 3.5. The Community Energy System sub-lease in no way changes the ownership of the Community Energy System from the Financier or the Customer to Supa.

### **4. Supply of Energy to the Customer**

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- 4.1. The Customer acknowledges that:
    - 4.1.1. Supa will have full control of the Community Energy System and all energy generated by or stored in the Community Energy System;
    - 4.1.2. all energy generated by or stored in the Community Energy System will belong to Supa EXCEPT the energy that shall be held onsite by the Customer as backup for pre-determined systems; and
    - 4.1.3. the Specifications, Price and all details in the relevant Sales Order, Community Revenue Order or Production Revenue Order, are based upon the Customer's total electricity usage and consumption records in the 12 months prior to the effective date of this Agreement.
  - 4.2. Supa will invoice the Customer for the Customer's Electricity Usage Charge on a monthly basis within 7 (seven) days of the end of the relevant month.
  - 4.3. Supa will review the retail energy price supplied to the Customer on an annual basis during the Term, which may include retail, Network or regulatory price changes, and will account for any changes in the Customer's electricity usage or consumption. Supa will give the Customer not less than 30 days' notice of any changes to the retail energy prices.
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## 5. Community Energy Use

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- 5.1. Supa will be responsible for attracting and onboarding third parties as users of the Community Energy System (the Community Users), but the parties anticipate that the Customer will assist in doing so.
- 5.2. Supa will:
  - 5.2.1. enter into retail energy supply agreements with the members of the Community Users; and
  - 5.2.2. supply to the Community Users:
    - 5.2.3. energy generated from and/or stored in the Community Energy System; and
    - 5.2.4. additional energy purchased and delivered via Supa's chosen Network provider.
- 5.3. Supa will provide the Customer with a detailed report of the revenue generated from supplying electricity to Community Users.
- 5.4. Supa will maintain accurate records of all transactions related to the revenue generated from supplying electricity to Community Users.

## 6. Relationship Management

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- 6.1. The parties will arrange for their Senior Executives to meet at least annually, to ensure that benefits are being realised and to share the plans and future requirements of their respective organisations.
- 6.2. Each party will appoint an individual who will act as the main point of contact for the other party in respect of all day-to-day matters relating to this Agreement and will have overall responsibility for performance of that party's obligations under the Agreement (Business Manager).
- 6.3. Each party will ensure its Business Manager or nominated representative are available as required during normal business hours or at such other times as are agreed between the parties.
- 6.4. The parties' Business Managers will meet as necessary to:
  - 6.4.1. review the operation of this Agreement against the desired intent,
  - 6.4.2. assess and track against the shared vision for both parties, and
  - 6.4.3. deal with any other matters the parties may agree from time to time.

## 7. Confidentiality and Intellectual Property

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- 7.1. In this clause **Confidential Information** means information that:
  - 7.1.1. is marked confidential or is clearly confidential and is made available to by one party (the **Discloser**) to the other (the **Recipient**); or
  - 7.1.2. is discovered or produced by the Recipient or otherwise comes to the Recipient's knowledge in the course of performing its obligations under this Agreement and concerns the Community Energy System, or the Discloser's plans, intentions, technological capabilities, background, clients, operations, processes, product information, designs, market opportunities and similar information.
- 7.2. Each Recipient will keep confidential all Confidential Information obtained from the Discloser and, except as permitted under clause 7.3 or 7.4, will not disclose it to anyone else without the other party's written consent.
- 7.3. The Recipient may disclose confidential information only to those of its employees, agents and contractors who are directly involved in fulfilling the obligations of the Recipient under this Agreement and will ensure that they comply with these confidentiality obligations.
- 7.4. The obligations of confidentiality in this clause 7 will not apply to information that:
  - 7.4.1. the Recipient can clearly show was independently available to it from a third party having the right to disclose it;
  - 7.4.2. enters the public domain through no fault of the Recipient or any other person to whom it discloses the information; or
  - 7.4.3. the Recipient is obliged by law to disclose.
- 7.5. The Parties agree that Supa owns all Intellectual Property in connection with the power management system within the Community Energy System, and any improvements, as well as any such rights available to Supa from the design, implementation and management of the Community Energy System and relevant processes.
- 7.6. The Customer agrees to take all actions as may be reasonably required by to perfect or enforce Supa's title to the Intellectual Property under clause 7.5, which shall include executing and delivering any document required in order to perfect or enforce such title.
- 7.7. This clause 7 will survive termination.

## 8. Warranties and Limitation of Liability

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- 8.1. Supa gives no warranties in respect of the Community Energy System but, if relevant, will arrange for the Financier to pass on to the Customer the benefit of any warranties given by the suppliers or manufacturers of the Community Energy System or hold those warranties on trust for the Customer.
  - 8.2. Except as expressly provided in this Agreement, all representations or warranties (statutory, express or implied) are excluded to the full extent permitted by law.
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- 8.3. The Community Energy System is being made available for business purposes and the Consumer Guarantees Act does not apply.
- 8.4. Neither party will be liable for any loss of profits or any indirect or consequential loss or damage arising out of or in connection with this Agreement.
- 8.5. Each party's liability to the other arising out of any claim for damages under this Agreement will not exceed in aggregate \$100,000.
- 8.6. Neither party can bring a claim against the other in relation to this Agreement more than two years after the event giving rise to the claim.

## 9. Default and Termination

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- 9.1. Either party may terminate this Agreement immediately by notice in writing to the other if the other party:
  - 9.1.1. breaches any obligation under this Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to be remedied; or
  - 9.1.2. goes into receivership or statutory management, becomes insolvent or ceases to carry on its business.
- 9.2. Either party may terminate this Agreement, on giving the other party not less than 6 (six) months' notice in writing,
- 9.3. If the Customer is the terminating party, then the Customer either:
  - 9.3.1. must transfer the responsibility for the provision and management of the Community Energy System to another Energy Retailer; or
  - 9.3.2. assume full responsibility of the Community Energy System including operation and maintenance, and accept the revised Electricity Only Agreement which will be provided by Supa to the Customer within 14 calendar days of Supa receiving the notice of termination from the Customer;

## 10. Dispute Resolution

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- 10.1. If a dispute arises between the parties in relation to this Agreement (a "Dispute"), both parties will endeavour in good faith to settle the Dispute by negotiation between their Business Managers.
- 10.2. If the Dispute is not settled within 14 days under clause 10.1 then, unless agreed otherwise, it will be referred to a mediator to be agreed by the parties, or failing agreement within 14 days, to be appointed by the Resolution Institute.
- 10.3. In the event of a referral to mediation:
  - 10.3.1. the mediator will be deemed not to be acting as an expert or arbitrator;
  - 10.3.2. the mediator will determine the procedure and timetable for the mediation; and
  - 10.3.3. the cost of the mediation will be shared equally between the parties.
- 10.4. Neither party may issue legal proceedings (other than for urgent interlocutory relief) in respect of the Dispute, unless that party has first complied with the preceding provisions of this clause 10.

## 11. General

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- 11.1. **Payment Terms:** All invoices from Supa to the Customer are payable within 10 working days of the date of the invoice.
  - 11.2. No waiver of any breach of the Agreement will be deemed to be a waiver of any other or any subsequent breach. The failure of any party to enforce any provision of the Agreement will not be interpreted as a waiver of the provision.
  - 11.3. These Terms and Conditions may be amended or varied by Supa, but such amendments will only be effective no earlier than one month after Customers are notified of the relevant changes to the Terms and Conditions.
  - 11.4. The rights and remedies set out in these Terms and Conditions are cumulative and not exclusive of any other rights or remedies provided by these Terms and Conditions, whether at law or in equity.
  - 11.5. If any provision of these Terms and Conditions becomes invalid or unenforceable, the remainder of these Terms and Conditions will remain valid and enforceable to the fullest extent permitted by law.
  - 11.6. The Customer may not assign, transfer or novate the Agreement or any of its rights or obligations hereunder without the prior written consent of Supa.
  - 11.7. The Sales Order may be executed and delivered in any number of counterparts, including by way of electronic transmission where a Party signs a counterpart and sends it as a PDF to the other Party by email. All such counterparts, when taken together, shall constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to bear the date of the Sales Order.
  - 11.8. The Agreement will be governed by and construed in accordance with New Zealand law and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to the Agreement.
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## Schedule 1

### Production Revenue Order

Under a Production Revenue Order, the following additional definitions and terms are relevant and accepted by both Parties under this Agreement:

**Definitions:**

**Production** means all electricity produced from the Community Energy System in a calendar month, based on the data received from the inverter/s installed at the Premises, but specifically excludes any electricity that is purchased from the Grid.

**Production Rate** means the agreed rate per kWh that Supa will pay to the customer for all electricity generated from the Community Energy System, as defined in the Production Revenue Order;

**Production Revenue** is an amount derived by the following formula, completed at the start of a month for the previous month:  
 $\text{Production Rate} \times \text{Production}$ , expressed as a \$ sum, excluding GST;

**Additional Terms:**

1. In compensation for the sub-lease, and specifically clause 4.1 of the Agreement, the Customer will invoice Supa for the Production Revenue early in a new month, with payment due by Supa within 10 working days of the invoice.

## Schedule 2

### Community Revenue Order

Under a Community Revenue Order, the following additional definitions and terms are relevant and accepted by both Parties under this Agreement:

**Definitions:**

**Community User Revenue** means total revenue generated from the supply of electricity from the Community Energy System to Community Users;

**Revenue Share** is the amount calculated as the total Community User Revenue, excluding any taxes, fees, or other charges imposed by regulatory authorities or third parties, multiplied by the Revenue Sharing Percentage, plus GST.

**Revenue Sharing Percentage** means the percentage of revenue to be paid to the Customer from the total Community User Revenue, as detailed in the Community Revenue Order;

**Variable Energy Charge** means the cost of Electricity Usage by the Customer (or as relevant, the Community Users) on a monthly basis.

**Additional Terms:**

1. Supa will supply the Customer with retail electricity services including a Variable Energy Charge that is not less than the discount in the Community Revenue Order (applied to the price payable to the Incumbent Energy Retailer).
  2. Supa will supply energy to the Community Users for the Term as follows:
    - 2.1. Supa will supply Community Users with retail electricity services including a Variable Energy Charge that is not less than the discount in the Community Revenue Order (applied to the price payable to the Incumbent Energy Retailer).
    - 2.2. Supa will review the retail electricity prices for Community Users annually. The review will include passing through any local network company price changes, along with a benchmarking exercise of the Customer's incumbent retailer.
  3. Supa will pay the Customer the Revenue Share on a monthly basis in arrears, against a relevant invoice, within 15 working days following the end of each month.
  4. Supa will pay, or reimburse the Customer for:
    - 4.1. an agreed level of energy generated each month, with that quantum to be reviewed annually.
  5. All amounts by Supa referred to in 4 above, will be payable within 10 working days of receipt of the relevant invoice.
  6. If Supa is the terminating party, Supa will assume responsibility for all of the outstanding payments due under the Finance Lease for the remainder of the Term.
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