

**utilise.**<sup>®</sup>



**UTILISE  
LICENCE TO OCCUPY**

**STANDARD TERMS AND  
CONDITIONS**

**OCTOBER 2022**

## Table of Contents

1. STATUS OF THIS AGREEMENT.....	3
2. GRANT OF LICENCE .....	3
3. RIGHT OF RENEWAL.....	3
4. LICENCE FEE.....	4
5. GOODS AND SERVICES TAX.....	4
6. INSTALLATION AND OPERATION OF LICENSEE'S EQUIPMENT .....	4
7. NO WARRANTY .....	5
8. USE OF PROPERTY .....	5
9. REMOVAL OF EQUIPMENT .....	6
10. ASSIGNMENT AND SUBLICENSING.....	6
11. RIGHT TO PURCHASE .....	6
12. TERMINATION.....	7
13. LANDOWNER'S COVENANTS.....	8
14. INSURANCE AND INDEMNITY .....	8
15. RESOLUTION OF DISPUTES .....	9
16. PERSONAL PROPERTY SECURITIES ACT .....	9
17. NOTICES .....	10
18. INTERPRETATION .....	10
FIRST SCHEDULE.....	13

## 1. STATUS OF THIS AGREEMENT

- (a) **Background:** The Landowner has agreed to grant to the Licensee the right to attach, install and operate the Equipment on the Property for the Permitted Use, on the terms of this Licence.
- (b) **Licence to Occupy Specific Terms:** A contract between the Landowner and the Licensee is formed on the terms and conditions of this Licence once both parties have signed the Specific Terms.
- (c) **Defined Terms and Interpretations:** The definition and interpretation of terms used in this Licence can be found at the end of this Licence.

## 2. GRANT OF LICENCE

- (a) **Grant:** Landowner grants to the Licensee and the Licensee accepts a licence of the Property for the Initial Term beginning on the Commencement Date and ending on the Termination Date at the Annual Licence Fee:
  - (i) **Equipment:** to construct and install on the Property, and to operate, test, erect, place, maintain and (subject to clause 6) renew, access, store, use and remove the Equipment attached to the Property, to be positioned and/or attached in the manner shown in the plans attached as the First Schedule for the purposes of generating electricity;
  - (ii) **Access:** to have access at all times to the Property with workmen and any necessary vehicles implements and machinery, for the purposes set out in clause 2(a)(i) and for any purpose incidental to those purposes. The Licensee will minimise disruption to lessees, licensees and other affected occupants of the Property when exercising its right of access, having regard to the nature and urgency of the work being undertaken together, the 'Permitted Use'.
- (b) **No Lease:** The Licensee acknowledges and agrees that the rights conferred on the Licensee by this licence rest in contract only and will not create in or confer upon the Licensee any tenancy or any estate or interest in the Property, and that the rights of the Licensee are those of a licensee only.
- (c) **No expansion:** Nothing in this Licence gives the Licensee a right to replace, substitute, upgrade, alter, redevelop or expand the System.

## 3. RIGHT OF RENEWAL

- (a) **Preconditions:** If:
  - (i) **Notice to renew:** at least three months before the expiry of the then current term the Licensee has given the Landowner written notice of the Licensee's wish to renew this licence (Notice to Renew); and
  - (ii) **Compliance by Licensee:** there is no subsisting breach of the terms of this licence;then Landowner will renew this licence at the Licensee's cost for the Renewal Term beginning on the day following the expiry of the then current term.
- (b) **Terms of Renewed Licence:** The renewed licence will be on the same terms as this licence but will exclude this present term for renewal unless further Renewal Term(s) are specified in the Specific Terms.

- (c) **Holding Over:** If, other than under a renewal of this licence or the grant of a further licence, the Landowner permits the Licensee to remain in occupation of the Property after the end or earlier termination of the Term (or Renewal Term as the case may be), that occupation will be on a monthly basis only, and otherwise on the same terms as this licence. Either party may terminate that licence on one month's notice in writing to the other at any time. These holding over provisions will be deemed to apply to the periods during which the Licensee continues to occupy the Property after the relevant Renewal Date.

#### 4. LICENCE FEE

- (a) **Annual Licence Fee:** The Licensee must during the Term pay the Annual Licence Fee, if demanded, as set out in the Specific Terms.
- (b) **No Deductions or Set-Off:** All licence fees and other money payable by the Licensee under this licence must be paid to Landowner on demand (if demanded) without any deduction or set-off, by direct bank payment or as Landowner may direct.

#### 5. GOODS AND SERVICES TAX

- (a) **Payment:** The Licensee must pay to Landowner all Goods and Services Tax payable on the Annual Licence Fee and other money payable by the Licensee under this licence. The Licensee must pay Goods and Services Tax:
- (i) **Annual Licence Fee:** on the Annual Licence Fee on each occasion when any licence fee falls due for payment; and
- (ii) **Other Money:** on any other money payable by the Licensee on demand.

#### 6. INSTALLATION AND OPERATION OF LICENSEE'S EQUIPMENT

- (a) **General Obligations:** The Licensee must, at its own cost:
- (i) **Installation:** install the Equipment in accordance with Prudent Operating Practice;
- (ii) **Maintenance:** maintain the Equipment in a safe, good, clean, and substantial state of repair, with visible portions of the Equipment appearing to be new or near new; and
- (iii) **Resource and Other Consents:** obtain a resource consent and/or bylaw approval, if required, for the installation and operation of the Equipment and comply in all respects with the provisions of the Resource Management Act 1991, and the terms of any resource consent and bylaw approval. The Licensee will also obtain any building consents, code compliance certificates and annual warrants of fitness required for any work it undertakes and make copies available to the Landowner upon request.
- (b) **Compliance with Statutes:** The Licensee must ensure that at all times the operation of the Equipment complies with all relevant statutes, regulations and bylaws.
- (c) **Licensee's Property:** Subject to Clause 10, the Equipment installed on the Property will remain the property of the Licensee and no part of it will become a fixture on the Property.

- (d) **Licensee warranty:** The Licensee warrants that all roof penetrations the Licensee makes for the installation of the System will be watertight. This warranty will run the shorter of the first ten (10) years of the Term and the length of any existing installation warranty for the roof.
- (e) **Repair of damage:** The Licensee will repair damage it causes to the Property or pay for the damage or loss that the Licensee may cause in the installation and maintenance of the System.

## 7. NO WARRANTY

- (a) The Landowner gives no warranty:
  - (i) as to the suitability of the Property for the Permitted Use;
  - (ii) that the Property will be occupied; or
  - (iii) that any subsequent tenant or occupant will make use of the System.

## 8. USE OF PROPERTY

- (a) **Restriction on use:** The Licensee will use the Property only for the Permitted Use on the terms expressed or implied in this licence.
- (b) **Restrictions on Use:** The Licensee must:
  - (i) **Noxious Activities and Nuisances:** not carry on any noxious, noisy or offensive business or activity in or about the Property or do anything which is or may be a nuisance or annoyance to any person, but the carrying on of the Permitted Use by the Licensee will not of itself be a breach of this clause;
  - (ii) **Resource Management Act:** not do anything which is or may be a breach of any duty imposed on any person by the Resource Management Act 1991;
  - (iii) **Health and Safety in Employment Act:** not do anything which is or may be a breach of any duty imposed on any person by the Health and Safety in Employment Act 1992; and
  - (iv) **Acts, Bylaws etc:** comply in all respects with all acts, bylaws, regulations, rules, and requisitions relating to the Property and the Licensee's use of the Property.
- (c) If any repairs or improvements to the Property that could interfere with the System (such as repairing the roof where the System is located) are to be carried out, the Landowner (or the Customer on the Landowner's behalf) must provide not less than 30 days prior written notice to the Licensee of such works. The parties shall cooperate in good faith to determine the appropriate method to accommodate these changes to the Property. Any changes made to the System under this clause shall be at the Landowner's (or the Customer's, as the case may be) reasonable expense. This Agreement will be amended to the necessary extent to reflect any changes to the System (including without limitation a reduction in capacity of the System) resulting from repairs or improvements to the Property. The Licensee agrees it will not prevent changes to the Property reasonably required by the Landowner or the Customer.

## 9. REMOVAL OF EQUIPMENT

- (a) **Remove Equipment:** Within a reasonable period after the Final Expiry Date or earlier termination of this licence, the Licensee will reinstate the Property, make good any damage caused to the Property and leave the Property in the clean and tidy condition it was in at the Commencement Date (fair wear and tear excepted) at the Licensee's expense. If the Licensee fails to reinstate, and the Customer has not taken ownership of the System, any costs incurred by the Landowner in reinstating the premises whether in whole or in part within twelve months of the end of the Licence shall be recoverable from the Licensee. Notwithstanding any termination of this licence, the Licensee will have access to the Property with workmen and any necessary vehicles implements and machinery, for the purposes set out in this clause 9 and for any purpose incidental to those purposes.
- (b) **Removal under PPA:** If the System is removed under the PPA, this Licence will terminate and the Licensee must perform its obligations under clause 9(a) above.

## 10. ASSIGNMENT AND SUBLICENSING

- (a) **Control of Assignment and Sublicensing:** Except as provided in this clause 10, the Licensee must not:
- (i) **Assign:** assign the Licensee's interest in this licence without the prior consent of the Landowner (which shall not be unreasonably withheld); or
  - (ii) **Sublicense:** sublicense or part with possession or share occupation of the whole or any part of the Property.
- (b) **Assignment to a Related Company, Secured Party or PPA Party:** The Licensee may assign the Licensee's entire interest in this licence to one of that company's related companies, as defined in the Companies Act 1993, or a party that holds a registered financing statement over the System on the Personal Property Securities Register, or a party that is a counterparty to the PPA, and the same right of assignment will apply to any such company to whom that interest is assigned, provided:
- (i) **No Breach:** there is no subsisting breach of this licence;
  - (ii) **Covenant:** the assignor delivers to Landowner a duly completed deed of covenant to this agreement.
- (c) **Assignment Upon Sale of Landowner's Interest in the Property:** Except as provided in this section 10, the Landowner must:
- (i) **Assign:** assign the Landowner's interest in this licence to the Purchaser of the Property; and
  - (ii) **Covenant:** ensure the Purchaser delivers to the Licensee a duly completed deed of covenant to this agreement.

## 11. RIGHT TO PURCHASE

- (a) The Licensee grants to the Landowner an option to purchase the System. The option to purchase the System may be exercised by the Landowner providing notice in writing to the Licensee.
- (b) If the Landowner gives an exercise notice under this clause 11, the Landowner will purchase and the Licensee will sell the System to the Landowner on the date which is 30 days after the date of the Landowner's exercise notice ("Settlement

Date”), provided the Customer does not wish to purchase the System under clause 11(d) below.

- (c) On the Settlement Date:
- (i) The Landowner must pay the purchase price calculated in accordance with clause 11(e); and;
  - (ii) The Licensee will transfer the System to the Landowner. The transfer of the System will be on an ‘as is where is’ basis and the Licensee will not make any warranties as to the condition or fitness for purpose of the System, though will provide all reasonable information sufficient for the Landowner to undertake its due diligence before exercising its option to purchase the system. The System will be transferred to the Landowner or its nominee free of all encumbrances.
- (d) The Landowner acknowledges that the Customer has the first right to purchase the System. The Landowner cannot exercise its right to purchase the System under this clause without the Customer being offered the first right of refusal.
- (e) **Purchase price:** The purchase price payable by the Landowner on exercise of the option will be calculated based on the following formula:
- the calculated System Cost adjusted for a depreciation schedule as below. That is,  $\text{Purchase Price} = (C \times N) - D$
- Where:
- C = The price per kilowatt specified in the Licence to Occupy Specific Terms
- N = number of kilowatts for the System at date of installation
- D = depreciation calculated in accordance with the methodology, at the rate per year specified in the Licence to Occupy Specific Terms from the day on which the System has successfully completed all testing and commissioning requirements and is able to generate electricity.
- If any part of the System is faulty or inoperable, the System Cost shall be reduced by a reasonable amount to take into account the reduced value of the System caused by the faulty or inoperable part. In no circumstances shall the System Cost be more than the cost to replace the System with a reasonably equivalent system (in terms of electricity generation) at the time of the purchase.
- (f) If the Landowner purchases the System from the Licensee, it agrees to take assignment of the PPA and all of the rights, title, interests and obligations of the Seller under the PPA relating to the System the Landowner has purchased.

## 12. TERMINATION

- (a) **Termination by Landowner:** Landowner may on written notice to the Licensee terminate this Licence, without compensation if:
- (i) **Failure to Perform:** Landowner gives the Licensee notice in writing of Landowner’s intention to terminate this licence for a breach by the Licensee of its obligations specified in the notice, and the Licensee fails to remedy the breach within 40 Working Days from the date of the notice;
  - (ii) **Licensee a Company:** the Licensee:

- (A) is or is deemed to be unable to pay its debts under section 287 of the Companies Act 1993;
- (B) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation approved in writing by the Landowner);
- (C) is wound up or dissolved;

A notice from Landowner under this clause may be combined with a notice under section 245 or section 246 of the Property Law Act 2007.

- (b) **Termination by either Party:** Either Party may on written notice to the other terminate this licence without compensation being payable by either party if:
  - (i) **Damage to Property:** any part of the Property to which the Equipment is attached is so damaged as to render it unusable by the Licensee for the Permitted Use; or
  - (ii) **Statutory or planning changes:** the use of the Property by the Licensee is rendered illegal or unnecessary by reason of any statutory or planning changes.
- (c) **Rights and obligations:** Termination or expiry of this Licence shall be without prejudice to any rights and/or obligations of the parties existing at the time of termination or expiry.
- (d) **Outstanding Fees:** Without prejudice to any of the Landowner's other rights, the Licensee will pay to the Landlord all amounts owing under the Licence on the date the Licence is terminated.

### 13. LANDOWNER'S COVENANTS

- (a) As long as the Licensee pays the Annual Licence Fee and any other fees and charges payable under this licence and observes and performs the covenants on its part contained or implied in this licence, the Licensee may, subject to the covenants and conditions contained or implied in this licence, enjoy the rights and privileges contained in this licence without interruption from Landowner or any agent or employee of Landowner.
- (b) Landowner will co-operate with the Licensee in the Licensee obtaining any consents and/or bylaw approval under clause 6(a)(iii) (including providing Landowner's consent to any resource consent and/or bylaw approval).
- (c) The Licensee may remove or trim any tree, shrub or plant on the Land that obstructs or interferes with the operation of the Equipment, or the Permitted Use.
- (d) Landowner must at the request of the Licensee, obtain an acknowledgement and consent to the terms of this licence from any mortgagee or encumbrancer of the Property.
- (e) Landowner must ensure the delivery to the Licensee of a deed of covenant confirming accession to this agreement by any Purchaser of the Landowner's interest in the Property, prior to the sale of the Landowner's interest in the Property.

### 14. INSURANCE AND INDEMNITY

- (a) **Insurance:** The Landowner does not and is not obliged to insure the System.



- (b) **Indemnity:** The Licensee will indemnify the Landowner against all reasonable claims, penalties, damages and losses (including reasonable costs) directly or indirectly incurred by the Landowner as a result of the Licensee's installation, operation and maintenance of the System on the Property.

## 15. RESOLUTION OF DISPUTES

- (a) Disputes: Any dispute, difference or question arising between the parties about:
- (i) **Interpretation:** the interpretation of this licence;
  - (ii) **Matters Arising:** anything contained in or arising out of this licence;
  - (iii) **Rights, Liabilities or Duties:** the rights, liabilities or duties of Landowner or Licensee; or
  - (iv) **Other Matters:** any other matter touching on the relationship of Landowner or the Licensee under this licence (including claims in tort as well as in contract);

will be referred to as a dispute for the purposes of this clause.

- (b) **Mediation:** Any dispute which is unable to be resolved directly by the parties will be referred to mediation on the application of either party. The parties will agree on a suitable person to act as a mediator or will ask the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of Arbitrators' and Mediators' Institute of New Zealand Inc.
- (c) **Arbitration:** If mediation is unsuccessful, the dispute will be referred to the arbitration of a single arbitrator under the Arbitration Act 1996, on either party's application. The parties must try to agree on the arbitrator. If they cannot agree, the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc will, on either party's application, nominate the arbitrator.
- (d) **Action at Law:** The parties must go to arbitration under this section before they can begin any action at law (other than an application for injunctive relief).

## 16. PERSONAL PROPERTY SECURITIES ACT

The Landowner acknowledges that:

- (a) the System is the personal property of the Licensee and will at no time be or become a fixture on the Property;
- (b) this Licence is not a contract to sell or lease the System;
- (c) the installation of the System creates a security interest under the Personal Property Securities Act 1999 (PPSA) in favour of the Licensee;
- (d) the Licensee, or the Licensee's nominee, has the right to register a financing statement on the Personal Property Securities Register to record its interest in the System;
- (e) no other security interest, lien or encumbrance will be granted over the System;
- (f) at all times the Landowner must keep the System free and clear of all liens, claims, levies and legal processes not created by the parties in clause 16 (d);
- (g) the Landowner must sign any documents and do anything else reasonably required by the Licensee to give effect to the rights of the Licensee under this Licence.

The Landowner will do and procure such things as the Licensee may reasonably request to enable the Licensee to register a financing statement on the Personal Property Securities Register (PPSR) and to ensure that the Licensee's security interest in the System is a first ranking perfected security interest on the PPSR.

## 17. NOTICES

- (a) **Service of Notices:** Any notice or document required or authorised to be delivered or served under this licence may be delivered or served or sent by facsimile to the parties at their respective addresses listed in the Licence to Occupy Specific Terms unless an updated address is advised in writing to the other party.
- (b) **Time of Service:** Any notice or other document will be treated as delivered or served and received by the other party:
  - (i) **Delivery:** on personal delivery;
  - (ii) **Registered Post:** three days after being posted by prepaid registered post; or
  - (iii) **Facsimile:** on completion of an error free transmission, when sent by facsimile.
- (c) **Signature of Notices:** Any notice or document to be delivered or served under this licence must be in writing and may be signed by:
  - (i) **Attorney etc:** any attorney, officer, employee or solicitor for the party serving or giving the notice; or
  - (ii) **Authorised Person:** any other person authorised by that party.

## 18. INTERPRETATION

In this licence unless the context indicates otherwise:

### Definitions:

- (i) **Annual Licence Fee** means the annual licence fee for the attachment, installation and operation of the Equipment on the Property specified in the Licence to Occupy Specific Terms;
- (ii) **Authority** means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the Property or its use;
- (iii) **Commencement Date** means the commencement date as defined in the Specific Terms.
- (iv) **Customer** has the meaning given to it in the relevant PPA.
- (v) **Equipment** means the solar power panels, battery, structural supports and cables, conduits, lines and all associated items to be installed on the Property for the purposes of the Permitted Use;
- (vi) **Goods and Services Tax or GST** means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax;
- (vii) **Invitee or Invitees** means and includes each and every servant, employee, agent, contractor, sub-contractor, licensee or invitee;

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- (viii) **Landowner** is the party named as the landowner in the Specific Terms and which is the lawful owner of the Property.
  - (ix) **Licence** means this Licence to Occupy, including the Specific Terms and Standard Terms;
  - (x) **Licensee** means Utilise Limited and includes the Licensee's successors and permitted assigns and the Licensee's agents, employees, contractors, and invitees;
  - (xi) **Notice to Renew** means a notice to renew this licence given by the Licensee in accordance with clause 3(a);
  - (xii) **Permitted Use** has the meaning given to it in clause 2(a);
  - (xiii) **PPA** means the Power Purchase Agreement relating to the Property.
  - (xiv) **Property** means that part of the land described in the Licence to Occupy Specific Terms Appendices comprising the roof or land to which any part of the Equipment is to be attached as identified on the plans attached in the Licence to Occupy Specific Terms' Appendices;
  - (xv) **Prudent Operating Practice** means the exercise of the practices, methods and acts which would reasonably be expected to be employed by appropriately skilled, experienced and qualified owners, operators or maintainers of facilities similar in size and operational characteristics to the characteristics of the System, including those involving the use of new concepts or technology, and having due regard to applicable electrical safety and maintenance codes and standards, manufacturer's warranties, and applicable international, national, regional and local laws, regulations and ordinances;
  - (xvi) **Purchaser** means a third party that is purchasing or has purchased the Property from the Landowner;
  - (xvii) **Specific Terms** means the Utilise Licence to Occupy Specific Terms relating to the Property;
  - (xviii) **Standard Terms** means these Licence to Occupy Standard Terms and Conditions relating to the Specific Terms;
  - (xix) **System** means the solar photovoltaic array for electricity generation and delivery, as constructed, owned and operated by the Licensee at the Property;
  - (xx) **System Cost** means the size of the installed System in kilowatts multiplied by the price per kilowatt, specified in the Specific Terms.
  - (xxi) **Term** means the term of this licence and includes the Initial Term and (if this licence is renewed) the Renewal Term and (if this licence is further renewed) any further Renewal Term(s);
  - (xxii) **Utilities** means all utility and other services connected and/or supplied to the Property, including water, sewage, drainage, electricity, gas, telephone and rubbish collection; and
  - (xxiii) **Working Day** has the meaning given to it in the Property Law Act 2007.

#### Interpretation

In this Agreement, unless the contrary intention appears:

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- 18.2 **Building Act Terms:** the terms Building Work and Code Compliance Certificate have the meanings given to those terms in the Building Act 2004;
- 18.3 **Calendar Month:** any reference to a month will be deemed to refer to a calendar month;
- 18.4 **Defined Expressions:** expressions defined in the main body of this licence have the defined meaning in the whole of this licence including the background and Licence to Occupy Specific Terms;
- 18.5 **Licence to Occupy Specific Terms:** the terms Commencement Date, Default Interest Rate, Final Expiry Date, Initial Term, Land, Licence Fee Payment Date(s), Renewal Term(s), Renewal Date(s), Property, Expiry Date, Property, Termination Date, and Equipment and any other terms specified in the Specific Terms, will have the meanings given to them in the Specific Terms;
- 18.6 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect this licence's interpretation;
- 18.7 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 18.8 **Parties:** references to parties are references to parties to this licence;
- 18.9 **Persons:** references to persons include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality;
- 18.10 **Schedules:** the schedules to this licence and their contents have the same effect as if set out in the body of this licence;
- 18.11 **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to sections and clauses of and schedules to this licence; and
- Statutes and Regulations:** references to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.

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## FIRST SCHEDULE

Plans and description of the System