

## **Green Forms Trading - Terms of Use**

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These Terms of Use govern Your access and use of the Website, Services and Software supplied or to be supplied by Cleantech Energy Solutions Pty Ltd ABN 92 621 781 726 trading as Green Forms Trading (“**Green Forms**”, “**We**”, “**Us**” and “**Our**”) and any information, data or other materials uploaded, downloaded on or through the Website, Portal and Mobile Application.

By accessing or using the Services, Website and the Software, You agree to be bound by these Terms of Use and Privacy Policy. If You do not agree to these Terms of Use, You must not use (or allow a third party to use) the Services or access the Software or Website.

### **1. Definitions and Interpretation**

#### **1.1. Definitions**

Unless the context requires otherwise:

“**Approved REC Application**” means a Processed REC Application that has been approved by the Regulator.

“**Assignment Form**” means the REC assignment form in terms satisfactory to Us and executed by the Customer, the Installer and the Designer whereby the Customer assigns to Us all rights to create RECs in respect of the Installation, including an authority from the Customer to deal with the RECs in respect of that Installation.

“**Business Day**” means a day that is not a Saturday, Sunday or any other day which is a public holiday or bank holiday in State of New South Wales.

“**Buyer**” means a third-party buyer that purchases from Us the Pending RECs and or Created RECs which are in Your Green Forms Account.

“**CEC**” means the Clean Energy Council of Australia.

“**Created REC**” means a REC in Your Green Forms Account where:

- (a) there is an Approved REC Application;
- (b) We have paid to the Regulator the registration fee to enable the Pending REC to be registered on the REC Registry;
- (c) the REC has been registered by the Regulator on the REC Registry; and
- (d) We are satisfied that the REC has been created in compliance with the Renewal Energy Legislation.

**“Customer”** means the person or entity which is the legal occupier of the Installation Premises at which a System has been installed.

**“Defective Installation”** means any Installation that is:

- (a) not manufactured, designed and or installed in accordance with the Renewable Energy Legislation or other law or regulation;
- (b) not installed in accordance with these Terms of Use; or
- (c) associated with or specifically relates to a Potential Breach.

**“Designer”** means the CEC accredited designer who designed the System.

**“Draft REC Application”** means a REC Application You have created using the Portal or Mobile Application but is not yet Submitted.

**“Force Majeure”** means an act of God, fire, lightning, explosions, flood, subsidence, network failures, act of terrorism, insurrection or civil disorder or military operations, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences or authorities, strikes, lock-outs or other industrial disputes of any kind and any other cause, whether similar or not to the foregoing, outside of the affected party’s control.

**“Green Forms Account”** means an electronic account with Green Forms established to utilise the Services.

**“GST”** means the goods and services tax payable under or imposed by the GST Law.

**“GST Law”** has the same meaning as in *A New Tax System (Good and Services Tax) Act 1999* (Cth).

**“Installer”** means the accredited CEC individual who undertakes an Installation.

**“Installation”** means the installation of a System at the Installation Premises for a Customer legally creating an entitlement to RECs in respect of that Installation.

**“Installation Premises”** means the premises at which a System has been installed as recorded on the Assignment Form and Supporting Data.

**“Intellectual Property”** means all copyright, trade mark rights (registered and unregistered), patent rights, design rights, logos, domain names or any other intellectual property rights subsisting in or created during the development of the Services, Software and Website.

**“Interest Rate”** means 12% per annum.

**“LGC”** means a large-scale generation certificates as defined by the Renewable Energy Legislation.

**“Licence Fee”** means the fee (exclusive of GST) You pay Us for each Pending REC or Created REC in Your Green Forms Account, as published on the Website, Our then current price list or otherwise notified to You including any deductions and/or set-offs.

**“Mobile Application”** means Our mobile device application known as “Green Forms Trading APP” as updated, altered or otherwise modified by Us from time to time.

**“Net REC Revenue”** means the consideration We agree to pay You in respect of an REC acquired under these Terms of Use, being the Trading Price accepted by You less the Licence Fee.

**“Pending REC”** means a REC which is listed by the Regulator as a REC that is pending approval and registration as a result of Our uploading of a Submitted REC Application to the REC Registry.

**“Portal”** means the online transaction portal operated by Us and accessed via the Website or Mobile Application by entering Your unique username and password for the submission of REC Applications as updated, altered or otherwise modified from time to time.

**“Potential Breach”** means where:

- (a) the Regulator, CEC or other relevant authority notifies Us that:
  - (i) a REC Application is under investigation and or is suspected to be in breach of the Renewable Energy Legislation or other law or regulation; or
  - (ii) You, the Installer or the Designer are under investigation or suspected to be in breach of the Renewable Energy Legislation or other law or regulation; or
- (b) We notify You that You have failed to comply with these Terms of Use.

**“Pre-Created REC”** means a REC which has been created for a System at the Installation Premises prior to Our uploading a Processed REC Application to the REC Registry for that subject System.

**“Privacy Policy”** means Our privacy policy as amended from time to time available at <https://greenformstrading.com.au/privacy>.

**“Processed REC Application”** means a Submitted REC Application which We have verified and uploaded to the REC Registry waiting to be either approved or refused by the Regulator.

**“REC”** means a STC and LGC within the meaning of those expressions as used in the Renewable Energy Legislation and includes the entitlement to create or register RECs.

**“REC Application”** means Our application form for the request to create RECs in respect of a System, which includes a Draft REC Application, Submitted REC Application and Processed REC Application.

**“Renewable Energy Credit Purchase Agreement”** means Your agreement with Us in which We accept the assignment of RECs on the terms outlined therein.

**“REC Registry”** means the internet-based registry system operated by the Regulator.

**“REC Revenue”** means the consideration paid by Us for the assignment of RECs, or the right to create RECs, in respect of an Installation which, after the deduction of the Licence Fee, is to be paid to the Retailer.

**“Regulator”** means the Clean Energy Regulator established under the *Clean Energy Regulator Act 2011* (Cth), being the independent statutory body responsible for administering RECs.

**“Renewable Energy Legislation”** means the *Renewable Energy (Electricity) Act 2000* (Cth) and associated regulations.

**“Security Interest”** has the same meaning as provide for in the *Personal Property Securities Act 2009* (Cth).

**“Services”** means the services We provide for the creation, registration, aggregation and trading of RECs under the Renewable Energy Legislation.

**“Software”** means the:

- (a) Mobile Application;
- (b) Portal,

but excludes any software of third parties.

**“STC”** means a small-scale technology certificate as defined by the Renewable Energy Legislation.

**“Submit”** or **“Submitted”** means, in respect of a Draft REC Application, delivery to Us for verification and processing by pressing the “submit” button on the Portal or Mobile Application.

**“Submitted REC Application”** means a Draft REC Application, Assignment Form and Supporting Data which You have Submitted via the Portal or Mobile Application to create RECs in respect of a System.

**“Supporting Data”** means:

- (a) certificates of compliance signed by such person as is required in the jurisdiction of the Installation Premises;
- (b) the Customer’s order to the Retailer setting out particulars of the System and Installation;
- (c) confirmation of the existence of a system design diagram of the System; and
- (d) all data, photographs, documents and other information in respect of the Installation We request.

**“System”** means REC eligible photovoltaic panels, inverters and associated equipment necessary for Installation and which are listed on the CEC’s list of approved components from time to time.

**“Taxes”** means all applicable taxes, levies, duties, charges, deductions and withholdings and similar imposts imposed by law or by any government agency or statutory body including income tax, valued added tax, GST, sales tax, business tax, withholding tax, fringe benefits tax, undistributed profits tax, financial institutions duty, stamp duties and any interest or penalty imposed about any of the preceding items.

**“Terms of Use”** means these terms of use as amended from time to time.

**“Trading Price”** means the price for the acquisition of a REC published from time to time on the Website or Software in respect of that particular REC.

**“User”** means the individual You have nominated to access and use Your Green Forms Account on Your behalf.

**“Website”** means Our website accessed at [www.greenformstrading.com.au](http://www.greenformstrading.com.au) and any links available from or within the Website, but does not include any external websites or links to external websites not belonging to or controlled by Us

**“You”** means the entity which supplies Systems to third parties and or undertakes Installations from which RECs, or the entitlement to create RECs, can result, including Your employees, agents, contractors and assigns, and any individual who uses the Software or Website.

**“Your Green Forms Account”** means the Green Forms Account You have created, and We have accepted, in accordance with these Terms of Use to utilise the Services which is accessed via the Software with Your unique username and password.

**“Your Nominated Bank Account”** means Your bank account with a financial institution which You have nominated to Us for payment to be made in.

## **1.2. Interpretation**

In these Terms of Use, unless the context otherwise requires:

- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all genders;
- (d) the use of the word "including" does not limit what else might be included;
- (e) a reference to a thing includes all or any part of it;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- (h) a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- (i) a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;
- (j) headings are inserted in this document for convenience only and are not intended to affect its interpretation; and
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them.

## **2. The Green Forms Account**

### **2.1. Creating a Green Forms Account**

- (a) To receive the Services and access the Software, You must create a Green Forms Account.
- (b) To create a Green Forms Account, You must register via the Website by completing the online registration form and providing all requisite information including, but not limited to, Your name, company name, ABN, address, email address, phone number, details of Your Nominated Bank Account and details of any User including, but not limited to identification such as a driver's licence, Medicare card and passport to confirm the User's identity.
- (c) We may, in Our absolute discretion, accept or deny the Green Forms Account created in accordance with clause 2.1(b). Upon Our acceptance, You will be able to use the Software in respect of the Services.

## **2.2. Username and password**

- (a) You must create a username and password to access to Your Green Forms Account.
- (b) Where the correct username and password are provided for the purpose of accessing Your Green Forms Account or using the Software, We are entitled to assume that the access is by You or the User. You indemnify Us completely against any claim of direct/indirect loss or damage, including trading losses, that results from wrongful, fraudulent or other access to Your Green Forms Account via the Software.
- (c) You acknowledge and agree that:
  - (i) You are responsible for all activities that occur on Your Green Forms Account, including those of any User;
  - (ii) You are responsible for maintaining the confidentiality of the username and password to Your Green Forms Account, log-in, access or other security measures; and
  - (iii) You must promptly notify Us of any actual or suspected breach of security relating to the Software, including, but not limited to, any unauthorised use of or access to Your Green Forms Account.

## **2.3. Using Your Green Forms Account**

- (a) You and any User must not:
  - (i) disclose any passwords for Your Green Forms Account to any other person;

- (ii) allow, grant, permit or enable any person other than You or the User to access Your Green Forms Account; and
  - (iii) sell, lease, licence, assign or otherwise transfer Your Green Forms Account to another party without first obtaining Our prior written consent.
- (b) You represent and warrant that:
- (i) You and each User will use Your Green Forms Account and otherwise utilise the Services in accordance with these Terms of Use;
  - (ii) the information provided to Us through Your Green Forms Account is true and correct and complies with the provisions of the Renewable Energy Legislation;
  - (iii) each User has full authority to access and use Your Green Forms Account on Your behalf, including to create REC Applications; and
  - (iv) You and each User will not use Your Green Forms Account for any unlawful, fraudulent or improper purpose.
- (c) We are not liable for the results of any unauthorised access to Your Green Forms Account by a person using the Your or any User's username and/or password.
- (d) We may, at any time and in Our absolute discretion, suspend or terminate access to Your Green Forms Account or the Software without liability to You. You agree to indemnify Us from any direct/indirect loss, damage and/or liability flowing directly/indirectly from such action and from any claims (whether in contract, tort, legislative or otherwise) whatsoever.
- (e) You and each User agree to be jointly and severally liable for any damages We may suffer or liability arising from any unlawful or improper use of Your Green Forms Account by You or any User.

### **3. The Services**

#### **3.1. Assignment of RECs**

- (a) You may contract with a Customer for the supply and installation of a System at the Installation Premises on terms which include a benefit to You conditional on the Customer completing an Assignment Form. You must use Your best endeavours to satisfy the requirements of the Customer and cause the Assignment Form to be Submitted to Us as soon as reasonably practicable after the Installation is completed.



- (b) Upon the Assignment Form and Supporting Data being Submitted to Us, You represent and warrant that:
- (i) all information contained in the Assignment Form and Supporting Data is true and correct;
  - (ii) all legal and equitable rights and title in the RECs are legally assigned to Us by the Customer;
  - (iii) the Customer has not previously assigned its title and rights in the RECs to another party except through the Assignment Form (i.e. there are no Pre-Created RECs in respect of the Installation);
  - (iv) You have no claim, right or interest in the RECs and will not interfere with Our rights to the RECs;
  - (v) the Retailer has supplied and the Installer has installed a System at the Installation Premises:
    - 1. by appropriately qualified, CEC accredited and licensed persons;
    - 2. in accordance with the design and specifications of the System created by a lawfully qualified Designer;
    - 3. in a good and tradesman like manner that is fit for purpose and in compliance with all legal requirements and standards (not just those prescribed by the Renewable Energy Legislation); and
    - 4. in compliance with the requirements of any authority or scheme having jurisdiction in respect of the issue and/or administration of RECs;
  - (vi) You will immediately notify Us of any new information You may obtain in respect of a System which suggests that previously supplied information contained on the Assignment Form and Supporting Data in respect of that Installation is misleading, incorrect or inaccurate; and
  - (vii) if requested by Us, You will assist Us in conducting an inspection of the System at the Installation Premises.

### **3.2. Supporting Data**

- (a) Where Supporting Data is Submitted, We acknowledge that the Supporting Data is Your property and You grant to Us an irrevocable and exclusive licence to use the Supporting Data in accordance with these Terms of Use.
- (b) You acknowledge and agree that:

- (i) You are solely responsible for the accuracy and completeness of the Supporting Data which is Submitted;
- (ii) failure by You to Submit accurate and complete Supporting Data with an REC Application will cause delays in the REC Application being uploaded to the REC Registry by Us;
- (iii) You have obtained the Customer's written consent in respect of any photographs or other recordings taken at the Installation Premises which form part of the Supporting Data;
- (iv) Our use of the Supporting Data does not infringe the rights of the Customer or any third party;
- (v) We may contact and communicate with the Customer, the Installer and or the Designer with respect to the Installation, which includes Us inspecting the Installation Premises;
- (vi) We may disclose, transfer, share or deal with the Supporting Data:
  - 1. to facilitate Our provision of the Services to You, which includes providing the Supporting Data to the Regulator;
  - 2. so that We may analyse the Supporting Data as necessary for the verification, creation, registration and/or audit of RECs;
  - 3. if We are required to do so by law or by any judicial or regulatory body; and
  - 4. to otherwise fulfill the purpose for which the Supporting Data was Submitted; and
- (vii) We will not be liable to You if the Regulator does not accept a REC Application due to incomplete, inaccurate or insufficient Supporting Data being Submitted.

### **3.3. Creating RECs**

- (a) To create an REC in Your Green Forms Account, You must Submit the Assignment Form, Supporting Data and Draft REC Application in final form so that We may create and register the RECs with the REC Registry and sell the RECs to Buyers.
- (b) Your Draft REC Application will only become a Submitted REC Application upon Our receipt and verification of the Assignment Form and all Supporting Data.

- (c) We will upload the Submitted REC Application to the REC Registry and pay to the Regulator the applicable registration fee as calculated by the Regulator to enable the Submitted REC Application to become a Processed REC Application.
- (d) Upon the Processed REC Application being approved by the Regulator and the Pending RECs being registered in the REC Registry, We will send You an automated email and the Approved REC Application will be recorded in Your Green Forms Account.
- (e) Subject to any breach by You of these Terms of Use, including any Potential Breach, an REC in Your Green Forms Account will only become a Created REC after We have verified the Approved REC Application. We will notify You in Your Green Forms Account when a Created REC is created.
- (f) Where there is a Potential Breach, but without limiting our rights under clause 3.6, We reserve the right in Our absolute discretion to refuse an Approved REC Application and may recover Our costs in dealing in such REC Applications.
- (g) By the creation of RECs in accordance with this clause 3.3, You acknowledge and agree that:
  - (i) any communications You have with Us may be recorded by any means and in Our absolute discretion, but otherwise in accordance with our Privacy Policy;
  - (ii) We have no control over the period of time it takes for the Regulator to accept a Processed REC Application as an Approved REC Application and We will not be liable to You for any loss or damage You may incur as a result of any such period;
  - (iii) We are not responsible for any direct/indirect losses/damages You may sustain if the Assignment Form, Supporting Data and or the REC Application You Submit are false, incorrect or incomplete;
  - (iv) You will promptly respond to any communication, inquiry or other contact You receive from Us and or the Regulator; and
  - (v) You will provide Us with any information or assistance We may require to create an REC or comply with the Regulator's requirements.

### **3.4. Payment for RECs**

- (a) In consideration for the assignment, or Your procurement of the assignment, of RECs to Us by the Customer, We agree to pay You the Net REC Revenue calculated in accordance with this clause 3.4.

- (b) Subject to clause 3.5, at any time You may agree to the value of the Trading Price in respect of a Created REC in Your Green Forms Account by selecting the “Sell” button.
- (c) If We receive Your acceptance of a Trading Price in accordance with clause 3.4(b), We will:
  - (i) provide You with a tax invoice for the Licence Fee payable to Us in respect of that Pending REC or Created REC; and
  - (ii) pay to You by direct deposit into Your Nominated Bank Account the Net REC Revenue less any applicable Taxes the next Business Day.
- (d) Subject to clause 3.5, at any time You may agree to the value of the Trading Price in respect of a Pending REC in Your Green Forms Account by selecting the “Sell” button and accepting one (1) of the following payment terms:
  - (i) the next Business Day following the date on which You agreed to the Trading Price;
  - (ii) 3 Business Days following the date on which You agreed to the Trading Price; or
  - (iii) 7 Business Days following the date on which You agreed to the Trading Price.
  - (iv) 21 Business Days following the date on which You agreed to the Trading Price.
- (e) If We receive Your acceptance of a Trading Price in accordance with clause 3.4(d), We will:
  - (i) provide You with a tax invoice for the Licence Fee payable to Us in respect of that Pending REC or Created REC; and
  - (ii) pay to You by direct deposit into Your Nominated Bank Account the Net REC Revenue less any applicable Taxes the next Business Day.
- (f) Where there is a Potential Breach, but without limiting Our rights under clause 3.6, We reserve the right in Our absolute discretion to refuse, delay, vary and/or terminate payment of the Net REC Revenue to You and may recover Our costs in dealing in such REC Applications.

### **3.5. Additional costs**

- (a) You must agree to the value of a Trading Price for a Created REC within 30 days from the date the Created REC is listed on REC Registry.

- (b) Where You fail to agree to the value of a Trading Price in accordance with clause 3.5(a), We may in our absolute discretion invoice You for each Created REC which has been listed in Your Green Forms Account in excess for said 30 day period for an amount equal to the difference between the Regulator's then current registration fee per REC (exclusive of GST) and Our then current Licence Fee ("**Invoiced Amount**").
- (c) Where You pay the Invoiced Amount, We will charge You a reduced Licence Fee in respect of those Created RECs at the time You select a Net REC Revenue. The reduced Licence Fee shall be equal to the difference between Our then current Licence Fee and the Invoiced Amount.
- (d) Without limiting Our rights under clause 3.5(b), if You do not agree to the value of a Trading Price for a Created REC within 12 months from the date that the Created REC is listed in the REC Registry, you agree that:
  - (i) We may sell the Created REC to a Buyer without notice to You;
  - (ii) We will pay to You the Net REC Revenue with respect to such Created REC based on the then current Trading Price; and
  - (iii) We will provide you with a tax invoice for the Licence Fee payable to Us in respect of such Created REC.

### 3.6. Failed Assignments

- (a) If a Pending REC and or Created REC is:
  - (i) found to be invalid, not capable of registration on the REC Registry or is not approved by the Regulator or Us;
  - (ii) the subject matter of a Defective Installation;
  - (iii) not able to form part of a Processed REC Application because it was a Pre-Created REC; or
  - (iv) subject to a Potential Breach; or
  - (v) not otherwise capable of being converted by Us to money;(each referred to as a "**Failed Assignment**"),

then We will use reasonable endeavours to re-upload the REC Application to the REC Registry in an acceptable form, which may include Us varying the REC Application. Where We re-upload the REC Application, We will have no liability

to You in doing so and You agree to assist Us to the best of Your ability in any investigation We may undertake.

- (b) If We are unable to re-upload the REC Application in accordance with clause 3.6(a) within seven (7) days and We have paid the Net REC Revenue to You in respect of that Failed Assignment, then You:
  - (i) must immediately upon Our demand refund to Us without deduction the Net REC Revenue paid to You;
  - (ii) grant to Us a Security Interest, which We may register on the Personal Properties Security Register, over:
    - 1. any Net REC Revenues We have paid to You in respect of that Failed Assignment; and
    - 2. any current and future Net REC Revenues paid and or owed to You or that may be owed in the future; and
  - (iii) are solely responsible to claim a refund or rebate of any Taxes (if applicable) from the relevant authorities.
- (c) We may, in Our absolute discretion and without notice to You, apply and set off any existing or future Net REC Revenues against any indebtedness You owe to Us under clause 3.6(b) regardless of whether We have made any formal demand for payment.
- (d) If We are unable to re-upload the REC Application in accordance with clause 3.6(a) and We have not paid the Net REC Revenue to You in respect of that Failed Assignment, then We may without any liability to You whatsoever:
  - (i) cancel the REC Application; and or
  - (ii) withhold or refuse payment of the Net REC Revenue to You where you have accepted a Trading Price in respect of the REC Application.
- (e) For the avoidance of doubt, the Licence Fee or other amounts paid or deducted with respect to any Failed Assignments are not refundable and You shall have no entitlement to request that We repay such sum. We shall not be liable to You in respect of any Failed Assignment.

### **3.7. Acknowledgements**

You acknowledge and agree that:

- (a) Our procedures and requirements for the proper and effective assignment, including the collection of proceeds of the assignment, of RECs may change from time to time;
- (b) the Net REC Revenue is calculated based on the applicable Trading Price offered for a Pending REC and or Created REC as selected by You from time to time using the Software and is subject to change from time to time as a result of market change or external factors;
- (c) the Trading Price shall not necessarily represent or be comparable to sums paid by any other aggregator at any particular time and shall be assessed by Us in Our absolute discretion;
- (d) Trading Prices are subject to change for Pending RECs and or Created RECs depending on the date of the Submitted REC Application which those Pending RECs and or Created RECs are the subject of;
- (e) Your acceptance of a Trading Price for a Pending REC and or Created REC in respect of a Processed REC Application is irrevocable and, subject to You receiving payment of the Net REC Revenue:
  - (i) You will have no further rights in or with respect to the Pending RECs and or Created RECs which are the subject matter of that Processed REC Application; and
  - (ii) We may deal in, sell or otherwise dispose of those Pending RECs and or Created RECs (including the Processed REC Application) to Buyers in Our absolute discretion and retain all amounts received in relation to their disposal;
- (f) if You have accepted a Trading Price for a Pending REC in respect of a Processed REC Application, You may not accept a Trading Price for a Created REC which may result from that same Processed REC Application;
- (g) We will not be liable to You or otherwise responsible for any delay in You receiving the Net REC Revenue We pay to You in accordance with clauses 3.4(c) and 3.4(e);
- (h) If the Regulator conducts an audit, or authorises a third party to do so, in accordance with the Renewable Energy Legislation in respect of any of Your REC Applications, You will be solely responsible for such costs and indemnify Us from any such direct/indirect costs and/or general/special liability We may suffer.
  - (i) We reserve the right to withhold offering a Trading Price for Pending RECs until such time we determine in Our absolute discretion;



- (j) We may accept or decline the Trading Price You select in our absolute discretion; and
- (k) changes to the Renewable Energy Legislation may impact on Our ability to provide the Services.

### 3.8. Suspension or termination

- (a) We may without notice to You suspend, restrict or terminate Your Green Forms Account or any part of the Services at any time and without any liability to You, which may include:
  - (i) suspending the option for You to accept a Trading Price any Pending REC or Created REC in Your Green Forms Account; or
  - (ii) suspending or terminating Your Green Forms Account and/or access to the Software/Services if We determine in Our absolute discretion that You are subject to a Potential Breach.
- (b) In the event We terminate Your Green Forms Account:
  - (i) all REC Applications that are not Processed REC Applications or Approved REC Applications will be deleted from Your Green Forms Account;
  - (ii) within 30 days of termination, You must notify Us of an account with the REC Registry (“**Nominated REC Registry Account**”) to enable Us to transfer all Created RECs and or Processed REC Applications in Your Green Forms Account for which You have not accepted a Trading Price; and
  - (iii) subject to payment of the Licence Fee in respect of any Created RECs and or Processed REC Applications, We will transfer all Created RECs and or Processed REC Applications to the Nominated REC Registry Account within a reasonable time.

### 3.9. General obligations

Without limiting Your obligations under these Terms of Use, You must:

- (a) keep up to date with any changes or amendments to the Renewable Energy Legislation and all relevant laws and implement any reasonable changes to Your processes and procedures in respect of You, the Users and/or Retailers use of the Software and Services;
- (b) rely on Your own investigations and not rely on statements made by Us for which We exclude any liability to You for any loss and/or damage sustained by You and/or Your customers/Retailers; and



- (c) suspend or terminate the User's access to Your Green Forms Account and the Software immediately upon Our direction to do so and indemnify Us from any direct/indirect loss, damage and/or liability flowing directly/indirectly from such action and from any claims (whether in contract, tort, legislative or otherwise) whatsoever.

## 4. The Software

### 4.1. Grant

Upon Our acceptance of the Green Forms Account You create in accordance with clause 2.1, We grant to You a limited, non-exclusive, non-transferable licence to access and use the Software solely for purpose of using the Services in accordance with these Terms of Use.

### 4.2. Acknowledgements

You acknowledge and agree that:

- (a) You will not allow, authorise or encourage any third party to use the Software in any manner which may cause You to be in breach of these Terms of Use;
- (b) You will make Your own enquiries and satisfy Yourself as to the relevant laws applicable in each jurisdiction in which You use the Software;
- (c) We may update, enhance, improve or otherwise modify the Software ("**Software Updates**") without notice from time to time and You must keep up to date with any Software Updates;
- (d) We may, at any time and without notice to You, suspend access to the Software and or the Website or deny You access to the Software and or the Website in the event of:
  - (i) technical failure;
  - (ii) Software Updates or other maintenance requirements; or
  - (iii) a Force Majeure,

however We will use reasonable endeavours to resume Your access to the Software and or the Website as soon as reasonable practicable.

## 5. The Website

- 5.1. The content of the pages of the Website is for Your general information and use only. The Website and content provided therein is subject to change at any time without notice.
- 5.2. Neither We nor any third parties provide any warranty or guarantee as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found or offered on the Website for any particular purpose. You acknowledge that such information and materials may contain inaccuracies or errors and We expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law.
- 5.3. Your use of any information or materials on the Website is entirely at Your own risk, for which We shall not be liable. It shall be Your own responsibility to ensure that any products, services or information available through the Website meet your specific requirements.
- 5.4. The Website contains material which is owned by or licensed to Us. This material includes, but is not limited to, the design, layout, look, appearance and graphics. Reproduction is prohibited other than in accordance with the copyright notice, which forms part of these Terms of Use.
- 5.5. All trademarks reproduced in the Website which are not the property of, or licensed to, Us are acknowledged on the Website.
- 5.6. From time to time, the Website may also include links to other websites ("**Third Party Websites**"). These links are provided for Your convenience to provide further information. They do not signify that We endorse Third Party Websites. We have no responsibility for the content or material of the Third Party Websites.
- 5.7. We may limit or block Your access to the Website if You are found, or reasonably suspected of, breaching these Terms of Use and You agree to indemnify and hold Us, Our agents, affiliates, directors, officers, employees, consultants and contractors harmless from and against any and all liability, costs, claims, losses, damages and expenses (including all reasonable legal fees), which may be suffered, incurred made or brought, directly or indirectly, in connection with any breach of these Terms of Use by You.
- 5.8. Your unauthorised use of the Website or breach of these Terms of Use may give rise to a claim for damages and/or be a criminal offence.

## **6. Payment by You**

- 6.1. Any indebtedness You owe to Us under these Terms of Use must be paid immediately upon demand and may be recovered as a liquidated debt.

- 6.2. If You fail to pay any amount owed to Us under these Terms of Use (“**Outstanding Amount**”), then You must pay interest on the Outstanding Amount at the Interest Rate from the time on which the Outstanding Amount should have been paid until the Outstanding Amount is paid in full.
- 6.3. You acknowledge and agree that We may, in Our absolute discretion and without notice to You, apply and set off any existing or future Net REC Revenues against any indebtedness You owe to Us, regardless of whether We have made any formal demand for payment.

## **7. Goods and Services Tax**

### **7.1. GST exclusive**

Unless GST is expressly included, all consideration payable under these Terms of Use in relation to any supply is exclusive of GST.

### **7.2. Increase in consideration**

If GST is payable in respect of any supply made under these Terms of Use (“**GST Amount**”), the recipient must pay to the supplier an amount equal to the GST payable. Subject to clause 7.3, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under these Terms of Use in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in these Terms of Use).

### **7.3. Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 7.2.

### **7.4. Reimbursements**

If these Terms of Use require a party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:

- (a) the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and
- (b) if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

### **7.5. Adjustment Event**

If an adjustment event occurs in relation to a taxable supply under these Terms of Use:

- (a) the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and
- (b) any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

## **8. Intellectual Property**

- (a) All Intellectual Property belongs to Us and, notwithstanding the licence granted to You under these Terms of Use, You acquire no right, title or interest in or to the Intellectual Property by virtue of these Terms of Use.
- (b) You must:
  - (i) not register or seek to register any of the Intellectual Property;
  - (ii) not cause any of the Intellectual Property to be prejudicially affected or contested; and
  - (iii) use the Intellectual Property only in the manner We prescribe and not make any alterations to the Intellectual Property.

## **9. Security**

- 9.1. We may require at any time and from time to time that You provide security in such form and in such amount as We consider reasonably necessary and having regard to the sums of money likely to become owing to Us by the You in respect of the Services We provide.
- 9.2. The security We may require under clause 9.1 is to be provided in such form and upon such terms as the parties agree, including (but not limited to) cash deposit or bank guarantee in terms acceptable to Us, and may at the election of Us be applied in satisfaction of any monetary obligation of the You which has not been satisfied within 14 days of becoming due.
- 9.3. We will provide You with particulars of any amount deducted or applied from such security in satisfaction of any sum owed by You within 2 Business Days of such deduction or application, and shall return the balance of any such security to You when no further money is owing or contingently owing by You to Us pursuant to these Terms of Use, or at such earlier time as the parties agree.
- 9.4. Without limiting Our rights under clause 9.1, We may require at any time that You provide in favour of Us executed personal guarantees of the director/s and or key personnel of You ("**Guarantors**") in such form as We may reasonably require, by which the Guarantors agree to be responsible for the obligations of You under these Terms of Use and indemnify Us against any loss arising by

virtue of any breach of You. In the event that You do not procure those guarantees from the Guarantors when required, We shall not be obliged to provide the Services to You and We will have the right to suspend or terminate the Services in accordance with clause 3.8.

## **10. Warranties and Indemnities**

### **10.1. Warranties by You**

You represent and warrant that:

- (a) You have all necessary right, power and authority to enter into, accept and perform Your obligations under these Terms of Use;
- (b) You use and access the Services, Website or the Software entirely at Your own risk;
- (c) You, the User or any third party acting on Your behalf will not be misleading or deceptive in any way and will deal with Us, the Regulator or any other authority in good faith in relation to the Services;
- (d) any material, information or other data (including the Supporting Data) You deliver to Us under these Terms of Use:
  - (i) are true, correct and current;
  - (ii) are able to be disclosed by You; and
  - (iii) do not infringe the rights of the Customer or any third party;
- (e) use of the Software, Website or the Services may be subject to technical limitations such as network coverage and third party service availability which we will not be liable to You for; and
- (f) You have not relied upon any statement or been induced by any representation by Us and acknowledge that We have made no warranty, statement or representation as to:
  - (i) the results or outcome of using the Services or the Software; and
  - (ii) the accuracy, reliability or otherwise of any information obtained through the Website, the Software or by otherwise using the Services.

### **10.2. Release and Indemnity**

You release and indemnify Us, Our associated entities and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands which may be brought against it or them, whether on their own or jointly with You and whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss or damage (whether personal or property, and whether direct or consequential, including consequential financial loss and reputational) arising out of or in connection with:

- (a) Your breach of these Terms of Use, including in relation to a Potential Breach;
- (b) Your failure to use reasonable care and skill in carrying out Your obligations under these Terms of Use;
- (c) the use or access to the Services, the Software or the Website by You, the User or a third party or on Your behalf;
- (d) any illegal or wrongful act by You, the User or Your officers, contractors, employees or agents in using the Services, the Software or the Website;
- (e) any false, inaccurate, misleading or incomplete information or data (including in respect of the Supporting Data) You, the User or any third party delivers to Us;
- (f) the assignment of RECs to Us and Our payment of the Net REC Revenue in accordance with these Terms of Use;
- (g) any Defective Installations at an Installation Premises;
- (h) the absence or want of authority or consent on Your and or the Installers part in respect of the Customer; or
- (i) Your breach of intellectual property rights of third parties arising out of Our use of the Supporting Data,

and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim, proceeding or demand.

## 11. Dispute Resolution

- 11.1. If a dispute arises (“**Dispute**”), the parties must, prior to the initiation of any legal proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution of the Dispute.
- 11.2. If a party claims a Dispute has arisen, it must give written notice specifying the nature of the Dispute (“**the Dispute Notice**”) to the other party or parties. If the Dispute is not resolved by mutual agreement within twenty-one (21) days of the date of the Dispute Notice, or within such longer period as the parties

may agree, the parties will appoint, by mutual agreement, a mediator to assist in the resolution of the Dispute.

- 11.3. In the absence of agreement between the parties on the appointment of a mediator within fifteen (15) days following the request by one or both parties to appoint a mediator under clause 11.2, a mediator shall be appointed on the application of one or both parties to and by the President of The Law Society of New South Wales.
- 11.4. The parties agree to co-operate with the mediator in all procedural steps necessary to constitute the mediation and to participate in bona fide discussions with the assistance of the mediator in seeking to agree on a resolution of the Dispute.
- 11.5. The costs of the mediator and the mediation shall be borne by the parties in equal shares.
- 11.6. If a party commences proceedings relating to the Dispute (other than for urgent interlocutory relief), that party must consent to orders under section 26 of the *Civil Procedure Act 2005* (NSW) that the proceedings relating to the Dispute be referred to mediation by a mediator.
- 11.7. Nothing in this clause 11 shall preclude an application for urgent interlocutory relief.

## **12. General**

### **12.1. Notices**

- (a) A notice or other communication connected with these Terms of Use ("**Notice**") has no legal effect unless in writing.
- (b) In addition to any other method of service provided by law, a Notice may be sent to You as follows:
  - (i) sent by prepaid ordinary mail to the address stated in Your Green Forms Account, if the address is in Australia and the Notice is sent from within Australia;
  - (ii) sent by email to the address stated in Your Green Forms Account; or
  - (iii) delivered to the address for service of the addressee in Your Green Forms Account.
- (c) If a Notice is sent or delivered in a manner provided by clause 12.1(b), it must be treated as given to and received by the party to which it is addressed:

- (i) if mailed from within Australia to an address in Australia, on the third Business Day (at the address to which it is mailed) after mailing;
  - (ii) if sent by email before 5.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt;
  - (iii) if otherwise delivered before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- (d) If a Notice is served by a method which is provided by law but is not provided by clause 12.1(b), and the service takes place after 5.00pm on a Business Day, or on a day that is not a Business Day, it must be treated as taking place on the next Business Day.
- (e) A Notice sent or delivered in a manner provided by clause 12.1(b) must be treated as validly given to and received by the party to which it is addressed even if:
- (i) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; and/or
  - (ii) the Notice is returned unclaimed.
- (f) A party may change its address for service by giving Notice of that change to each other party.
- (g) You indemnify Us if any Notice is issued by You and/or Us but fails to be received by either party if the contact information as stated in Your Green Forms Account are not true, correct and/or valid.

## **12.2. Entire Agreement**

These Terms of Use together with the Renewable Energy Credit Purchase Agreement constitute the entire agreement between the parties with respect to its subject matter and supersedes any prior agreements. Should a conflict or inconsistency arise, the provisions of these Terms of Use shall prevail to the extent of the conflict or inconsistency.

## **12.3. Amendment**

- (a) You acknowledge and agree that We may amend, vary or otherwise modify these Terms of Use at any time and by reasonable notice.



- (b) Where the Terms of Use are amended, varied or otherwise modified in accordance with clause 12.3(a), the updated Terms of Use will be made available at <https://greenformstrading.com.au/terms> which shall be binding upon You.

#### **12.4. No Waiver**

A failure or delay by Us in exercising any right or power under these Terms of Use shall not affect or operate as a waiver of such right or power. Nor shall any single or partial exercise of any such right or power preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right or power by Us. Our waiver, permit, consent or approval of any kind of any breach of or default under the Terms of Use must be in writing and shall be effective only to the extent set forth in such writing.

#### **12.5. Force Majeure**

If the performance of the Services or any obligations under these Term of Use, except the making of required payments, is prevented, restricted, or interfered with because of a Force Majeure event, the affected party, upon giving prompt notice to the other party, is excused from such performance to the extent of such prevention, restriction, or interference. The affected party must use its best efforts to avoid or remove the Force Majeure event or to limit the impact of the event on its performance and must continue performance with the utmost dispatch when the Force Majeure event is removed.

#### **12.6. Severability**

Nothing in these Terms of Use is intended to contravene any applicable law. To the extent that any provision in the Terms of Use is invalid or unenforceable, it is to be read down so as to be valid and enforceable, and otherwise must be severed to the extent of any invalidity or unenforceability, without affecting the remaining provisions of the Terms of Use.

#### **12.7. Governing Law**

The law in New South Wales governs these Terms of Use and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

