



Agreement

for the sale of Electricity

IMPORTANT NOTE

The process of transferring electricity through the Distribution System to the Customer's Premises is called "Delivery of Electricity" in this Agreement. The Customer's Distributor operates and controls the Distribution System and undertakes this process. As the retailer, AGL can arrange with the Distributor for Delivery of Electricity to the Customer's Premises. AGL cannot however, as a retailer, physically control the quality or frequency of the electricity delivered to the Customer's Premises or the continuity of Delivery of Electricity to the Customer's Premises.

THIS AGREEMENT is between the **CUSTOMER** set out in Item 1 of Schedule 1 and **AGL** (as 'AGL' is defined in clause 12).

1. THIS AGREEMENT

- (a) This Agreement sets out all of the terms of the agreement between AGL and the Customer (and supersedes any previous contract, agreement or understanding between AGL and the Customer) for the sale of electricity to the Customer's Premises.
- (b) Each party acknowledges that it must comply with all provisions of Energy Law that impose obligations on it.
- (c) The special conditions (if any) set out in Schedule 3 will form part of this Agreement and will prevail over any other provision of this Agreement to the extent of any inconsistency.
- (d) If a person signs this Agreement for or on behalf of a party, the person warrants that they are authorised to sign for or on behalf of the party.
- (e) If this Agreement replaces an earlier electricity retail sale agreement between the parties, then this Agreement applies from the Commencement Date (even if the earlier agreement would otherwise have continued). However, AGL may still recover any amount owing (or that becomes owing) by the Customer under the earlier agreement in accordance with its terms in respect of the period before the Commencement Date.
- (f) If either of the warranties in clause 2.1(d) is not correct in relation to any Premises, AGL has no obligation (without limiting any right it may have) to sell electricity or provide any other services to the Customer in relation to that Premises, and may upon Notice to the Customer remove that Premises from this Agreement (in which case, that Premises will be deemed to have been removed from Item 1 of Schedule 2) from the date set out in the Notice, or if no Premises would remain under Agreement upon such removal, terminate the Agreement.
- (g) If all or any part of the Premises is located in the Australian Capital Territory, AGL and the Customer agree that the terms and conditions for the sale and/or supply of electricity to the Customer at that Premises are the terms and conditions set out in this Agreement and not the terms and conditions specified in Part 2 of the Consumer Protection Code (being an industry code under Part 4 of the *Utilities Act 2000* (ACT)).
- (h) The Customer consents to AGL completing the transfer of the Premises to AGL, if AGL is not already the Customer's Retailer in respect of those same premises. The Customer acknowledges that any such transfer to AGL may involve changes to the Metering Equipment and/or the Metering Installation, the disclosure of information relating to the supply of electricity for that premises effected by the transfer, and consents to AGL being provided with any consumption history or data as required.

2. SALE OBLIGATIONS

2.1. Sale and Purchase of Electricity

- (a) AGL will sell to the Customer, and the Customer will purchase from AGL, all electricity which the Customer requires for its Premises from the Commencement Date in accordance with the terms of this Agreement. The Customer must not purchase electricity for the Premises from a third party during the Term without the prior written consent of AGL, which must not be unreasonably withheld.
- (b) The parties will use reasonable endeavours to ensure AGL becomes financially responsible for the Premises under Energy Law for the purposes of this Agreement. The Customer acknowledges that due to delays in the process of transferring and registering the Customer with the System Operator (which AGL cannot control) there may be delays in AGL becoming financially responsible for the Premises under Energy Law. AGL has no liability to the Customer for any such delays, and a delay does not affect this Agreement.
- (c) The Customer acknowledges that if AGL remains financially responsible for a Premises under the National Electricity Rules, it will be deemed to have sold electricity to the Customer during the period that it remains financially responsible.
- (d) Unless specified otherwise in this Agreement, the Customer warrants that the consumption of electricity at the Premises will exceed the consumption threshold for "small business customers" as regulated by Energy Law ("**Large-Market Threshold**") during each rolling 12 month period throughout the Term. Except for New Premises, the Customer also warrants that the consumption of electricity at the Premises has been more than the Large-Market Threshold during:
 - i. the 12 month period immediately preceding the Commencement Date; and

2.2. Electricity Consumption and Consumption Forecast

- (a) Where the Customer's Estimated Total Annual Consumption is less than 50,000 MWh:
 - i. upon AGL's request, the Customer must provide to AGL an annual electricity consumption forecast for each Premises; and
 - ii. the Customer must give AGL at least 30 days Notice if the Customer becomes aware that the aggregate annual electricity consumption at all Premises (based on the average monthly electricity consumption at each Premises) will be greater than or equal to 50,000 MWh.
- (b) Where the Customer's Estimated Total Annual Consumption is greater than or equal to 50,000 MWh, the Customer must give AGL at least 30 days Notice if it becomes aware that the aggregate annual electricity consumption at all Premises (based on the average monthly electricity consumption at each Premises) is to change from the Estimated Total Annual Consumption by more than 20% up or down.
- (c) For the purposes of clauses 2.2(a) and (b), the Customer must provide such forecasts to AGL at ElectricityLoadForecasting@agl.com.au.
- (d) The Customer must not, except as required by law, enter into any arrangements for the curtailment or artificial or automatic management of the rate of consumption of electricity at the Premises without AGL's prior written consent. Such consent may not be unreasonably withheld or delayed, but may be given subject to reasonable terms.
- (e) If the Customer's aggregate annual electricity consumption at all Premises (based on the average monthly electricity consumption at each Premises) is greater than or equal to 50,000 MWh, and there is or has

been a material change to the volume or pattern of electricity consumption during the Term (for which the aggregate annual electricity consumption for all Premises will be compared to the Customer's Estimated Total Annual Consumption for the relevant period), AGL may in its sole discretion recover any costs or reduction in benefit incurred or likely to be incurred by AGL, or a Related Body Corporate of AGL, as a result of that change.

- (f) Nothing in this clause 2.2 gives the Customer any rights to add or remove any premises as a Premises under or from this Agreement.

2.3. Delivery of Electricity

AGL will arrange with the Distributor for the Delivery of Electricity to each Premises unless the Customer tells AGL that it already has a separate agreement with the Distributor for the Delivery of Electricity to that Premises.

2.4. Obligations are Conditional

Despite clause 2.1, AGL's obligations under this Agreement will not commence in relation to a Premises until appropriate Metering Equipment has been installed, the Customer is registered as an AGL customer for that Premises under Energy Law and the Customer has satisfied any other pre-conditions notified to the Customer by AGL or the Distributor.

2.5. Sale of Electricity after Expiry Date

If on the Expiry Date for a Premises:

- (a) the Customer has not entered into a new agreement with AGL for the purchase of electricity for that Premises which commences on the day immediately after the Expiry Date; and
- (b) the Customer has not transferred financial responsibility for electricity supplied to that Premises to another electricity retailer by the Expiry Date for that Premises,

then after the Expiry Date AGL will continue to sell to the Customer and the Customer will continue to purchase from AGL all electricity which the Customer requires for that Premises in accordance with the terms of this Agreement, except that the Energy Charge Rates will be determined in accordance with clause 3.5. AGL will continue selling electricity to the Customer under this clause 2.5 until the earlier of the date:

- (c) any new agreement entered into between the Customer and AGL for the purchase of electricity in relation to that Premises commences;
- (d) AGL is notified in accordance with the National Electricity Rules that the transfer of that Premises to another Retailer is complete;
- (e) AGL terminates this Agreement in accordance with clause 9, or by giving the Customer not less than 15 Business Days Notice (if this day falls on a different day by State, the latest day will prevail) of termination; or
- (f) the Customer terminates this Agreement by giving AGL not less than 40 Business Days Notice (if this day falls on a different day by State, the latest day will prevail) of termination, and the termination takes effect at the end of a calendar month.

3. CHARGES

3.1. Energy Charges

The Customer agrees to pay AGL the Energy Charges for the electricity AGL sells to the Customer at each Premises calculated in accordance with the Energy Charge Rates for each Premises (as those Energy Charge Rates are reviewed annually in accordance with the CPI Escalation Formula, unless noted otherwise in Schedule 1).

3.2. Basis of Energy Charge Rates

The Energy Charge Rates are determined on the basis of the Customer's commitment to purchase from AGL all electricity which the Customer requires for each Premises during the period from the Commencement Date to the Expiry Date.

3.3. Other Charges

- (a) The Customer also agrees to pay to AGL all Network Charges, Market Charges, Metering Charges, Retail Service Fees, Services Charges, Emissions and Renewable Energy Charges and Energy Loss Charges applicable to each Premises for the quantity of electricity AGL sells to the Customer at each Premises.
- (b) Without limiting the application of any other charges under this Agreement, the Approved Energy Loss Factors will be applied against the Energy Charge Rates and the Emissions and Renewable Energy Charges rates for the purpose of calculating the Energy Loss Charges.
- (c) The Customer understands and agrees that AGL is entitled to take action under this Agreement and in its own name to recover any Network Charges owing by the Customer from time to time.

3.4. Variation of Charges

- (a) If, as a result of the occurrence of an Increased Costs Event after the date of AGL's initial offer to the Customer, AGL determines that there is, or reasonably estimates that there will be, any increase in the direct or indirect cost to AGL, or a Related Body Corporate of AGL, of purchasing or selling or agreeing to sell the Customer electricity, then the Customer must pay AGL such additional amounts as AGL certifies are necessary to compensate AGL or a Related Body Corporate of AGL for that increase, which may include a reasonable estimate by AGL of any such cost likely or reduction in benefit to be incurred by AGL, or a Related Body Corporate of AGL, in the future.
- (b) Without limiting any right under this Agreement to vary the Energy Charge Rates, or the application of new Energy Charge Rates, the Energy Charge Rates are firm to the market price cap (as that term is defined in the National Electricity Rules).

3.5. Energy Charge Rates following Expiry Date

If AGL continues to sell the Customer electricity for Premises after the Expiry Date in accordance with clause 2.5, the Customer agrees that the Energy Charge Rates for that electricity will be:

- (a) set out in a Notice to the Customer from time to time, for the period specified in that Notice (if any); or
- (b) equal to the Default Rates, if the Customer does not receive a Notice under clause 3.5(a) or if the period for which the rates set out in a Notice under clause 3.5(a) are applicable ends.

3.6. GST

- (a) Unless expressly stated otherwise, all amounts payable or the value of other consideration provided in respect of supplies made in relation to this Agreement are exclusive of GST (if any). If GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Agreement, the amounts payable or the value of the consideration provided for that supply (or deemed supply) ("**Payment**") shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the imposition of GST.
- (b) Where any amount is payable as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred, then that amount must be reduced by any input tax credit available to that party and, if a taxable supply, must be increased by the GST payable in relation to the supply and a tax invoice will be provided by the party being reimbursed or indemnified.
- (c) All GST payable shall be payable at the time any payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it shall be payable within 10 days of a tax invoice being issued by the party making the supply.

- (d) Where in relation to this Agreement a party makes a taxable supply, that party shall provide a tax invoice in respect of that supply before the GST payable in respect of that supply becomes due.
- (e) Terms defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning when used in this clause 3.6.

3.7. Carbon Adjustment

- (a) For each Billing Period (or part thereof) that occurs after one or more Carbon Schemes or Carbon Taxes have commenced operation, AGL may, in its sole discretion, elect to increase the Energy Charge Rates by an amount equal to the Carbon Adjustment.
- (b) If AGL:
 - i. elects to apply a Carbon Adjustment under clause 3.7(a) it will not pursue recovery of the direct costs it incurs in acquiring Carbon Permits or paying carbon adjustments to third parties under clauses 3.3 or 3.4 (without prejudice to AGL's right to recover other costs associated with the Carbon Scheme or Carbon Tax under those clauses); and
 - ii. does not elect to apply a Carbon Adjustment under clause 3.7(a) it may pursue recovery of any costs it incurs as a result of that Carbon Scheme or Carbon Tax under clauses 3.3 or 3.4.
- (c) If AGL has not notified the Customer of an election, then clause 3.7(a) will be deemed to apply. AGL may change its election at any time by Notice to the Customer.

4. BILLING AND PAYMENT

4.1. Bills

- (a) Subject to clause 5.1(b), the quantity of electricity sold and billed to the Customer under this Agreement will be determined from readings of the Metering Installation at the Premises.
- (b) AGL will send a bill to the Customer at the end of each Billing Period for the charges payable by the Customer under this Agreement. The bill may include:
 - i. unbilled charges incurred in respect of a previous Billing Period; and
 - ii. adjustments in relation to any charges which were billed or should have been billed in respect of a previous Billing Period.
- (c) A bill is duly rendered if left at, mailed to or otherwise sent to the address set out in Item 4 of Schedule 2 (as amended by Notice from the Customer to AGL).

4.2. Payment of Bills

- (a) Subject to clause 4.2(c), the Customer must pay all bills by the Due Date (free of set-off and without deduction) using any of the methods set out in Item 5 of Schedule 1.
- (b) AGL may also require the Customer to pay any costs incurred by AGL in recovering any amounts the Customer owes to AGL (including any amount in dispute that is subsequently required to be paid by the Customer), or due to the Customer's default under this Agreement.
- (c) Subject to clause 4.2(f), if the Customer reasonably believes any part of a bill is incorrect then the Customer may withhold that part of the bill that is in dispute provided that the Customer gives Notice to AGL before the Due Date detailing the reasons why the Customer reasonably believes that part of the bill is incorrect and requesting that AGL review the accuracy of the disputed portion of the bill. The Customer must pay AGL the part of the bill that is not in dispute by the Due Date. AGL will review the disputed portion of the bill within 30 days of the Customer's written request to do so.
- (d) If an undisputed bill is not paid in full by the Due Date, or if the part of a bill that is not in dispute is not paid by the Due Date, AGL may charge interest on the unpaid amount

from the Due Date at the Interest Rate and compounded monthly.

- (e) For bills that have been disputed wholly or in part and where the final determination is that an amount is required to be paid by the Customer in respect of the disputed bill, the Customer must pay that amount within 10 Business Days from notice of the resolution of the dispute. AGL may charge interest on that amount from the initial Due Date at the Interest Rate and compounded monthly.
- (f) Despite clause 4.2(c), the Customer must pay all Network Charges (and applicable GST) in full by the Due Date.

4.3. Credit Support

- (a) The Customer must, upon signing this Agreement, provide to AGL the credit support identified in Item 7 of Schedule 1 (if any).
- (b) AGL may by Notice request the Customer to provide AGL with credit support to secure the due and punctual performance of the Customer's obligations under this Agreement if:
 - i. the Customer fails to pay on the Due Date, the outstanding amount of any 3 bills or 2 consecutive bills ; or
 - ii. AGL, acting reasonably, considers that the Customer's creditworthiness has materially changed since the date of this Agreement.
- (c) If AGL gives notice under clause 4.3(b), the Customer must provide the credit support in the amount requested within seven days after AGL's request and it must be in the form of an irrevocable and unconditional undertaking given to AGL by an Australian bank or another security acceptable to AGL (which may include a guarantee from a creditworthy person or returnable deposit) and otherwise on terms and conditions acceptable to AGL.
- (d) AGL may use the credit support to pay off any amounts the Customer owes to AGL under this Agreement.
- (e) AGL may retain any unused portion of any credit support held by it until the Customer ceases to purchase electricity from AGL. AGL must then return any unused portion of the credit support to the Customer within one month.
- (f) Where AGL uses the credit support to pay off any amounts the Customer owes to AGL under this Agreement, AGL may require the Customer to reinstate the credit support to the level of the original amount requested pursuant to sub-clause 4.3(c) above.
- (g) The Customer must give Notice to AGL of any change in control of one-half of the shares in, or voting rights attaching to shares in, the Customer and of any event or circumstance that affects the creditworthiness of the Customer.
- (h) AGL may, from time to time, request reasonable information from the Customer to assist AGL in its assessment of the Customer's creditworthiness. Upon request, the Customer must provide the information requested.
- (i) If under clause 10.10 of this Agreement, the Customer assigns, novates or otherwise transfers this Agreement to another party, AGL reserves the right to request credit support from that party and clause 4.3 of this Agreement will apply to that party.

5. METERING, METERING EQUIPMENT AND DATA

5.1. Recordings

- (a) The data recorded by the Metering Equipment at each Premises and provided to AGL under Energy Law will be prima facie evidence of the amount of electricity which AGL has sold to the Customer and the basis for calculation of the Energy Charges for that Premises.

- (b) Where safe access to the Metering Equipment is denied, the Metering Equipment makes incorrect readings, or metering data is not available, for any reason, the quantity of electricity consumed at the Premises will (subject to any relevant Energy Law) be reasonably estimated by AGL based on available information and (if relevant) prior billing history.

5.2. Access

- (a) The Customer must provide safe and unhindered access to the Metering Equipment for AGL’s employees, agents and contractors, and all persons entitled to access under Energy Law.
- (b) The Customer must keep AGL informed of all safety hazards at each Premises that could pose a risk to the health or safety of any person.

5.3. Metering

- (a) AGL must at the Customer’s cost, take reasonable steps to arrange for the installation (unless already installed), testing and maintenance of the Metering Equipment and/or Metering Installation.
- (b) Subject to clause 5.4, AGL will appoint a Metering Provider in AGL’s discretion.
- (c) AGL reserves the right to change the Metering Provider in AGL’s discretion.
- (d) If the Customer becomes aware that any part of their Metering Equipment and/or Metering Installation is defective, the Customer must notify AGL promptly of the defect. AGL will pass through to the Customer any costs it incurs from the Metering Provider or Distributor associated with rectifying any defective Metering Equipment and/or Metering Installation.
- (e) The Customer must not order or permit the Metering Provider or any other third party to effect any change or addition to the Metering Equipment and/or Metering Installation without the consent or direction of AGL.

5.4. Use of Customer Nominated Metering Provider

- (a) Subject to clauses 5.3, 5.4(b) and 5.4(c), the Customer may request, and AGL may consent to, the use of a Metering Provider nominated by the Customer (“**Customer Nominated MP**”).
- (b) If AGL requests it, the Customer must provide AGL with evidence, to AGL’s reasonable satisfaction, that the Customer Nominated MP holds appropriate accreditation and any other appropriate regulatory approvals which are required to be held by metering and data services providers operating in the National Market.
- (c) The Customer indemnifies AGL and must keep AGL indemnified against any cost, liability, loss, damage, claim or expense that AGL incurs or suffers as a direct or indirect result of the Customer Nominated MP providing or failing to provide metering, data and other associated services with respect to any Premises, including where incurred or suffered due to the Customer Nominated MP’s negligence.
- (d) In the event that a Customer Nominated MP is appointed under this Agreement and a Responsible Person Fee is not set out in item 9 of Schedule 2, AGL may charge the Customer a Responsible Person Fee in respect of that appointment, as reasonably determined by AGL.

6. DELIVERY OF ELECTRICITY, QUALITY & QUANTITY

- (a) The Customer agrees that, as its Retailer under this Agreement:
 - i. AGL does not operate or physically control the Distribution System that provides Delivery of Electricity to the Customer’s Premises;
 - ii. AGL cannot control the quality or the frequency of the electricity delivered to the Customer’s

Premises, or the continuity of the Delivery of Electricity;

- iii. AGL is not responsible for the acts or omissions of any third party (including where applicable the Distributor);
- iv. AGL does not give any express or implied warranty to the Customer about the adequacy, safety or other characteristics of the Customer’s own electrical installation or equipment; and
- v. subject to clause 8.1, AGL cannot and does not make any representation to the Customer concerning the quality or the frequency of the electricity sold to the Customer, interruptions to the Delivery of Electricity, or the occurrence of any power surges or dips.

- (b) The Customer must take reasonable precautions to minimise the risk of loss or damage to any equipment, premises or business of the Customer which may result from poor quality or reliability of electricity supply. This includes an obligation to install and maintain any necessary and appropriate equipment to protect all electrical equipment at the Premises against power surges from lightning and other causes, partial reduction of electrical voltages resulting in a reduction of loads and any other material disruption to the quality of electricity.

7. DISCONNECTION AND RECONNECTION

7.1. Disconnection

AGL may arrange for the disconnection of any Premises:

- (a) if the Customer breaches any of its material obligations or an obligation that may impact a third party under this Agreement and fails to remedy the breach within 14 days of receipt of a request from AGL to do so;
- (b) if an Insolvency Event has occurred in respect of the Customer;
- (c) if AGL reasonably considers that the Customer is failing to comply with its obligations under any Energy Law, AGL notifies the Customer that it must comply with that obligation, and AGL reasonably considers that the Customer has failed to comply with that obligation within the time set out in that Notice;
- (d) if AGL reasonably believes that the Customer has stolen electricity or has interfered with the Metering Equipment for a Premises;
- (e) if AGL removes a Premises from this Agreement in the circumstances set out under clause 2.1(e); or
- (f) upon termination of this Agreement for any reason.

7.2. Reconnection

If the Distributor disconnects a Premises under clause 7.1 and the Customer requests reconnection:

- (a) AGL may direct the Distributor to reconnect that Premises on such terms as AGL sees fit; and
- (b) prior to reconnection, AGL may require the Customer to pay the disconnection fee and/or reconnection fee set by the Distributor, and to provide any credit support in accordance with clause 4.3.

7.3. Vacation or Sale of Premises

The Customer must provide AGL with at least 40 Business Days Notice (if this day falls on a different day by State, the latest day will prevail) if the Customer intends to:

- (a) vacate a Premises and move its business to another site, in which case AGL may vary this Agreement by amending Schedule 2, via a letter of variation, to refer to the Customer’s new site from the date AGL is registered as the Customer’s Retailer at the new site;
- (b) vacate a Premises without moving to a new site, in which case AGL may elect that this Agreement will cease to apply in relation to that Premises on the vacating date and the requirements of clause 9.2 will apply;

- (c) sell or otherwise part with possession of Premises owned by the Customer in which case the provisions of clause 9.2 will apply unless AGL has first agreed to transfer, assign or novate this Agreement to the new owner or occupier of that Premises; or
- (d) cease to operate its business from Premises, in which case the provisions of clause 9.2 will apply.

8. LIABILITY

8.1. Consumer Rights and Guarantees

- (a) The *Competition and Consumer Act 2010* (Cth) and other laws provide that certain conditions, consumer guarantees and rights apply to contracts with consumers (as defined in that legislation) that cannot be excluded or limited.
- (b) So far as the law allows, AGL gives no condition, warranty or undertaking, and AGL makes no representation to the Customer concerning the condition or suitability of the electricity AGL sells to the Customer or any other good or service provided under this Agreement, or its quality, fitness or safety.
- (c) So far as the law allows, any liability AGL has to the Customer for breach of a condition, guarantee, right or representation applying to this Agreement that cannot be excluded but can be limited, will (at AGL's option) be limited to:
 - i. providing to the Customer equivalent goods or services to those goods or services to which that breach relates; or
 - ii. paying the Customer the cost of acquiring goods or services which are equivalent to the goods or services to which that breach relates.

8.2. Limitation of Liability

- (a) So far as the law allows and subject to clause 8.2(b), the liability of a party (Party X) to the other party (Party Y) arising out of or in connection with this Agreement (other than any liability under clauses 3, 4 or 9.2) is limited to loss, damages, costs, charges and expenses directly sustained or incurred by Party Y as a result of:
 - i. personal injury to Party Y or its employees or agents; or
 - ii. damage to the property of Party Y or its employees or agents;
 caused by Party X's breach of this Agreement or negligent act or omission, up to a maximum of \$1 million per event.
- (b) So far as the law allows, neither party will be liable to the other in contract, in tort, in equity, by operation of statute or otherwise for any kind of Consequential Loss suffered or incurred by the other party, or any other person and arising out of or in connection with this Agreement (other than any liability under clauses 3, 4 or 9.2).

8.3. No Liability for Delivery of Electricity

The Customer agrees that, subject to clause 8.1, AGL is not liable for any loss, damages, costs, charges, expenses or interest suffered by the Customer because of any variation or deficiency in the quality or frequency of electricity sold to the Customer (including without limitation any power surges or power dips) or any interruptions to the Delivery of Electricity howsoever caused.

8.4. Force Majeure

The failure by either party to observe or perform wholly or in part any obligation (other than an obligation to pay money) under this Agreement is deemed not to be a breach of this Agreement if the failure was caused by or arose as a consequence of Force Majeure.

8.5. Other Rights

This clause 8 will apply in addition to, and will not vary or exclude the operation of, any exclusion from or limitation on liability

either party may be entitled to claim the benefit of under any Energy Law.

9. TERMINATION

9.1. Right to Terminate

- (a) Either party may terminate this Agreement by Notice:
 - i. if an Insolvency Event occurs in respect of the other party;
 - ii. if the other party breaches any of its material obligations under this Agreement and the breach is not remedied within 14 days of receipt of a Notice to remedy that breach; or
 - iii. if the other party breaches any of its material obligations under this Agreement which cannot be remedied.
- (b) AGL may terminate this Agreement in the circumstances set out under clause 2.1(e).

9.2. Consequences of Termination

In order to commit to selling the Customer electricity at the Energy Charge Rates until the Expiry Date, AGL enters into Wholesale Energy Contracts to effectively reduce AGL's exposure to the volatility of the wholesale price of the electricity AGL sells to the Customer.

If, prior to the Expiry Date:

- (a) the Customer sells, ceases, moves or otherwise transfers the business conducted by the Customer at a Premises or sells or otherwise vacates a Premises and AGL ceases to be or at that time does not become the retailer to that Premises on the terms of this Agreement for the balance of the period up to the Expiry Date; or
- (b) this Agreement is terminated by AGL as a result of the Customer's breach, an Insolvency Event, or under clause 2.1(e),

then the Customer must compensate AGL for any loss, damage, cost, reduction in benefit, charge or expense suffered by AGL as a result of the Customer's breach and/or arising from AGL's continuing obligations under any relevant Wholesale Energy Contract, without prejudice to any other action or claim AGL may have under this Agreement.

AGL will endeavour to minimise any such loss damage, cost, charge or expense.

9.3. Meter Reading on Termination

The Metering Equipment for each Premises will be read on the Termination Date and a final bill sent for all outstanding charges (which bill will be payable in the normal manner).

10. GENERAL PROVISIONS

10.1. Use of Information

- (a) The Customer consents to AGL seeking and using information concerning the Customer, its Premises, the Customer's electricity consumption, metering, billing and payment data and history (and any related or similar information) for the purposes of this Agreement, any relevant Wholesale Energy Contract, any Energy Law or for any other lawful purpose AGL reasonably considers necessary.
- (b) Unless prevented by law, AGL or its Related Bodies Corporate can use this information to offer to sell the Customer other products and services. The Customer may notify AGL at any time if it does not wish AGL to use this information in this manner.

10.2. Confidentiality of Agreement

- (a) Both parties must ensure that the terms of this Agreement and all commercially sensitive information exchanged between the parties remain confidential.
- (b) Either party may disclose such information:

- i. with the prior written consent of the other party (including that given under clause 10.1(a));
 - ii. if permitted or required by any law or stock exchange rules; or
 - iii. on a confidential basis to its officers, employees and advisers (or those of a Related Body Corporate) for any purpose which is connected with this Agreement.
- (c) In no circumstances may the Customer disclose the terms of this Agreement to any person offering, or capable of offering, to sell electricity to the Customer.

10.3. Dispute Resolution

- (a) If a dispute arises in relation to this Agreement, the party seeking to escalate the dispute must give Notice to the other party detailing the full reasons for the dispute and requiring that the parties undertake dispute resolution pursuant to this clause 10.3 ("**Dispute Notice**").
- (b) Following the provision of a Dispute Notice, each party agrees to negotiate in good faith with the other for not less than 30 Business Days (if this day falls on a different day by State, the latest day will prevail) from the date of the Dispute Notice to try to resolve it amicably. After the 30 Business Days expire, senior representatives of each party must first meet and, within a further 5 Business Days (if this day falls on a different day by State, the latest day will prevail), determine the process for resolving the matter through means other than litigation, such as further negotiations, mediation or conciliation, and also determine the procedure and timetable for any exchange of documents, for the conduct of the selected proceedings and for selection and remuneration of any mediator or conciliator ("**Dispute Resolution Process**").
- (c) If the dispute is not resolved within 35 Business Days (if this day falls on a different day by State, the latest day will prevail) from the date of the Dispute Notice, or a Dispute Resolution Process is not determined within the time agreed between the parties specified in clause 10.3(b), or if the Dispute Resolution Process does not resolve the dispute in accordance with the timetable determined under clause 10.3(b), then either party may, by giving Notice to the other party, terminate any Dispute Resolution Process and may only then commence litigation proceedings.
- (d) Neither party may commence legal proceedings concerning a matter in dispute (other than for the purpose of seeking urgent injunctive or declaratory relief) unless the parties have attempted to resolve the dispute in accordance with this clause 10.3.
- (e) Each party must continue to perform its obligations under this Agreement despite the existence of the dispute.

10.4. Notices

- (a) A notice to AGL must be in writing and sent to the relevant address, email address (if any) or fax number set out in Item 6 of Schedule 1 (unless AGL notifies the Customer to the contrary).
- (b) A notice to the Customer must be in writing and sent or hand delivered to the address, or sent to the email address or fax number, set out in Item 7 of Schedule 2, (unless the Customer notifies AGL to the contrary).
- (c) Unless actual receipt is earlier confirmed by the recipient, a Notice is taken to be received:
- i. if sent by mail, on the third day after mailing;
 - ii. if hand delivered, on the day it is delivered;
 - iii. if sent by fax, on production of a transmission report by the machine from which the fax was sent successfully, which indicates that the fax was sent in its entirety to the fax number of the recipient;
 - iv. if sent by email, on the next Business Day after sending.

10.5. Exercise of rights

A party may exercise a right, power or remedy under this Agreement at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that, or of any other, right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

10.6. Waiver and variation

- (a) Subject to clause 10.6(b), a provision of, or a right created under, this Agreement may not be either:
- i. waived, except in a Notice signed by the party granting the waiver; or
 - ii. varied, except in a Notice signed by the parties.
- (b) AGL may, by Notice to the Customer, vary a provision of this Agreement in such manner as AGL reasonably determines is necessary to reflect any changes to Energy Law or in the interpretation or application of an Energy Law.

10.7. Survival

Clauses 1, 3, 4, 6, 7.1, 8, 9.2, 10.1, 10.2, 10.4, 10.5, 10.6, 10.9, 11, 12 and this clause 10.7 survive the termination or expiry of this Agreement.

10.8. No representations or warranties

The Customer acknowledges that in entering into this Agreement it has not relied on any representations or warranties about the subject matter except as provided in this Agreement.

10.9. Governing Law

This Agreement shall be interpreted in relation to each Premises, in accordance with the law in force in the State or Territory in which such Premises are located, and the parties submit to the jurisdiction of the courts of the relevant State or Territory, including any courts having appellate jurisdiction from those courts.

10.10. Assignment

- (a) Subject to clause 10.10(b), a party may only assign, novate or otherwise transfer its rights and obligations under this Agreement with the prior written consent of the other party, which will not be unreasonably withheld or delayed.
- (b) AGL may assign, novate or otherwise transfer its rights and obligations under this Agreement to a Related Body Corporate that is a Retailer and the Customer hereby consents to that assignment, novation or transfer and agrees to do and execute or cause to be done or executed any such acts, deeds and assurances whatsoever reasonably necessary to effect that assignment, novation or transfer.
- (c) If the Customer assigns, novates or otherwise transfers its rights and obligations under this Agreement AGL may charge the Customer a fee for such novation or assignment, which is payable by the Customer as the assignor, transferor or the novating party of rights and obligations under this Agreement. AGL is not obligated to accept the novation, assignment or transfer of rights and obligations under this Agreement if the new customer does not agree with the charges or terms of the Agreement, if there are issues relating to credit support or if the Customer does not sign the assignment or novation. In such cases, the Agreement will remain with the then current Customer.

10.11. Broker commissions

The Customer acknowledges that if it has engaged an Intermediary in relation to this Agreement, it is aware that a Commission may be payable to the Intermediary. The Customer further acknowledges that it may seek disclosure of the details of any Commission from the Intermediary.

11. INTERPRETATION

- (a) In this Agreement unless the contrary intention appears:
- i. a reference to this Agreement or another instrument includes any variation or replacement of them;
 - ii. the singular includes the plural and vice versa;
 - iii. the word person includes a firm, a body corporate, an unincorporated association or an authority;
 - iv. a reference to one gender includes all genders;
 - v. a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - vi. an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of them, jointly and severally;
 - vii. a provision must not be construed against a party only because that party prepared it; and
 - viii. mentioning anything after "includes" or "including" will not limit what else might be included.
- (b) Headings in this Agreement are inserted for convenience and do not affect the interpretation of this Agreement.
- (c) A reference to a law, ordinance, code, rule(s) or mandatory guideline includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements of that statute, ordinance, code, rule(s) or guideline.
- (d) Where the application of a term of this Agreement is inconsistent with a provision of an Energy Law, then to the extent permitted by that Energy Law, that term will prevail. Otherwise, that term will be read down or modified so that it applies in a manner which is consistent with the relevant provision of that Energy Law (as that provision applies in those circumstances) or, if that is not possible, that term (or relevant part) will be severed.
- (e) Where AGL is required by this Agreement to determine an amount payable by the Customer with reference to a charge, liability, cost, expense or penalty:
- i. a certificate signed by AGL as to the amount payable is, in the absence of manifest error, final and binding on the Customer; and
 - ii. AGL may take into account the tax deductibility of any such charge, liability, cost, expense or penalty and the assessable nature of any related amount the Customer pays or owes to AGL.

12. GLOSSARY

In this Agreement unless the contrary intention appears:

AGL means, if the Premises is located in:

- (a) Victoria, New South Wales, Queensland or the Australian Capital Territory: AGL Sales Pty Limited (ABN 88 090 538 337) of Level 22, 101 Miller Street, North Sydney NSW 2060; or
- (b) South Australia: AGL South Australia Pty Limited (ABN 49 091 105 092) of Level 22, 101 Miller Street, North Sydney NSW 2060.

Agreement means these terms and conditions together with all schedules and appendices.

Approved Energy Loss Factors means, unless explicitly stated to the contrary in this Agreement, any loss factors (including both the intra-regional loss factors and the distribution loss factors) approved by the System Operator or any other regulatory authority from time to time.

ASX means the Australian Securities Exchange (or any successor entity).

Billing Period means the period set out in Item 3 of Schedule 1.

Business Day means a day other than a Saturday or Sunday or a public holiday in the State or Territory in which the relevant Premises are located.

Carbon Adjustment means the amount of the increase for that Billing Period calculated using the following formula:

$$CA = CI \times CRP$$

Where:

CA Carbon Adjustment for that Billing Period (in \$/MWh);

CI Carbon Intensity;

CRP Carbon Reference Price for that Billing Period.

Carbon Intensity means for the relevant Billing Period:

- (a) the average carbon dioxide equivalent intensity of generators registered under the National Electricity Rules applying to the month immediately preceding the Billing Period as published by, or calculated from information published by, the System Operator from time to time and, where this is published for a period other than a month, on a pro-rata and/or average (as necessary) of the carbon dioxide equivalent intensities published in respect of days or weeks occurring in the month immediately preceding the Billing Period (in tonnes of CO₂-e/MWh); or
- (b) if the System Operator does not publish such an average carbon dioxide equivalent intensity applicable to at least part of the month immediately preceding the Billing Period or by the second Business Day after the end of that Billing Period, then as determined by AGL acting reasonably.

Carbon Permit means a unit, permit, credit, offset, permission, allowance or other proprietary right capable of being used by its holder to satisfy a liability for the emission of one tonne of carbon dioxide equivalent under the Carbon Scheme and if the Carbon Scheme provides for Carbon Permits with different vintage years or different periods during which they are eligible for surrender, that Carbon Permit is of the vintage year (or other period during which they are eligible for surrender) which corresponds to the financial year (or other relevant period prescribed by the Carbon Scheme) in which the first day of the relevant Billing Period occurs.

Carbon Reference Price means, for the relevant Billing Period (expressed in \$/tonne CO₂-e, exclusive of GST):

- (a) subject to paragraph (c), if in respect of a Carbon Scheme:
 - i. during such time that fixed-price Carbon Permits are issued under the Carbon Scheme and such Carbon Permits are not capable of being traded, that fixed price; or
 - ii. during such time that Carbon Permits are issued under the Carbon Scheme and such Carbon Permits are capable of being traded, the average of the spot price for such Carbon Permits published by the ASX as the daily closing price for each Trading Day occurring during that Billing Period, or if this price is not published for any reason or more than one such price is published, the price that best reflects the average of the market prices for delivery of Carbon Permits occurring during that Billing Period as determined by AGL acting reasonably; or

Where subparagraphs i. and ii. above are both satisfied, either subparagraph i. or ii. will apply as determined by AGL acting reasonably.

- (b) subject to paragraph (c), if in respect of a Carbon Tax, the Carbon Tax Rate, or if the Carbon Tax does not utilise a Carbon Tax Rate, the rate that best reflects the tax, charge or levy applying to emissions of participants in the National Market during that Billing Period, as determined by AGL acting reasonably; or
- (c) if in respect of a scheme which is both a Carbon Scheme and a Carbon Tax, the price or rate under either paragraph (a) or (b), as determined by AGL acting reasonably.

Carbon Scheme means any mandatory Commonwealth scheme for the management of greenhouse gas emissions or concentrations which applies to emissions relating to the generation or transmission of electric power in the National Market, or emissions from fuel sources used for the generation of electric power in the National Market, and which requires liable persons to hold, acquit or surrender units, permits, credits, offsets, allowances or other similar rights in respect of those greenhouse gas emissions or concentrations.

Carbon Tax means a tax, charge or levy imposed by the Commonwealth Government on liable persons as part of a mandatory scheme for the management of greenhouse gas emissions or concentrations, which applies directly or indirectly to emissions relating to the generation or transmission of electric power in the National Market, or emissions from fuel sources used for the generation of electric power in the National Market.

Carbon Tax Rate means, if the Carbon Tax is imposed as a uniform tax, charge or levy payable by liable persons on the quantity of greenhouse gas emitted by them, that tax, charge or levy.

Consequential Loss means loss of income or revenue; loss of profit or anticipated profits; loss of business or financial opportunity; loss of production or loss from business interruption; loss of reputation; punitive or exemplary damage; failure to achieve anticipated savings, reduction of costs, or other savings; and penalties payable under third party contracts.

Commencement Date means in relation to a Premises the date specified in Item 2 of Schedule 2 for that Premises.

Commission means any amount that is incorporated into the charges payable by the Customer to AGL under this Agreement, which is remitted by AGL to the Intermediary as a commission for the services the Intermediary provided or provides to the Customer.

CPI means the consumer price index all groups for the city specified in Item 2 of Schedule 1 (if applicable as per Item 2 of Schedule 1).

CPI Escalation Formula means the formula:

$$P_r = P_{r-1} * [(CPI_r / CPI_{r-1}) - X]$$

Where:

- P_r is the Energy Charge Rate applicable from and including the date specified in Item 2 of Schedule 1 of the relevant year ("Review Date");
- P_{r-1} is the Energy Charge Rate applicable immediately prior to the relevant Review Date;
- CPI_r is the CPI for the calendar quarter published immediately prior to the relevant Review Date;
- CPI_{r-1} is the CPI for the calendar quarter published immediately prior to a date 12 months prior to the relevant Review Date; and
- X is the discount escalation rate expressed as a decimal and specified in Item 2 of Schedule 1 (if any).

There will be no adjustment to the applicable Energy Charge Rate if $[(CPI_r / CPI_{r-1}) - X] < 1$; in that case, $P_r = P_{r-1}$.

Customer means the person set out in Item 1 of Schedule 1.

Default Rates means the rates applicable to large customers without a retail contract published at www.agl.com.au from time to time, or if not published, the rates AGL in its sole discretion determines are necessary to recover its costs or the costs of a Related Body Corporate of AGL, of acquiring electricity or hedging the cost of acquiring electricity in the National Market and selling electricity to the Customer, plus a reasonable margin.

Delivery of Electricity means the delivery of electricity through a Distribution System to, or in relation to, the Customer's Premises.

Distribution System means the system of electric lines and other equipment through which a Distributor provides Delivery of Electricity.

Distributor means a person entitled by Energy Law to distribute electricity through a Distribution System. If this Agreement covers two or more Premises, there may be two or more Distributors.

Due Date has the meaning set out in Item 4 of Schedule 1 in relation to a bill.

Emissions and Renewable Energy Legislation means the *Renewable Energy (Electricity) Act 2000* (Cth) and any other Energy Law which has as one of its purposes the reduction or limitation of greenhouse gases or the minimisation of the impact on the environment of the electricity industry generally.

Emissions and Renewable Energy Charges means the amount fixed by AGL from time to time and set out in the Customer's bill as the charge which AGL reasonably determines should be paid by the Customer on account of any cost or liability imposed on or incurred by AGL, or a Related Body Corporate of AGL, under or as a direct or indirect consequence of any Emissions and Renewable Energy Legislation (including the cost of acquiring renewable energy, energy efficiency or greenhouse gas abatement certificates or any other relevant proprietary right or interest) or any reasonable estimate of any such cost or liability likely to be so imposed on or incurred by AGL, or a Related Body Corporate of AGL, in the future.

Energy Charges means the charges payable under clause 3.1.

Energy Charge Rates means, in relation to a nominated period and Premises, the rates set out in Item 5 of Schedule 2, which will apply to the period or periods ending no later than the Expiry Date, as those rates are reviewed annually in accordance with the CPI Escalation Formula, or the rates applying under clause 3.5, for that period and Premises.

Energy Law means any statute, regulation, code, rules, direction, mandatory guideline, licence condition or other regulatory instrument which governs or affects any one or more of the price of electricity, the cost to AGL of purchasing or selling electricity, the Delivery of Electricity, the sale of electricity to the Customer or the electricity industry generally.

Energy Loss Charges means the charges calculated as:

- (a) the product of the Approved Energy Loss Factors applicable to each Premises and the Energy Charges; and
- (b) the product of the Approved Energy Loss Factors applicable to each Premises and each of the Emissions and Renewable Energy Charges.

For the avoidance of doubt, Energy Loss Charges may be expressed in a bill as a component of another charge or amount payable and need not be expressed as a separate charge or charges.

Estimated Total Annual Consumption means the estimated annual consumption set out in Item 8 of Schedule 2.

Expiry Date means in relation to a Premises, the date set out in Item 3 of Schedule 2 for that Premises.

Force Majeure means in relation to a party, any event or circumstance outside that party's control, including:

- (a) an act of God, insurrection, industrial disputes of any kind, epidemics or any other risks to health or safety;
- (b) the order of any court or the award of any arbitrator, any order act or omission of government or other regulatory body or any inability or delay in obtaining governmental quasi-governmental or regulatory approvals consents permits licences or authorities; or
- (c) any order, direction, act or omission of a third party (including the System Operator, a generator or transmission operator or the Distributor).

GST has the meaning given to the term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Increased Costs Event means where:

- (a) a new Tax is imposed or the basis for imposing or calculating any Tax changes;
- (b) AGL, or a Related Body Corporate of AGL, incurs any liability, cost or reduction in benefit due to or arising from the

introduction of, or a change to an Energy Law or a change to the interpretation or effect of an Energy Law;

- (c) the System Operator becomes entitled pursuant to an Energy Law to levy or recover any charges, costs or other imposts; or
- (d) AGL, or a Related Body Corporate of AGL, incurs a liability, cost or reduction in benefit pursuant to a Wholesale Energy Contract in circumstances contemplated by that Wholesale Energy Contract relating to:
 - i. Taxes;
 - ii. participation in the National Market;
 - iii. the principles upon which use of system fees relating to the use of transmission or distribution systems are allocated; or
 - iv. a change to or introduction of an Energy Law or a change to the interpretation or effect of an Energy Law.

Insolvency Event includes the appointment of an administrator or receiver, voluntary administration, compromise, arrangement, official management, winding-up, dissolution, cessation of business, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy or any similar procedure or where applicable, changes in the constitution of any partnership or person, or any failure to provide credit support when required by this Agreement.

Interest Rate means the Westpac Banking Corporation corporate overdraft reference rate as at the Due Date plus a margin of 2% per annum.

Intermediary means a broker, buying group or other third party involved in providing energy brokering, procurement or contracting advice to the Customer.

Market Charges means any charge imposed by Energy Law, the System Operator, any other regulatory authority or with the Customer's agreement, and includes any ancillary services, charges or costs and any other charges associated with operation of the National Market.

Metering Charges means:-

- (a) all metering costs incurred by AGL or charges in relation to the provision of Metering Equipment and any Metering Installation and the collection and distribution of metering data; plus
- (b) the Responsible Person Fee.

Metering Provider means a person or persons nominated by AGL and appointed by the System Operator to do one or more of the following:

- (a) supply and install Metering Equipment and/or Metering Installations;
- (b) read Metering Equipment;
- (c) collect, process and transmit metering data to the Distributor, the System Operator, any relevant regulatory entity, AGL or the Customer;
- (d) provide any additional metering-related services to AGL in respect of the Premises.

Metering Equipment means equipment installed (or to be installed) to measure, record and in certain cases forward the data relating to the amount of electricity delivered to a Premises from the Distribution System.

Metering Installation has the meaning set out in the National Electricity Rules and includes, for the avoidance of doubt, the links that provide remote access communications with the installation, the metering current transformers and the voltage transformers.

National Electricity Law means the schedule to the *National Electricity (South Australia) Act 1996 (SA)*.

National Electricity Rules means the National Electricity Rules made under the National Electricity Law.

National Market means the Australian wholesale electricity market operated under the National Electricity Rules.

New Premises means premises that were constructed or have substantially changed their electricity consumption profile since 1 January in the year immediately preceding the Commencement Date.

Network Charges means any costs charged by the Distributor to AGL in relation to the Customer's Premises including the cost of Delivery of Electricity and connection to the Distribution System and any excluded services.

NMI has the meaning set out in the National Electricity Rules.

Notice means a notice which conforms with the requirements of clause 10.4 (Notices).

Off Peak means all other times not defined under Peak or Shoulder.

Peak means:

- (a) for New South Wales and the Australian Capital Territory, 7.00 am – 9.00 am and 5.00 pm – 8.00 pm local time on Business Days ;
- (b) for South Australia, 7.00 am - 9.00 pm local time on Monday to Friday;
- (c) for Victoria, 7.00 am – 11.00 pm local time on Monday to Friday; and
- (d) for Queensland, 7.00 am – 11.00 pm local time on Business Days and Gazetted Show holidays throughout Queensland.

Premises means each of the Premises set out in Item 1 of Schedule 2 and where the context requires it, all of those Premises.

Related Body Corporate has the meaning defined in section 9 of the *Corporations Act 2001* (Cth) and when referring to AGL, includes AGL Hydro Partnership ABN 86 076 691 481.

Responsible Person Fee means the fee or fees (if any) set out in Item 9 of Schedule 2, or as applied under clause 5.4.

Retailer means a person entitled by Energy Law to retail electricity.

Retail Service Fee means the fee or fees as set out in Item 6 of Schedule 2.

Services Charges means the fee AGL may charge the Customer for any other products or services AGL agrees to provide to the Customer.

Shoulder means, for New South Wales and the Australian Capital Territory, 9.00 am – 5.00 pm and 8.00 pm – 10.00 pm local time on Business Days.

System Operator means any person or body appointed under Energy Law whose functions are, amongst other things, to operate and administer the National Market, control the security of the electricity supply system, or regulate and monitor the electricity transmission system.

Taxes means any taxes, levies, imposts, deductions, charges, withholdings or duties, other than income tax, fines or penalties.

Term means the period from the Commencement Date to the Termination Date.

Termination Date means in relation to each Premises:

- (a) the earlier of the Expiry Date for that Premises or the date this Agreement terminates under clause 9.1; or
- (b) where clause 2.5 applies, the date AGL ceases selling electricity to the Customer under this Agreement at that Premises.

Trading Day means a day on which the ASX is due to be open for trading during its regular trading session.

Wholesale Energy Contract means a wholesale, power purchase, hedge or other similar contract that has the purpose or effect of reducing AGL's (or a Related Body Corporate of AGL's) exposure to the volatility of the wholesale cost of acquiring electricity in the National Market.