

RoLR Deemed Large
Customer Retail
Arrangement – Electricity
(NSW, QLD, VIC)

agl.com.au/business



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Important Note

The process of transferring electricity through the Distribution System to the 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 Premises. AGL cannot however physically control the quality or frequency of the electricity delivered to the Premises or the continuity of Delivery of Electricity to the Premises.

THIS AGREEMENT is between the CUSTOMER and AGL (both as defined in clause 15).

1. This Agreement

This Agreement consists of these terms and conditions and sets out the agreement between AGL and the Customer for the sale of electricity to the Premises.

2. Sale, purchase, and delivery of electricity

2.1 Sale and purchase obligations – general

- (a) AGL will sell to the Customer, and the Customer will purchase from AGL, all electricity that the Customer requires for the Premises from the Commencement Date in accordance with the terms of this Agreement.
- (b) Each party must comply with all applicable Energy Laws in the performance of this Agreement.

2.2 Premises transfer

The Customer acknowledges that the transfer of the Premises to AGL was effected by operation of law as a result of a RoLR Event and that such transfer to AGL may involve the disclosure of information relating to the supply of electricity for the Premises, and consents to AGL being provided with any consumption history or data as required.

2.3 Electricity consumption and consumption forecast

If the Customer’s actual consumption or expected consumption of electricity at a Premises during any 12 month period does not exceed the upper consumption threshold for small business customers as regulated by Energy Law, AGL may upon Notice to the Customer remove that Premises from this Agreement from the date set out in the Notice, or if no Premises would remain under this Agreement upon such removal, terminate the Agreement.

2.4 Arrangements for 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 a particular Premises.

2.5 Sale of electricity until the End Date

- (a) AGL will continue selling electricity to the Customer under this clause 2.5 until the End Date, being the earlier of the date:
 - (i) any new agreement entered into between the Customer, or another customer, and AGL for the purchase of electricity in relation to the Premises commences;
 - (ii) AGL is notified in accordance with the National Electricity Rules that the transfer of the Premises to another Retailer is complete; and
 - (iii) of disconnection of the Premises under clause 9.1(e) following termination of this Agreement.

3. Charges

3.1 Energy Charges

The Customer agrees to pay AGL the Energy Charges for the electricity AGL sells to the Customer at the Premises, calculated as the actual metered consumption at each Premises (subject to clause 5.3) multiplied by the product of the Energy Charge Rates and the Approved Energy Loss Factor applicable to the Premises.

3.2 Other charges

The Customer also agrees to pay to AGL all Network Charges, Market Charges, Metering Charges, Retail Service Fees, Services Charges, and Emissions and Renewable Energy Charges applicable to the Premises for the electricity AGL sells to the Customer at the Premises.

3.3 Default Rates

The Customer acknowledges that the Default Rate reflects potential costs of acquiring electricity or hedging the cost of acquiring electricity in the National Market and selling electricity to the Customer, including internal costs of generation where relevant, and that the Default Rate will change from time to time as published on AGL’s website.

3.4 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 3.8.

4. Billing and payment

4.1 Bills

- (a) Subject to clause 5.3(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. Bills will be sent by email unless otherwise requested by the Customer in writing. The bill may include:
 - (i) unbilled charges incurred in respect of a previous Billing Period; and
 - (ii) adjustments in relation to any charges that were billed or should have been billed in respect of a previous Billing Period.
- (c) If, after a bill has been issued in respect of a given Billing Period, it is discovered that the Customer has been overcharged or undercharged under this Agreement, AGL must determine the correct charges and AGL will credit or debit the amount of overcharge or undercharge in the next bill as appropriate, or in an ad hoc bill if no further bill is due to be sent to the Customer under clause 4.1(b). AGL may send a bill under this paragraph (c) at any time notwithstanding that the Customer has ceased purchasing electricity from AGL at the Premises under the terms of this Agreement.

- (d) A bill is duly rendered if left at, mailed, or emailed to or otherwise sent to the address notified to AGL by the Distributor in respect of the Premises or as updated by the Customer by written notice to AGL from time to time.

4.2 Payment and dispute of bills

- (a) Subject to clause 4.2(d), the Customer must pay all bills within 14 days of the date of the bill (free of set-off and without deduction) by cash, cheque, or electronic funds transfer (**Payment Terms**). If AGL agrees to accept payment by credit card, AGL may charge the Customer for any additional costs incurred, including any merchant services or payment processing fees levied by a service provider.
- (b) If a bill is not paid in full in accordance with the Payment Terms, AGL may charge interest at the Interest Rate on the unpaid amount, calculated from the date payment was due until the date payment is received by AGL (both dates inclusive) and compounded monthly.
- (c) AGL may also require the Customer to pay any costs reasonably 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.
- (d) Subject to clause 4.2(e), the Customer may withhold payment of any part of the bill that it reasonably believes is incorrect provided it gives Notice to AGL before the date payment is due detailing the reasons for this belief and requesting that AGL review the accuracy of the disputed portion of the bill. The Customer must pay AGL the undisputed portion of the bill by the date payment is due in accordance with the Payment Terms. AGL will review the disputed portion of the bill within 30 days of the Customer's written request to do so. If AGL's review does not resolve the Dispute, either party may give the other a Dispute Notice and clause 7 will apply.
- (e) Despite clause 4.2(d), the Customer must pay all Network Charges (and applicable GST) in full in accordance with the Payment Terms.
- (f) If the Customer validly withholds an amount in accordance with this clause and is subsequently found (by agreement or decision of a court or other party having jurisdiction) not to be liable to pay that amount, the Customer will not be liable for any interest on that amount.
- (g) AGL is entitled, without prejudice to any other rights or remedies it may have, to withhold and set off payments of any monies due or owing by the Customer to AGL, against any and all amounts due or owing by AGL to the Customer.

4.3 Credit support

- (a) The Customer must promptly provide to AGL such information reasonably requested by AGL from time to time to assist in the assessment of the Customer's creditworthiness.
- (b) AGL may by Notice request the Customer to provide AGL with Security to secure the due and punctual performance of the Customer's obligations under this Agreement if:
- AGL, acting reasonably, considers that the Customer's creditworthiness is unsatisfactory, or has materially adversely changed; or
 - the Customer fails to pay, in accordance with the Payment Terms, the outstanding amount of any 3 bills or any 2 consecutive bills.
- (c) The Customer must provide any Security requested within 7 days after AGL's Notice under clause 4.3(b).
- (d) AGL may use the Security to pay any amounts AGL reasonably believes the Customer owes to AGL under this Agreement.
- (e) Where AGL uses the Security to pay any amounts the Customer owes to AGL under this Agreement, AGL may require the Customer to reinstate the Security to the original amount requested pursuant to clause 4.3(b) within 7 days.
- (f) If the Customer fails to provide or reinstate Security in accordance with this clause 4.3, AGL may refuse to sell or supply electricity under this Agreement, cause the electricity

supply at a Premises to be disconnected in accordance with clause 9.1(d), or terminate this Agreement in accordance with clause 8.1(b).

- (g) AGL must release any remaining Security on termination or expiry of this Agreement if all amounts owing or payable by the Customer to AGL under this Agreement have been paid in full.

5. Metering and access

5.1 Responsibility for metering

- (a) This clause 5.1 applies where a Customer has not appointed its own Metering Coordinator.
- (b) AGL must, at the Customer's cost, appoint a Metering Coordinator (**AGL MC**) who will provide metering services in respect of the Metering Equipment and/or Metering Installation.
- (c) AGL will appoint the AGL MC at AGL's discretion and AGL reserves the right to change the AGL MC at any time.
- (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 AGL MC or Distributor associated with rectifying any defective Metering Equipment and/or Metering Installation to the extent this has been caused by the Customer.

5.2 Use of Customer Appointed Metering Coordinator

- (a) Where jurisdictional Energy Laws allow, the Customer may appoint its own Metering Coordinator (**Customer Appointed MC**) and if the Customer does so, this clause applies.
- (b) The Customer must provide AGL with details of its Customer Appointed MC as soon as possible after the appointment along with such other information as AGL reasonably requests.
- (c) The Customer must indemnify AGL and keep AGL indemnified from and against any Claim or Loss (including any fines or penalties to the extent permitted by law) brought against, suffered, or incurred by AGL in connection with the Customer Appointed MC providing or failing to provide metering, data, and other associated services with respect to any Premises, including where the Claim or Loss is caused by the Customer's or the Customer Appointed MC's negligence.
- (d) The Customer is solely responsible for arranging the services provided by the Customer Appointed MC and paying any fees charged by the Customer Appointed MC, including any fees billed directly to the Customer by the Customer Appointed MC.

5.3 Data

- (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 by the acts or omissions of the Customer, 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.
- (c) In circumstances where the Customer has not appointed a Customer Appointed MC, the Customer may request access to its metering data from AGL in accordance with the process and subject to the terms and conditions set out at agl.com.au.

5.4 Access

- (a) The Customer must provide safe and unhindered access to each Premises, the Metering Equipment and Metering Installation for the Metering Coordinator's and 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.

6. Delivery of electricity, quality, and 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 Premises;
 - (ii) AGL cannot control the quality, or the frequency of the electricity delivered to the 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 Customer Appointed MC and 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 10.1 and clause 6(b), AGL 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) AGL has the right to effect a Retailer Planned Interruption in order to install, maintain, repair, alter or replace the Metering Installation or Metering Equipment. AGL will give the Customer at least 4 Business Days' notice (except in the case of an emergency) of such Retailer Planned Interruption and will specify its expected date, time, and duration.
- (c) 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. Dispute resolution

- (a) If a dispute arises in relation to this Agreement, a 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 7 (**Dispute Notice**).
- (b) Following the provision of a Dispute Notice, senior representatives of each party who have not previously been involved in the dispute and who have authority to settle it must commence their attempt to resolve the dispute in good faith within 14 days from the date of the Dispute Notice.
- (c) If the dispute is not resolved within 60 days from the date of the Dispute Notice, then either party may, by giving Notice to the other party, terminate this dispute resolution process and may commence litigation proceedings.
- (d) Each party must continue to perform its obligations under this Agreement despite the existence of a dispute.
- (e) Other than for the purposes of seeking injunctive or urgent declaratory relief, a party may not commence legal proceedings in respect of a dispute or any matter arising in connection with this Agreement otherwise than in accordance with this clause 7.

8. Termination

8.1 Right to terminate

- (a) The Customer may terminate this Agreement by 30 days' notice in writing.
- (b) Either party may terminate this Agreement by Notice to the other party:

- (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, including a failure to pay a bill in accordance with clause 4.2, 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 or reasonably compensated for.
- (c) AGL may terminate this Agreement on 3 Business Days' notice if the Customer fails to provide Security in accordance with clause 4.3.
 - (d) AGL may, at any time, in accordance with section 148(8) of the National Energy Retail Law, serve a notice on the Customer terminating the Agreement with effect from the date that is six months after the Commencement Date, if a retail contract is not executed in relation to the Premises before that notified date.

8.2 Meter reading on termination

The Metering Equipment for each Premises will be read following termination and a final bill issued in accordance with this Agreement for all outstanding charges.

9. Disconnection and reconnection

9.1 Disconnection

AGL may arrange for the disconnection of the Premises:

- (a) if AGL reasonably believes that the Customer has stolen electricity or the Metering Equipment or Metering Installation for a Premises has been interfered with, AGL gives Notice to the Customer and the Customer does not pay for the stolen electricity, or satisfy AGL that the Metering Equipment or Metering Installation has not been interfered with within the time set out in that Notice; or
- (b) upon termination of this Agreement for any reason set out in clause 8.1.

The Customer must provide access to the Premises and the Metering Equipment in accordance with clause 5.4(a) until the Premises is disconnected.

9.2 Reconnection

If AGL arranges for the Metering Coordinator or the Distributor to disconnect a Premises under clause 9.1 and the Customer requests reconnection:

- (a) AGL may direct the Metering Coordinator or the Distributor to reconnect that Premises on such terms that AGL considers reasonable; and
- (b) prior to reconnection, AGL may require the Customer to pay the disconnection fee and/or reconnection fee set by the Metering Coordinator or the Distributor, and to provide any Security in accordance with clause 4.3.

10. Liability

10.1 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 by AGL or its contractors, 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.

provided that this clause 11(c) does not require the affected party to settle a strike, industrial dispute, lockout, boycott, work ban or other industrial dispute.

12. Assignment

The Customer agrees that AGL may assign, novate or otherwise transfer its rights and obligations under this Agreement to a Related Body Corporate that is a Retailer, and appoints AGL as agent on its behalf to enter into appropriate novation arrangements with that Related Body Corporate at the relevant future time.

13. General provisions

13.1 Use of information

- (a) The Customer consents to AGL:
 - (i) collecting, using and disclosing Personal Information in accordance with the Privacy Policy and Credit Reporting Policy, which are available at agl.com.au or on request, and which provide further details about the Personal Information AGL collects, what AGL does with it, where AGL sends it, the credit reporting bodies AGL uses and Customer's opt-out, access, correction and complaint rights with AGL and credit reporting bodies;
 - (ii) disclosing Personal Information to third parties outside Australia as set out in the Privacy Policy and Credit Reporting Policy, and the Customer agrees that while these third parties may be subject to privacy and confidentiality obligations, they may not always comply with those obligations or those obligations may differ from Australian privacy laws, AGL is not accountable for the third party under the Privacy Act and will not be required to take reasonable steps to ensure that those parties comply with the Australian Privacy Principles under the Privacy Act, the Customer may not be able to seek redress under the Privacy Act and the third party may be subject to foreign laws which might compel further disclosures of Personal Information (e.g. to government authorities); and
 - (iii) collecting, seeking, and using Related Data including information about the Customer's electricity consumption, electricity production and export, metering data, location and proximity data, data about the status or energy usage of devices or appliances, electricity storage, billing and payment history for the purposes of this Agreement, any Energy Law or for any other lawful purpose. The Customer also consents to AGL disclosing information to credit reporting agencies.
- (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.

13.2 Confidentiality of Agreement

- (a) Each party must ensure that all commercially sensitive information exchanged between the parties remains confidential.
- (b) Either party may disclose such information:
 - (i) with the prior written consent of the other party (including that given under clause 13.1(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, provided that the party is liable for any further disclosure by its officers, employees and advisers to a person that party is not entitled to disclose such information to under this clause 13.2.
- (c) AGL may disclose such information to a credit reporting agency under the Privacy Act or to a debt collection agency, if necessary to pursue payment of an outstanding amount owing under this Agreement.

10.2 Exclusions and limitations of liability

- (a) So far as the law allows, subject to clauses 10.2(b) and 10.2(c), each party will have no liability to the other party arising out of or in connection with this Agreement whether in contract, in tort (including negligence), in equity, by operation of law or otherwise for Losses, including Consequential Losses. This exclusion of liability applies whether or not a party was aware of the possibility of such Consequential Loss to the other party when this Agreement was entered into.
- (b) The exclusion of liability under clause 10.2(a) does not apply to a party's liability under clauses 2, 3, 4, 5.1(d), 5.2(c), 8.2 and 13.2, for which liability is unlimited, other than in respect of Losses for which a party is liable under clause 10.2(c). For the avoidance of doubt, Losses that are recoverable under this clause 10.2(b) shall be considered direct damages and neither party shall assert that they are Consequential Loss to the extent they result directly from the breaching party's failure to perform or other wrongful act or omission. The fact that the parties have specified certain types of Losses as being recoverable does not otherwise affect the normal legal principles applicable to a party's entitlement to recover (or the categorisation of) Loss.
- (c) So far as the law allows, a party (**Party X**) is liable to the other party (**Party Y**) for Losses arising out of or in connection with this Agreement directly sustained or incurred by Party Y as a result of:
 - (i) personal injury to Party Y or its employees, contractors, or agents; or
 - (ii) damage to the property of Party Y or its employees, contractors, or agents,
 caused by Party X's breach of this Agreement or negligent act or omission but subject to a cap of \$1 million per event.

10.3 No liability for Delivery of Electricity

The Customer agrees that subject to clause 10.1 and without limiting the generality of clause 10.2, AGL is not liable for any Loss 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 unless any such interruption is due to the negligent act or omission of AGL, or intentional breach of this Agreement by AGL.

10.4 Other rights

This clause 10 will apply in addition to, and will not vary or exclude the operation of, any exclusion from or limitation of liability either party may be entitled to claim the benefit of under Energy Law.

11. Force Majeure

- (a) 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 to the extent the failure is caused by a Force Majeure.
- (b) A party claiming a Force Majeure, must notify the other party as soon as reasonably practicable and provide particulars about the Force Majeure, the obligations affected by it and the extent of its effect on those obligations and the expected duration (which notice may be given orally and subsequently confirmed in writing).
- (c) The party claiming the Force Majeure must:
 - (i) use reasonable efforts to remedy or abate the Force Majeure as quickly as possible; and
 - (ii) as soon as possible after the Force Majeure ceases to affect the performance by the affected party of any of its obligations under this Agreement, resume performance of those obligations,

13.3 Notices

- (a) Unless otherwise specified, a notice to AGL must be in writing and sent to the relevant address or email address as follows (or as varied by notice by AGL from time to time):

Address

The Sales Manager
AGL Sales Pty Limited
Locked Bag 14120 MCMC
Melbourne VIC 8001

Email address

BusinessSales@agl.com.au

- (b) Unless otherwise specified, a notice to the Customer must be in writing (which includes being set out in a bill), and be hand delivered or sent to the address or email address notified to AGL by the Distributor in respect of the Premises or as updated by the Customer by written notice to AGL from time to time.
- (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 Business Day after mailing;
 - (ii) if hand delivered, on the day it is delivered;
 - (iii) if sent by email, on the next Business Day after sending.

13.4 Exercise of rights

A party may exercise a right, power, or remedy under this Agreement in 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.

13.5 Severance

If any term of this Agreement is or becomes for any reason invalid or unenforceable at law, then that term will be deleted from this Agreement without affecting the remainder of this Agreement, which will continue to be valid and enforceable.

13.6 Waiver and variation

- (a) A provision of, or a right created under, this Agreement may not be waived, except in a Notice signed by the party granting the waiver.
- (b) A provision of, or a right created under, this Agreement may be varied by Notice from AGL, and for the purposes of this clause, Notice may be given with immediate effect by publication on AGL's website, or as otherwise provided in this Agreement.

13.7 Survival

Clauses 1, 2.5, 3, 4, 5, 6, 7, 8.2, 9.1, 10, 13.1, 13.2, 13.3, 13.4, 13.6, 13.8, 14, 15, this clause 13.7 and any obligations which by their nature are intended to so do, survive the termination or expiry of this Agreement and are enforceable at any time at law or in equity.

13.8 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.

14. 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 in accordance with clause 13.5.
- (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 Notice from AGL as to the amount payable is prima facie evidence of the amount payable and final and binding unless rebutted by 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.

15. Glossary

In this Agreement unless the contrary intention appears:

AGL means AGL Sales Pty Limited (ABN 88 090 538 337) of Level 24, 200 George Street, Sydney NSW 2000.

AGL MC has the meaning given in clause 5.1(b).

Agreement means these terms and conditions.

Approved Energy Loss Factor means, unless explicitly stated to the contrary in this Agreement, the aggregate of any applicable 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 a period for which AGL issues a bill, which will be as close as possible to a Contract Month.

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.

Claim means any claim, action, demand, order, notice, declaration, or proceedings of any nature whatsoever, whether actual or threatened.

Commencement Date in relation to a Premises, means the date the Premises is transferred to AGL as a result of a RoLR Event.

Commonwealth Large-scale Renewable Energy Target means the large-scale generation certificate-based scheme established under the Renewable Energy Act and the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000* (Cth), to encourage additional electricity generation from renewable energy sources.

Commonwealth Small-scale Renewable Energy Scheme means the small-scale technology certificate-based scheme established under the Renewable Energy Act and the *Renewable Energy*

(*Electricity (Small-scale Technology Shortfall Charge) Act 2010* (Cth), to encourage additional electricity generation from renewable energy sources.

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.

Contract Month means the period of time beginning at the start of the first day of a calendar month and ending at the start of the first day of the following calendar month, except:

- (a) where the Commencement Date is not the first day of a calendar month, the first Contract Month is the period beginning at the start of the Commencement Date and ending at the start of the first day of the following calendar month; and
- (b) where the last day on which AGL sells electricity to the Customer at the Premises is not the last day of a calendar month, the last Contract Month will be less than a calendar month.

Customer means a customer whose Premises has been transferred to AGL and is subject to the terms of this Agreement by operation of law due to the occurrence of a RoLR Event.

Customer Appointed MC has the meaning given in clause 5.2(a).

Default Rates means the rates applicable to large customers without a retail contract published at 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, including internal costs of generation where relevant, plus a reasonable margin.

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

Dispute means any dispute, difference or disagreement between the parties arising out of or in connection with this Agreement. A reference to a Dispute, where the Dispute is partly resolved, refers to the unresolved part of the Dispute.

Distribution System means the system of electricity 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. Note that if there are two or more Premises, there may be two or more Distributors.

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 amounts reasonably determined by AGL as 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 and:

- (a) may be charged in proportion to the Customer's consumption of electricity or otherwise reasonably attributed or apportioned to the Customer; and
- (b) where calculated with reference to an amount of electricity, the Approved Energy Loss Factor will be applied against the Emissions and Renewable Energy Charges rates.

Emissions and Renewable Energy Scheme means a scheme, program or requirement established under Emissions and Renewable Energy Legislation under which AGL, or a Related Body Corporate of AGL, is liable to incur costs, or purchase, hold, acquit or surrender renewable energy or greenhouse gas abatement

units or certificates or any other similar proprietary right or interest in respect of electricity purchased for, sold to, or consumed at, the Premises, such schemes which may include the Commonwealth Large-scale Renewable Energy Target, the Commonwealth Small-scale Renewable Energy Scheme, the NSW Energy Savings Scheme, the Retailer Energy Productivity Scheme, and the Victorian Energy Efficiency Target Scheme.

Energy Charges means the charges payable under clause 3.1.

Energy Charge Rates means the rate charged for electricity sold under this Agreement, which is the Default Rate.

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.

Force Majeure means in relation to a party, any event or circumstance outside that party's reasonable control and which is not reasonably able to be prevented or overcome by the exercise of reasonable care by that party, including:

- (a) an "act of God", insurrection, industrial dispute of any kind, epidemic 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 in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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.

Interest Rate means the Westpac Banking Corporation corporate overdraft reference rate as at the date payment is due in accordance with the Payment Terms plus a margin of 2% per annum.

Loss means any liability, cost, expense, loss, or damage and, in relation to a Claim, includes amounts payable on the Claim (whether or not the Claim is successful) and legal and other professional costs and disbursements on a full indemnity basis. For the avoidance of doubt, Loss includes wholesale losses and retail losses.

Market Charges means any charges associated with the operation of the National Market 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 includes charges associated with AEMO's Reliability and Emergency Reserve Trader function.

Metering Charges means all metering costs incurred by AGL in relation to the Premises, or charges in relation to the provision of Metering Equipment and any Metering Installation and the collection and distribution of metering data incurred by AGL in respect of Metering Coordinator services in relation to the Premises, including where a Customer Appointed MC is appointed.

Metering Coordinator means a Customer Appointed MC or an AGL MC appointed to provide metering services in accordance with the National Electricity Rules and Energy Laws including:

- (a) appointing a Metering Provider to read, install, inspect, test, repair, maintain, exchange, alter, upgrade, or remove Metering Installations; and
- (b) appointing a Metering Data Provider to undertake metering data processing and transfer to the Distributor, the System Operator, any relevant regulatory entity, AGL, the Customer or any other person permitted to receive metering data under the Energy Law.

Metering Data Provider has the meaning given in the National Electricity Rules.

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, that meets the requirements of AGL and the Distributor.

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.

Metering Provider has the meaning given in the National Electricity Rules.

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

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

National Energy Retail Law means the schedule to the *National Energy Retail Law (South Australia) Act 2011*.

National Energy Retail Rules means the rules made pursuant to the National Energy Retail Law.

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

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

NMI has the meaning given in the National Electricity Rules.

Notice means a notice which conforms with the requirements of clause 13.3 (Notices).

NSW Act means the *Electricity Supply Act 1995 (NSW)*.

NSW Energy Savings Scheme means the scheme established under the NSW Act and the Energy Savings Scheme Rule on 1 July 2009 to encourage energy-saving activities that improve energy efficiency and/or reduce electricity consumption in residential, commercial, and industrial settings.

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

Payment Terms has the meaning set out in clause 4.2(a).

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.

Personal Information has the meaning given to it under the Privacy Act.

Privacy Act means the *Privacy Act 1988 (Cth)*.

Premises means premises at which an NMI is located that has

been transferred to AGL by operation of law due to a RoLR Event.

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

Related Data means any record of information that is related to this Agreement, ancillary services supplied to the Customer, the Customer's interactions with AGL, connected devices at the Premises, the Metering Equipment or the products and services that Customer acquires from AGL or from third parties that AGL collaborates with, including records in physical or electronic form. Some, but not all, Related Data may include Personal Information.

Renewable Energy Act means the *Renewable Energy (Electricity) Act 2000 (Cth)*.

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

Retailer Energy Productivity Scheme means the energy efficiency scheme established by the South Australian government under Part 4 of the *Electricity (General) Regulations 2012* (under the *Electricity Act 1996*).

Retailer Planned Interruption means an interruption to the supply of electricity to the Premises arranged by AGL where permitted under Energy Laws.

Retail Service Fee means a charge of \$650 per annum, payable monthly.

RoLR Event has the meaning given to that term in the National Energy Retail Law.

Security means an irrevocable and unconditional undertaking given to AGL by an Australian bank, a refundable deposit or pre-payment, guarantee from a third party or other security, on terms acceptable to AGL and in an amount determined by AGL in its discretion, having regard to the Customer's electricity consumption and payment history and AGL's policies, provided that the amount of Security will not exceed 3 months' average charges (calculated by reference to a 12-month period).

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.

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

Vic Act means the *Victorian Energy Efficiency Target Act 2007 (Vic)*.

Victorian Energy Efficiency Target Scheme means the scheme established under the Vic Act to reduce greenhouse gas emissions and encourage investment, employment and technology development in industries that supply goods and services which reduce the use of electricity and gas of consumers.

Call us on 1300 793 477 Monday to Friday, during business hours (excluding public holidays) or visit agl.com.au/business