

Statement of Charging Principles for Large Customer Without a Retail Contract

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Statement of Charging Principles for Large Customer Without a Retail Contract

1. The Parties

This statement sets out the basis on which *AGL*, as the *financially responsible retailer* who provides you with *customer retail services* at your *premises* (in this statement referred to as 'we', 'our' or 'us') will impose charges on you, the person consuming electricity at the *premises* to whom this statement is expressed to apply (in this statement referred to as 'you' or 'your') under section 64 of the *National Energy Retail Law*.

2. Definitions

Words appearing in italicised type like *this* are defined in Schedule 1 to this statement.

3. Does this Statement Apply to You?

This statement applies to you if we are the *financially responsible retailer* for your *premises* and:

- (a) you are a *large customer*; and
- (b) you do not have an appropriate arrangement in place with a *retailer* for the payment of electricity consumed at your *premises*.

4. When will this Statement Apply?

4.1 When will this statement apply

This statement applies on and from the date we first provide you with *customer retail services* at your *premises*.

4.2 When does this statement cease to apply?

- (a) The arrangements set out in this statement will end on the earliest of the following to occur:
 - (i) the date that you become a *small customer* in relation to the *premises*;
 - (ii) the date a different *customer* starts receiving *customer retail services* under a *retail contract* for the *premises*;
 - (iii) when we or another *retailer* enter into a contract with you for providing *customer retail services* to you at your *premises* and your responsibility for payment for *customer retail services* under the new contract commences; or
 - (iv) if you have vacated or intend to vacate your *premises*, on the day you cease to be responsible to pay for *customer retail services* supplied to that *premises* under clause 14.

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- (b) If clause 4.2(a)(iv) applies, but we are not able to obtain safe access to the *premises* to conduct a final meter reading (where relevant), then the arrangements under this statement will continue to apply until:
 - (i) ten *business days* after safe access is given; and
 - (ii) when the meter is read or the relevant *metering data* are obtained.

4.3 Rights when this statement ceases to apply

The fact that this statement has ceased to apply does not affect any rights or obligations which have accrued prior to that time.

5. Scope of this Statement

5.1 What is covered by this statement?

This statement applies only to the provision of *customer retail services* to you at your *premises*. We will sell to you electricity supplied to your *premises* (by your *distributor*) and will comply with the other requirements set out in this statement. In return, you are required under the *National Energy Retail Law* to pay the amount billed by us under clause 9 of this statement.

5.2 What is not covered by this statement?

- (a) We do not operate the *supply network* to which your *premises* is connected. This is the role of your *distributor*.
- (b) You have a separate *customer connection contract* with your *distributor*. Your *distributor* is responsible for:
 - (i) the connection of your *premises* to the *supply network*;
 - (ii) the maintenance of that connection;
 - (iii) the supply of electricity to your *premises*; and
 - (iv) the quality and other characteristics of electricity supplied to your *premises*.
- (c) Unless you negotiate a different arrangement with your *distributor*, a *deemed standard connection contract* or a *deemed AER approved standard connection contract* will govern your contractual relationship with your *distributor*. Even if you do not apply to enter into a *deemed standard connection contract* or a *deemed AER approved standard connection contract* it will automatically come into place by operation of law.

5.3 Quality of electricity supplied to your premises

We cannot regulate the quality or reliability of electricity supplied to your *premises*. You should also be aware that electricity suffers fluctuations and interruptions from time to time for a number of reasons, including:

- (a) the location of your *premises*;
- (b) whether your *premises* is served by underground or overhead mains;

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- (c) the weather conditions;
- (d) animals, vegetation, the actions of vandals and other people;
- (e) the existence of emergency or dangerous conditions;
- (f) damage to an electricity network;
- (g) the design and technical limitations of an electricity network; and
- (h) the demand for electricity at any point in time.

You should understand that unexpected fluctuations or interruptions may cause damage to your equipment or cause it to malfunction. We recommend that you give careful consideration to taking out insurance or installing devices to protect your equipment and property when these fluctuations or interruptions do occur.

6. Modification or Upgrade of Connection

6.1 Connection

If your existing connection to the *supply network* or associated equipment requires modification or upgrading, you will need to make arrangements with your *distributor* about your connection. In some cases, we can arrange for these things on your behalf.

7. Our Liability

7.1 How this clause operates with the Competition and Consumer Act etc.

- (a) The *Competition and Consumer Act 2010* (Cth) and other laws imply certain conditions, warranties and rights into contracts that cannot be excluded or limited.
- (b) Unless one of these laws requires it, we give no condition, warranty or undertaking, and we make no representation to you about the condition or suitability of electricity, its quality, fitness or safety, other than those set out in this statement.
- (c) Any liability we have to you under these laws that cannot be excluded but that can be limited is (at our option) limited to:
 - (i) providing equivalent goods or services provided by us to your *premises*; or
 - (ii) paying you the cost of replacing the goods or services provided by us to your *premises*, or acquiring equivalent goods or services.

7.2 Not liable

- (a) So far as the law allows, we are not liable for any loss or damage you suffer (whether due to negligence or otherwise) because of the electricity we sell to you.
- (b) In particular, we are not liable for any loss or damage you may suffer because:
 - (i) there is a failure of electricity supply, or there is a defect in the electricity supplied (however caused); or

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- (ii) some characteristic of the electricity (for example, voltage or frequency) makes it unsuitable for some purpose.

7.3 Non-exclusion

This clause 7 applies in addition to, and does not vary or exclude, the operation of sections 119 and 120 of the *National Electricity Law*.

7.4 Survival of this clause

This clause 7 continues to apply after the arrangements contemplated under this statement have ended.

8. Price for Electricity and Other Services

8.1 What are our tariffs and charges?

- (a) We will charge you in accordance with the *market prices*.
- (b) To the extent permitted by the *electricity legislation*, we may pass through to you any other charges imposed by your *distributor* which are not included in the *market prices*, including network charges. We may also charge you the *metering charge*, provided we are entitled to do so.
- (c) We will pay any amounts received for *customer connection services* from you to the *distributor* providing those services.

8.2 Changes to the rate of a tariff or charge during a billing cycle

If the rate of a tariff or charge applying to you changes during a *billing cycle*, your bill for that *billing cycle* will be calculated on a pro-rata basis using:

- (a) the rate of the old tariff or charge up to and including the date of change; and
- (b) the rate of the new tariff or charge from that date to the end of the *billing cycle*.

8.3 Changes to tariff or charge type during a billing cycle

If the type of tariff or charge applying to you changes during a *billing cycle*, your bill for that *billing cycle* will be calculated using:

- (a) the old tariff or charge up to and including the date of change; and
- (b) the new tariff or charge from that date to the end of the *billing cycle*.

8.4 GST

- (a) Unless expressly stated otherwise, all amounts payable or other consideration provided in respect of transactions under this statement are expressed exclusive of GST (if any). Where a supply under this statement is a taxable supply, all amounts payable or other consideration provided must be increased by the amount of GST payable in relation to the transaction.
- (b) All GST payable must be paid at the same time as the payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it

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must be paid within 10 *business days* of a tax invoice being issued by the party making the taxable supply.

9. Billing

9.1 When bills are sent

We may send a bill to you at any time after the end of each *billing cycle*.

9.2 Payments to the distributor

- (a) This clause does not apply to you if you are a *customer* on a *negotiated connection contract* who is billed directly by your *distributor*.
- (b) We will arrange for one bill to be sent to you for covering tariffs and charges due to us and those tariffs and charges due to your *distributor* for *customer connection services*. We will arrange for payment to *the distributor*.

9.3 Calculating the bill

- (a) We will calculate:
 - (i) the bill for electricity sold during the *billing cycle* (using information obtained from reading your meter or otherwise in accordance with the *electricity legislation*); and
 - (ii) the amount for any other services supplied in accordance with *energy legislation* during the *billing cycle*.
- (b) The bill may also include the *metering charge* and amounts due to the *distributor* for *customer connection services*.
- (c) The bill may also include:
 - (i) unbilled charges incurred in respect of a previous billing cycle;
 - (ii) adjustments in relation to charges which were billed or should have been billed in respect of a previous billing cycle; or
 - (iii) any other charges attributable to you at your *premises*, or any other address at which you purchased electricity from us.

9.4 Estimating the electricity usage

- (a) If your meter is unable to be read, or your *metering data* is not obtained, or is considered to be incorrect for any reason (for example, if access to the meter cannot be gained, or the meter breaks down or is faulty), the amount of electricity which was purchased from us at your *premises* may be estimated. The bill will clearly state the bill is based on an estimated reading.
- (b) When your meter is subsequently read, the next bill will be adjusted for the difference between the estimate and the actual amount of electricity used, based on the reading of the meter. When you have received an estimated bill due to the absence of *metering data* and a subsequent meter reading shows that you have

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been undercharged, we will include the amount undercharged as soon as practicable in a subsequent bill and you must pay the undercharged amount.

- (c) If the meter is unable to be read due to your actions, and you subsequently request that we replace the estimated bill with a bill based on a reading of the meter, we will endeavour to comply with your request but may pass through to you any cost we incur in doing so.

9.5 How bills are issued

We must send a bill:

- (a) to you at the address of your *premises* or such other address nominated by you; or
- (b) to a person authorised in writing by you to act on your behalf at the address specified by you.

9.6 Contents of a bill

The bill will be in a form and contain such information as is required by any applicable *electricity legislation*.

10. Paying Your Bill

10.1 What you have to pay

You must pay to us the amount shown on each bill (free of set off and without deduction) by the date shown on the bill as the date for payment, which must not be less than 12 *business days* after we send the bill.

10.2 Issue of reminder notices

If you have not paid a bill by the due date, we may send you a reminder notice that your bill is past due, giving you a further due date (which must not be less than 5 *business days* after the date we sent the notice).

10.3 Review of bills

- (a) Subject to clause 10.3(b), if you believe on reasonable grounds that any part of a bill is incorrect, then you may ask us to review the bill. Any such request must be in writing and must set out the grounds for your belief that the bill is incorrect. You must pay us the part of the bill not in dispute by the due date. You must also pay any future bills.
- (b) We will inform you of the outcome of our review within a reasonable period. If our review shows the bill to be correct, you must pay the amount of the bill in full. If our review shows that your grounds for believing the bill to be incorrect were not reasonable, you may be required to pay interest on the unpaid amount from the *due date* in accordance with clause 10.5.
- (c) Despite clause 10.3(a), you must pay all charges due to your *distributor* that are required to be paid to us under your *customer connection contract* in full by the due date.

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10.4 How the bill is paid

You can pay the bill using any of the payment methods listed on the bill. If a payment you make is dishonoured (eg where a cheque or credit card payment is not honoured), we may require you to pay an amount reflecting any cost incurred by us as a result of the payment being dishonoured.

10.5 Late payments

- (a) If you do not pay your bill on time, we may charge interest on the unpaid amount from the due date at the *interest rate* and compounded monthly, provided we are not prohibited by any applicable *electricity legislation* from doing so.
- (b) We may also require you to pay any costs incurred by us in recovering any amounts you owe to us (including any amount in dispute that is subsequently required to be paid by you), or due to your breach of the *electricity legislation*, provided we are not prohibited by any applicable *electricity legislation* from doing so.
- (c) This clause does not affect our right to arrange for your *premises* to be disconnected under clause 13 of this statement.

11. Meters

You are required under the *electricity legislation* to allow safe and convenient access to your *premises* for the purposes of reading the relevant meters.

12. Overcharging and Undercharging

12.1 Undercharging

Where we have undercharged you, we may recover from you the amount undercharged.

12.2 Overcharging

Where you have been overcharged, we will inform you within 10 *business days* of becoming aware of that overcharging and:

- (a) if you have already paid that amount, credit that amount in a subsequent bill as soon as reasonably practicable; or
- (b) if you have ceased to purchase *customer retail services* from us, use our best endeavours to pay that amount to you within 10 *business days*.

13. Disconnection of Supply

13.1 When can we arrange for disconnection?

We may arrange for the disconnection of your *premises* by giving you 5 *business days* notice if:

- (a) you do not pay any amount which is due under the *National Energy Retail Law*,

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- (b) we reasonably consider that you are failing to comply with your obligations under any *electricity legislation*; or
- (c) an *insolvency event* has occurred or continues to occur in respect of you, and you do not remedy the breach before the expiry of the notice. The disconnection will take effect upon the expiry of such notice.

You should be aware that there are other circumstances in which your *distributor* can arrange for disconnection under your *customer connection contract*, such as in cases of emergency or for safety reasons. These are detailed in your *customer connection contract*.

14. Vacating a Premises

- (a) If we receive notice that you intend to vacate your *premises*, we must use our best endeavours to arrange that the relevant meters are read on the date specified in your notice (or as soon as possible after that date if you do not provide access to your meter on that date) and send a final bill to you at the forwarding address stated in your notice. Subject to clause 14(b), you will cease to be responsible for charges for the premises on the date which is the later of:
 - (i) 20 *business days* after notice is provided to us; and
 - (ii) any later date specified in your notice.
- (b) If you do not give safe access to the premises to conduct a final meter reading (where relevant), you will continue to be responsible for charges for the *premises* until the earlier of:
 - (i) ten *business days* after safe access is given; and
 - (ii) when the meter is read or the relevant metering data is obtained.

15. Transfer to a New Retailer

If you have entered into an agreement to receive *customer retail services* from another *retailer* at your *premises*, we may:

- (a) seek your consent to conduct a special reading of the meter at your *premises*; and
- (b) if you give your consent, charge you a fee to conduct the special reading of the meter at your *premises*, which will be disclosed to you at the time we seek your consent.

16. Use of Electricity and Wrongful Use

16.1 Use of electricity

You must not:

- (a) illegally use electricity;

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- (b) interfere or allow interference with any of our equipment which is at the *premises* except as may be permitted by law;
- (c) use the electricity supplied to your *premises* or any *electrical equipment* in a manner which:
 - (i) unreasonably interferes with the connection or supply of electricity to another *customer*, or
 - (ii) causes damage or interference to any third party;
- (d) allow *customer retail services* purchased from us to be used other than in accordance with the *electricity legislation*; or
- (e) tamper with, or permit tampering with, any meters or associated equipment.

16.2 Wrongful use

If you are in breach of the requirements set out in clause 16.1 of this statement, we or your *distributor* may, in accordance with any applicable *electricity legislation*:

- (a) estimate the amount of the electricity so obtained and bill you or take debt recovery action against you for that amount; and
- (b) arrange for the immediate disconnection of your *premises*.

17. Notices and Bills

Unless any applicable *electricity legislation* otherwise allows (for example, where phone calls are allowed), all notices must be sent in writing. We can send you notices to your *premises*.

Notices and bills are deemed to have been received by a party:

- (a) on the date it is handed to the party, it is left at the party's *premises* (in your case) or one of our offices (in our case) or successfully faxed to the party (which occurs when the sender receives a transmission report to that effect); or
- (b) on the date two *business days* after we post it to your *premises*.

18. Privacy and Confidentiality

18.1 Privacy Of Information

Subject to clause 18.2, we must keep your information about you confidential in accordance with the *Privacy Act 1988* (Cth).

18.2 Disclosure

We may, however, disclose information about you:

- (a) if required or permitted by law to do so;
- (b) if we are required or permitted by our licence to do so, such as to a law enforcement agency; or

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- (c) where you give us written consent.

19. Queries and Complaints

If you have a query or a complaint relating to the sale of electricity by us to you, you may contact us on the details set out in our last bill to you, or as notified to you from time to time.

20. Applicable Law

- (a) We will comply with any applicable requirements of any codes issued under the *electricity legislation* from time to time.
- (b) The laws of South Australia govern our arrangements with you.

21. General

21.1 Our obligations

Some obligations placed on us under this under the *electricity legislation* may be carried out by another person. If an obligation is placed on us to do something then we are deemed to have complied with the obligation if another person performs the task on our behalf.

21.2 Ending of arrangements under this contract does not affect a customer connection contract

To avoid doubt, if you are a party to a *deemed standard connection contract* or a *deemed AER approved standard connection contract*, the ending of the arrangements under this statement does not affect that contract.

21.3 Amending this statement

This statement may be amended from time to time by us. We will publish the amended statement on our website.

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Schedule 1

1. Definitions

AEMO means the Australian Energy Market Operator Limited ACN 072 010 327, the company which operates and administers the wholesale electricity market in accordance with the *National Electricity Rules*;

AER means the Australian Energy Regulator established by section 44AE of the *Competition and Consumer Act 2010* (Cth);

AGL means:

- (a) in relation to *premises* in South Australia, AGL South Australia Pty Limited ABN 49 091 105 092 of AGL Centre, 226 Greenhill Road, Eastwood SA 5063;
- (b) in relation to *premises* in New South Wales, the Australian Capital Territory and Victoria, AGL Sales Pty Limited ABN 88 090 538 337 of Level 22, 120 Spencer Street, Melbourne VIC 3000; and
- (c) in relation to *premises* in Queensland, either AGL Sales Pty Limited ABN 88 090 538 337 of Level 22, 120 Spencer Street, Melbourne VIC 3000 or AGL Sales (Queensland Electricity) Pty Limited ABN 66 078 875 902 of Level 22, 101 Miller Street, North Sydney NSW 2060.

billing cycle means:

- (a) in relation to the first bill we issue after we become aware that you have been consuming electricity at your *premises* without an appropriate retail contract in place, the entire period you have been consuming electricity at the *premises* without an appropriate retail contract in place; and
- (b) for each subsequent period, the regular recurrent period for which you receive a bill from us.

business customer means a customer who is not a residential customer;

business day means a day, other than a Saturday, a Sunday or a South Australia wide public holiday (as appointed under the *Holidays Act 1910* (SA));

business premises means premises of a business customer, other than premises used solely or principally for personal, household or domestic use;

connection point has the meaning given in the *National Electricity Rules*;

customer means a person who buys or wants to buy energy from a *retailer*;

customer connection contract means a contract between a *distributor* and a *customer* of the kind set out in section 67 of the *National Energy Retail Law*;

customer connection services, for *premises*, means:

- (a) the connection of the *premises* to a *supply network* to allow the supply of electricity from the *supply network* to the *premises*; and
- (b) the supply of electricity from the *supply network* to the *premises*;

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customer retail services means the sale of electricity to the *premises*;

deemed AER approved standard connection contract means a customer connection contract between a *customer* and a *distributor* that is taken to be entered into under section 76 of the *National Energy Retail Law*;

deemed standard connection contract means a *customer connection contract* between a *customer* and a *distributor* that is taken to be entered into under section 70 of the *National Energy Retail Law*, the terms of which are set out in Schedule 2 to the *National Energy Retail Rules*;

distribution authority means an authority issued under the *Electricity Act* that authorises its holder to supply electricity using a *supply network* within its distribution area;

distributor means –

- (a) a regulated distribution system operator within the meaning of the NEL; or
- (b) a nominated *distributor*, to the extent provided by section 12 of the *National Energy Retail Law*;

electrical equipment is any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire:

- (a) used for controlling, generating, supplying, transforming or transmitting electricity at a voltage greater than extra low voltage; or
- (b) operated by electricity at a voltage greater than extra low voltage; or
- (c) that is, or that forms part of, a cathodic protection system;

Electricity Act means the *Electricity Act 1996 (SA)*;

Electricity Regulations means the *Electricity (General) Regulations 2012 (SA)* made under the *Electricity Act*;

electricity legislation means the *National Energy Retail Law*, *National Energy Retail Regulation*, *National Energy Retail Rules*, *Electricity Act*, *Electricity Regulations*, the *Essential Services Commission Act (SA)* and regulations, standards, codes, protocols and rules made under those Acts;

financially responsible retailer, for *premises*, means the *retailer* who is the financially responsible market participant responsible for the premises under the *NER*;

force majeure event means an event outside the control of you or us;

GST has the meaning given in the *GST Law*;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

GST Law has the meaning given in the *GST Act*, or if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

insolvency event includes the appointment of a receiver, administrator, liquidator or similar person, a 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

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applicable, changes in the constitution of any partnership or person, or any failure to provide credit support or a *security deposit* when required by this contract;

interest rate means the Westpac Banking Corporation corporate overdraft reference rate as at the due date for payment plus a margin of 2% per annum;

large customer means a *business customer* who consumes energy at *business premises* at or above the *upper consumption threshold*;

market prices means the prices and charges set by us (and amended) from time to time, being the prices and charges we, in our sole discretion, determine are necessary to recover our costs of acquiring electricity in the *National Electricity Market* and selling that electricity to you, plus a reasonable margin, as published from time to time on our website at <http://www.agl.com.au/~media/AGL/Business/Documents/Large%20Business/Terms/Pricing%20Schedule%20for%20Large%20Customers%20with%20no%20retail%20contract.pdf>

metering charges means all costs incurred in relation to the provision of *metering equipment*, and the collection and distribution of the data from that equipment;

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;

metering data has the meaning given under the *National Electricity Rules*;

negotiated connection contract means a *customer connection contract* between a *customer* and a *distributor* that is taken to be entered into under section 78 of the *National Energy Retail Law*;

National Electricity Law or NEL has the meaning given to the term National Electricity (South Australia) Law in the *National Electricity (South Australia) Act 1996 (SA)*;

National Electricity Market means the Australian wholesale electricity market operated by AEMO under the *National Electricity Rules*;

National Electricity Rules or NER has the meaning given under the *National Electricity Law*;

National Energy Retail Law means the law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011 (SA)*;

National Energy Retail Regulation means the Regulation made under section 12 of the *National Energy Retail Law (South Australia) Act 2011 (SA)* and Part 11 of the *National Energy Retail Law*;

National Energy Retail Rules has the meaning given in the *National Energy Retail Law*;

premises means the address at which *customer retail services* or *customer connection services* (as the context requires) are provided to you and, to avoid doubt, may include your electrical installation;

residential customer means a customer who purchases energy principally for personal, household or domestic use at a *premises*;

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retailer authorisation means a retailer authorisation issued under Part 5 of the *National Energy Retail Law*;

retailer means a person who is the holder of a *retailer authorisation*;

small customer means a *customer* who is a *residential customer* or a *business customer* who consumes energy at *business premises* below the *upper consumption threshold*;

supply network means a system, or part of a system, of electric lines, substations and associated equipment, other than a transmission grid, for distributing electricity to *customers*, whether or not generating plant is connected to it;

upper consumption threshold means the upper consumption threshold determined in accordance with section 6 of the *National Energy Retail Law*.

Other grammatical forms of words defined in the dictionary are taken to have a corresponding meaning.

2. Interpretation

In this statement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this contract;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) all references to 'include' or 'including' are non-exhaustive and do not imply any limitation;
- (e) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporation and any governmental agency;
- (f) a reference to a clause, schedule, appendix or section is to a clause, schedule, appendix or section of this contract;
- (g) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement;
- (h) a reference to any statute, regulation, proclamation, order in council, ordinance, by-law or rule, includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws or rule varying, consolidating, reenacting, extending or replacing them. A reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws or rules issued under that statute;
- (i) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (j) a reference to a person includes that person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and permitted assigns;

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- (k) a reference to a person includes that person's officers, employees, contractors, agents or other representatives;
- (l) when *italicised*, other parts of speech and grammatical forms of a word or phrase defined in this contract have a corresponding meaning;
- (m) a period of time which:
 - (i) dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (ii) commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (n) an event which is required under this contract to occur on or by a stipulated day which is not a *business day* may occur on or by the next *business day*.