



Electricity Sale Agreement

Power Wholesale

Details

Version: 101-3 (Feb 2022)

Flow Power

Name: Progressive Green Pty Ltd trading as 'Flow Power'
ABN: 27 130 175 343
Address: Ground Floor, 109 Burwood Rd, Hawthorn, VIC 3122
Email: go@flowpower.com.au with a copy to LegalNotices@flowpower.com.au
Phone: 1300 08 06 08
Attention: General Manager Energy Solutions

Customer

Name: NEWCASTLE PORT CORPORATION
ABN: 50 825 884 846
Address: Level 4, 20 Windmill Street, Walsh Bay NSW 2000
Email: scromie@portauthoritynsw.com.au
Phone: 0438 400 744
Attention: Sancha Cromie

Background

Flow Power agrees to sell electricity to the Customer at the *Premises*, and the Customer agrees to purchase that electricity from Flow Power, on the terms set out in this agreement.

This agreement is made up of:

- (a) the Agreement Particulars;
- (b) the General Terms and Conditions; and
- (c) each of the Additional Schedules described below,

and all of those documents must be read together as one document. A reference to 'this agreement' in any of the above documents is a reference to this agreement as a whole.

Additional Schedules

- (a) kWatch Schedule
- (b) Export Electricity Schedule

If applicable in the Agreement Particulars:

- (a) Energy Ready Schedule
- (b) GreenPower Schedule

EXECUTED as an **agreement** which is legally binding on the date it has been signed for and on behalf of both parties.

Signed for and on behalf of **Customer** by its duly authorised representative(s) (who, by signing, certifies that they are authorised to sign this agreement and that they have read and understood all of the terms and conditions or schedules referred to above):

Signature of representative

Philip Holliday

Name of representative

Chief Executive Officer and Director

Title

1 July 2022

Date

Signed for and on behalf of **Flow Power** by its duly authorised representative (who, by signing, certifies that he or she is authorised to sign this agreement):

Signature of representative

Jonathan Mitchell

Name of representative

General Counsel

Title

3 June 2022

Date

Agreement Particulars

1. Reference Number	50825884846NESAPW1
2. Premises	See Premises Schedule
3. Term	
3.1 Proposed Start Date	01/07/2022
3.2 End Date	31/12/2030
4. Price	
4.1 Electricity Price	For each Trading Interval for the <i>Premises</i> , a price in c/kWh determined as the Spot Price for the <i>Premises</i> for that Trading Interval plus the <i>Margin</i> for the <i>Premises</i> for that Trading Interval or, if the Spot Price for that Trading Interval is negative, plus the absolute value of the <i>Margin</i> for the <i>Premises</i> for that Trading Interval.
4.2 Margin for the <i>Premises</i>	For each Trading Interval, 0.556 c/kWh for the <i>Premises</i> for that Trading Interval.
5. Other Fees and Charges	
5.1 Routine Meter Charge	\$1195 per annum per meter.
5.2 Service and Administration Charge	\$4.90 per day per <i>Premises</i> .
5.3 Payment Processing Fee	Not required.
6. Billing	
6.1 Billing frequency	Once every month
6.2 Due date for payment of invoices	14 days after the date of the bill
7. Initial Advance Payment	Not required
8. Export Electricity	
8.1 Export Electricity Price	For each Trading Interval, a price in c/kWh determined as the Spot Price for the <i>Premises</i> for that Trading Interval minus the <i>Export Margin</i> for the <i>Premises</i> for that Trading Interval or, if the Spot Price for that Trading Interval is negative, minus the absolute value of the <i>Export Margin</i> for the <i>Premises</i> for that Trading Interval.
8.2 Export Margin	For each Trading Interval, 0.556 c/kWh for the <i>Premises</i> for that Trading Interval.
8.3 GST	The Customer represents that the Customer will supply Export Electricity to Flow Power in the course or furtherance of an enterprise that the Customer carries on and that the Customer is registered or required to be registered for GST.
9. Supply related communication	Please indicate where information regarding outages and other supply related matters is posted: <input type="checkbox"/> The address set out in the 'Details' <input type="checkbox"/> The postal address of the relevant <i>Premises</i> If none selected, the default is only "The address set out in the 'Details'".
10. Inclusive kWatch Controller Amount	Unless otherwise agreed between the parties, 1 for every <i>Premises</i> with estimated annual consumption greater than 60MWh.

11. kWatch Controller Installation Assumptions	<p>For each Nominated Premises (as defined in the kWatch Schedule):</p> <p>(a) is located less than 100km from the centre of the capital city of the relevant State or Territory in which it is situated; and</p> <p>(b) Flow Power having formed an opinion (acting reasonably) that:</p> <p>(i) the switchboard, meter cabinet and associated equipment are in safe working order;</p> <p>(ii) for the location where the kWatch Controller is to be installed:</p> <p>(A) the kWatch Controller can be installed in accordance with Flow Power's installation manual as amended from time to time, including having sufficient space;</p> <p>(B) it is appropriately protected against environmental elements, including weather;</p> <p>(C) it has an available power supply: 240v GPO or 6 – 30 VDC supply; and</p> <p>(D) it has adequate 4G (or better) mobile reception; and</p> <p>(iii) the time to install, test and commission the kWatch Controller will not exceed 4 hours.</p>					
12. GreenPower Charges	<input type="checkbox"/> Tick if GreenPower Schedule applicable For more information about the National GreenPower Accreditation Program, please refer to https://www.greenpower.gov.au/					
12.1 GreenPower Percentage	N/A					
12.2 GreenPower Rate	N/A					
13. Energy Ready Charges	<input type="checkbox"/> Tick if Energy Ready Schedule applicable					
13.1 Energy Ready Start Date	N/A					
13.2 Energy Ready Service Charge	N/A					
13.3 Energy Ready Shared Savings Charge	N/A					
13.4 Trial Period	N/A					
14. List of Energy Ready initiatives ER - Energy Ready Services AS - Additional Services SS – Specialist Service	Initiative	Customer discussion screening	Data analysis screening	Preliminary investigation	Detailed investigation	Implement
	Solar PV	ER	AS	AS	AS	SS
	Battery	ER	AS	AS	AS	SS
	Tariff optimisation LV-LV or HV-HV	ER	ER	ER	ER	ER
	Tariff optimisation LV-HV or HV-LV	ER	ER	ER	AS	AS
	Power factor correction	ER	ER	AS	AS	AS
	Revenue meter amalgamation	ER	ER	ER	AS	AS
	Peak demand management	ER	ER	ER	AS	AS

	Load shifting, PEF optimisation, demand response	ER	ER	ER	ER	SS
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Premises Schedule

#	NMI	Address	Postal Address	Est. Annual Consumption MWh	Export Electricity (indicate if yes)*	Life Support Equipment (indicate if yes)
1.	41020222970	100 Wharf Road Newcastle, 2300 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	163.00	<input type="checkbox"/>	<input type="checkbox"/>
2.	NCCCNRZ11Z2	115 Sommersville Road Rozelle, 2039 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	54.00	<input type="checkbox"/>	<input type="checkbox"/>
3.	41037426648	26 Hickson Road Dawes Point, 2000 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	67.00	<input type="checkbox"/>	<input type="checkbox"/>
4.	41037223499	4 Towns Place Millers Point, 2000 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	332.00	<input type="checkbox"/>	<input type="checkbox"/>
5.	43100109510	91 Foresore Road Port Kembla, 2505 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	132.00	<input type="checkbox"/>	<input type="checkbox"/>
6.	41037938625	Booth St Balmain, 2041 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	204.00	<input type="checkbox"/>	<input type="checkbox"/>
7.	NKKKNR00545	Car terminal 2 Glebe Island, 2039 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	67.00	<input type="checkbox"/>	<input type="checkbox"/>
8.	NKKKNR00553	Car terminal 5 Glebe Island, 2039 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	26.00	<input type="checkbox"/>	<input type="checkbox"/>
9.	NCCC0075136	Circular Quay SYDNEY, 2000 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	549.00	<input type="checkbox"/>	<input type="checkbox"/>
10.	41035256089	Circular Quay West Sydney, 2000 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	174.00	<input type="checkbox"/>	<input type="checkbox"/>

11.	NCCC0005515	Scott St Newcastle, 2300 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	290.00	<input type="checkbox"/>	<input type="checkbox"/>
12.	41038350897	Sommerville Road Rozelle, 2039 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	31.00	<input type="checkbox"/>	<input type="checkbox"/>
13.	NCCCNZRZ1H81	Waite Ave Balmain, 2041 NSW	Level 4, 20 Windmill Street, Walsh Bay NSW 2000	182.00	<input type="checkbox"/>	<input type="checkbox"/>

General Terms and Conditions

1. Conditions Precedent

The obligations of Flow Power under this agreement are subject to the following conditions precedent being satisfied or waived by Flow Power by notice given to the Customer:

- (a) Flow Power has completed a credit check of the Customer and is satisfied with the Customer's creditworthiness;
- (b) if applicable, the Customer has paid the amount of the *Initial Advance Payment* to Flow Power as contemplated by clause 6.4(a); and
- (c) Flow Power is satisfied that the Customer's annual consumption of electricity at the *Premises* has been, or in the case of new *Premises*, is estimated to be, more than the relevant consumption threshold contemplated by clauses 14.1 and 14.2.

2. Sale and Purchase of Electricity

2.1 Sale and Purchase

- (a) Flow Power agrees to sell to the Customer, and the Customer agrees to purchase from Flow Power, the electricity supplied to the *Premises* from:
 - (i) the Proposed Start Date; or
 - (ii) if the financial responsibility to AEMO for the *Premises* is to be transferred to Flow Power or Flow Power is otherwise to assume such financial responsibility so that Flow Power may sell the Customer that electricity, the date that Flow Power becomes financially responsible to AEMO for the *Premises*.
- (b) Flow Power will organise any necessary transfer and will aim for the assumption of financial responsibility to AEMO for the *Premises* to take effect from the *Proposed Start Date*. Flow Power does not control this process and will not be liable to the Customer for any delay.

2.2 Customer warranties

The Customer warrants and acknowledges that:

- (a) it has the power to enter into this agreement and has all authority, approvals and rights needed to perform it;
- (b) any estimated consumption or load specified in this agreement is a reasonable forecast of the electricity that Flow Power will sell to the Customer under this agreement;
- (c) it has had the opportunity to review the terms of this agreement and all included schedules (in particular, any early termination fees) and it understands them;
- (d) it has not relied on any predictions, forecasts, advice or statements of opinion given by Flow Power, or any of Flow Power's employees or agents, as to the appropriateness or financial effect of this agreement, market conditions, the likelihood of price changes or any change in law; and
- (e) no non-certified electrical work has been performed at any *Premises*. The Customer agrees to indemnify Flow Power for any liability Flow Power suffers as a result of any non-certified electrical work being performed at the *Premises*.

3. Term

Subject to clause 13, the term of this agreement continues:

- (a) if an *End Date* has been specified, until the *End Date*; or
- (b) if an *End Date* has not been specified, until it is terminated by either party in accordance with clause 13 or by mutual agreement between the parties.

4. Charges

4.1 Liability

Subject to clause 4.2(c), the Customer must pay:

- (a) the Energy Charges;
- (b) the *Service and Administration Charges*;
- (c) the *Routine Meter Charges*;
- (d) the other fees and charges outlined in this clause 4; and
- (e) any other fees and charges outlined in the Agreement Particulars or elsewhere in this agreement.

4.2 Energy Charges

- (a) Subject to clauses 4.2(b) and 4.2(c), for each Trading Interval the Energy Charge for the *Premises* is an amount calculated as follows:

$$EP * L * MD$$

where:

EP is the Electricity Price for the *Premises* for that Trading Interval;

L is the product of any relevant distribution and transmission loss factors applicable in respect of the *Premises* under the National Electricity Rules; and

MD is the amount of electricity supplied to the *Premises* in that Trading Interval.

- (b) If there is more than one *Premises*, the Customer must pay an Energy Charge for each of the *Premises* for each relevant Trading Interval.
- (c) If the Electricity Price for the *Premises* for a Trading Interval is negative, then no Energy Charge for the *Premises* is payable by the Customer for that Trading Interval and instead Flow Power must incorporate a credit for the relevant negative amount in the Customer's bill.

4.3 Other fees and charges

Flow Power may charge the Customer, and the Customer must pay, any amount paid by Flow Power, or which Flow Power fairly and reasonably estimates will be payable by Flow Power, in connection with electricity sold under this agreement (other than an amount paid in the wholesale electricity market for that electricity itself) including, without limitation:

- (a) the amount of any network charges, market charges, and special metering charges (including those applicable for testing the meter and any associated current or voltage transformers); and
- (b) the amount of any costs, charges or penalties (including internal administration costs) arising under or in connection with the Retailer Reliability Obligation, any Commonwealth or State renewable energy scheme, energy efficiency scheme, carbon tax, clean energy, emissions trading or carbon pollution reduction

scheme, all as reasonably allocated by Flow Power to the Customer when the relevant amount relates also to electricity Flow Power sells to other customers.

4.4 Variation of Energy Charges

- (a) Flow Power may increase any of the charges under clause 4.1 to recover any direct or indirect increase in the cost of selling electricity to the Customer as a result of:
- (i) the introduction of, change in, or repeal of, any law or regulatory requirement, or in its interpretation or administration by a government agency, a regulator or a court; or
 - (ii) compliance by Flow Power with an applicable direction or requirement (whether existing or future) of a government agency or a regulator, which occurs after the date of this agreement.
- (b) Flow Power may determine the amount of the increase using reasonable methods of calculation, estimation, allocation or attribution, which may include but not limited to the use of:
- (i) estimates and forecasts;
 - (ii) methodologies based on an index, industry benchmark, relevant law or regulatory guideline, published or produced by a third party;
 - (iii) determinations of suitably qualified independent experts selected by Flow Power;
 - (iv) averaging methodologies; or
 - (v) a combination of any of the above.

4.5 Ongoing charges

- (a) Subject to clause 4.5(b), in addition to the other charges described under clauses 4.1, 4.2 and 4.3, Flow Power may charge the Customer, and the Customer must pay, Energy Charges for or in respect of electricity supplied to the *Premises* after the *End Date* (if specified) or any date on which this agreement terminates, but on the basis that the Electricity Price for the *Premises* for each Trading Interval is the Spot Price for that Trading Interval plus the absolute value of 20% of that Spot Price, if by then a new agreement has not been entered into or financial responsibility to AEMO for the *Premises* has not transferred from Flow Power to another retailer.
- (b) If the Electricity Price for the *Premises* for a Trading Interval under clause 4.5(a) is negative, then no Energy Charge for the *Premises* is payable by the Customer for that Trading Interval and instead Flow Power must incorporate a credit for the relevant negative amount in the Customer's bill.

4.6 Indicative Environmental Rates

If *Indicative Environmental Rates* are included in the Agreement Particulars, then:

- (a) clause 4.3(b) will not apply in respect of renewable energy schemes or energy efficiency schemes in connection with the *Environmental Certificates* referred to in the *Environmental Rates Table*, but instead, Flow Power will charge, and the Customer must pay, an Environmental Charge in connection with each of those renewable energy schemes or energy efficiency

schemes, where each Environment Charge is the product of:

- (i) the applicable *Environmental Rate*; and
 - (ii) the aggregate amount of electricity supplied to each applicable *Premises*;
- (b) the parties agree and acknowledge that:
- (i) each *Environmental Rate* is determined by the product of the relevant *Fixed Certificate Price* and the relevant *Indicative Surrender Percentage*; and
 - (ii) each *Indicative Surrender Percentage* is based on published forecasts from relevant regulators and Flow Power's reasonable estimates from time to time; and
- (c) if the actual surrender percentages for the relevant schemes become known, or if Flow Power's reasonable estimates of the *Indicative Surrender Percentages* change from time to time, then Flow Power may vary the *Environmental Rates* to reflect this. Flow Power may include an adjustment in subsequent bills for previous supply to account for the difference.

5. Market Disruption

If a Market Disruption Event occurs, or either party reasonably expects that a Market Disruption Event will occur, then:

- (a) promptly following a request from either party, the parties must negotiate in good faith to agree an alternative relevant Spot Price for relevant Trading Intervals or method of determining the relevant Spot Price; and
- (b) if the parties have not reached an agreement within 10 Business Days of the request, the relevant Spot Price for relevant Trading Intervals is to be determined, or a method of determining the relevant Spot Price is to be determined, by an expert selected by the parties (or, failing agreement within 2 Business Days, selected by the Chief Executive Officer for the time being of the Australian Financial Markets Association (or any successor body) at the request of one of the parties. The expert is to act as an expert and not as an arbitrator. The determination of the expert will be binding on the parties absent fraud or manifest error. The costs and expenses of the expert are to be borne equally by the parties.

6. Billing and Payment

6.1 Bills

Flow Power must bill the Customer at least as frequently as contemplated in the Agreement Particulars for the amount of electricity supplied to the *Premises*.

6.2 Payment of bills

The Customer must pay amounts billed by the due date which must be specified in the bill, without deduction.

6.3 Review of bills

Flow Power must review a bill on request made by the Customer. Despite the review, the Customer must pay the full amount of the bill (including any disputed amount) by the due date. If the bill is incorrect, Flow Power must adjust the bill. If the bill is correct, the Customer may ask for a

meter test. If the meter is found to be compliant, the Customer must pay the cost of the test.

6.4 Payment in advance

- (a) If the Agreement Particulars include an amount for *Initial Advance Payment*, then the Customer must pay Flow Power that amount as Advance Payment by the date specified by Flow Power (or if no such date specified, by the *Proposed Start Date*).
- (b) Flow Power may at any time at its discretion request in writing, and if so requested the Customer must provide within 5 Business Days:
 - (i) its most recent financial statements;
 - (ii) evidence of debt and/or corporate credit ratings; and
 - (iii) other information that Flow Power reasonably requests to establish or confirm the Customer's creditworthiness.
- (c) If Flow Power does not hold any Advance Payment (including where the Agreement Particulars provide that *Initial Advance Payment* is not required), at any time Flow Power forms an opinion, on reasonable assessment of financial information then available, that the Customer is or may be unable to maintain an acceptable credit rating, the Customer must at Flow Power's request provide an amount specified by Flow Power as Advance Payment within 5 Business Days of the request. For the purposes of this clause 6.4(c), if the Customer declines or fails to provide any information within the period requested under clause 6.4(b), then the Customer will be deemed to be unable to maintain an acceptable credit rating.
- (d) If Flow Power holds Advance Payment and the amount of the Advance Payment increases because Flow Power's estimate of the amount of the Customer's Energy Charges, network charges, market charges, metering charges and any other amounts payable under this agreement increases or if any amount of the Advance Payment paid by the Customer is applied by Flow Power under clause 6.4(g), then Flow Power may require the Customer to pay the incremental amount or the amount so applied, so that all of the then required amount of the Advance Payment is paid. The Customer must comply with any such requirement within 5 Business Days of receipt of request from Flow Power or, if Flow Power includes the request in a bill, by the due date specified in the bill.
- (e) If Flow Power's reasonable estimate of the amount of the Customer's Energy Charges, network charges, market charges and metering charges decreases, Flow Power must credit the decremental amount against amounts payable by the Customer in the Customer's next bill and by doing so the amount of the Advance Payment paid decreases accordingly.
- (f) Flow Power is not obliged to maintain the Advance Payment in a separate account and may use the amount as Flow Power sees fit. The Customer is not entitled to any interest on the Advance Payment.
- (g) Flow Power may apply any amount of the Advance Payment as payment of any amount the Customer owes Flow Power under this agreement or as damages for any breach of this agreement by the Customer, and

must provide the Customer with an account of how Flow Power has applied it.

- (h) On the *End Date* (if specified) or any date on which this agreement is terminated, any amount of the Advance Payment held by Flow Power that has not already been applied under clause 6.4(g) must be applied as payment of any amount the Customer owes Flow Power under this agreement.
- (i) Within 30 Business Days of the end of the month in which this agreement is terminated, provided that any reconciliation of the charges under clause 4 has been completed, Flow Power must pay to the Customer an amount equal to any amount of the Advance Payment paid by the Customer that has not been applied under clause 6.4(g) or 6.4(h), in accordance with the Customer's reasonable instructions.

6.5 Payment method

Flow Power prefers for the Customer to pay its bills under a direct debit arrangement with Flow Power. For each payment of a bill the Customer chooses to make using a different payment method, Flow Power may impose a *Payment Processing Fee*. Flow Power may also charge the Customer any merchant service fees Flow Power incurs because of the payment method the Customer uses in paying a bill.

6.6 Late payment

Flow Power may charge interest if the Customer is late paying a bill. Interest will accrue on and from the due date until and including the date the Customer makes full and final payment, at the rate of 1.9% per month, calculated daily.

6.7 Undercharging

If for any reason Flow Power has undercharged or not charged the Customer, Flow Power may recover from the Customer the full amount undercharged or not charged even if Flow Power does not become aware of its right to recover this amount until after this agreement has expired or terminated. Flow Power must list the amount to be recovered as a separate item in a special bill or in Flow Power's next bill. Where Flow Power itself has been charged interest on all or part of the amount by which it has undercharged the Customer, by AEMO or the Customer's distributor or any other person, then Flow Power may pass that interest charge on to the Customer.

6.8 Overcharging

If for any reason Flow Power has overcharged the Customer, Flow Power must inform the Customer as soon as possible after becoming aware of the error and repay the amount according to the Customer's reasonable instructions. If the Customer does not give Flow Power reasonable instructions Flow Power must credit the amount on the Customer's next bill.

7. Metering

7.1 Interval meter

The meter installed at the *Premises* must be an interval meter capable of being remotely read using a communications network. The costs of installing such a meter are to be borne by the Customer and, if incurred by Flow Power, are to be recovered from the Customer on a pass through basis.

7.2 Direct metering arrangements

- (a) If at any time the Customer wants to appoint or wants Flow Power to appoint the Customer's own nominated metering service provider as the metering coordinator for the metering installation at the *Premises*, and some step is required to be and is reasonably able to be taken by Flow Power to effect that appointment, then, as soon as practicable after the Customer's request, Flow Power must take that step. Flow Power may recover from the Customer any amounts Flow Power is liable to pay to the Customer's nominated metering services provider on a pass through basis.
- (b) If the Customer appoints its own nominated metering service provider as the metering coordinator for the metering installation at the *Premises*, the Customer must pay Flow Power, within 5 Business Days of request, any termination fee or break fee (however described) payable by Flow Power to its metering coordinator or metering service providers in respect of the termination of metering services for the *Premises*.

7.3 Meter data

All metering data recorded by the meter and provided to Flow Power in accordance with the law is prima facie evidence of electricity supplied to the *Premises* and must form the basis of Energy Charges calculations. If Flow Power is unable to reasonably or reliably base a bill on metering data recorded by the meter, Flow Power may provide the Customer with an estimated bill. If Flow Power gives the Customer an estimated bill and Flow Power subsequently obtains reliable metering data recorded by the meter, Flow Power must adjust the next bill.

7.4 Access

The Customer must allow Flow Power's representatives, agents and contractors to have access to the *Premises* and the meter for the purposes of installation, reading, testing, maintaining and repairing the meter as well as calculating or measuring electricity supplied to the *Premises*, checking the accuracy of metering data and replacing the meter, and also for connection, disconnection and reconnection of the *Premises*, and must inform Flow Power if such access will pose a health or safety risk to any person.

7.5 Meter security

The Customer must not, and must secure the *Premises* so that no other person is able to, damage, modify, remove or otherwise interfere with the meter. If the meter is damaged, modified or interfered with, the Customer must pay to Flow Power the cost of repairing or replacing the meter.

8. Responsibilities

8.1 Title

Title and risk to the electricity sold under this agreement passes to the Customer at the supply point at the *Premises*.

8.2 Supply

As a retailer, Flow Power does not and cannot supply electricity to the *Premises*. Only the Customer's distributor can. Flow Power is not responsible for and has no control over the distribution system supplying electricity to the *Premises* nor the quality or reliability of electricity supplied.

8.3 Electrical installation and equipment

Unless otherwise specified in this agreement, the Customer is responsible for the adequacy, safety and setup of the electrical installation and equipment within the *Premises* on the Customer's side of the supply point.

8.4 Supply interruptions

- (a) Flow Power may arrange planned interruptions to the supply of electricity to the *Premises* where permitted under law for the purpose of the installation, maintenance, repair or replacement of the meter.
- (b) If the Customer's electricity supply will be affected by a planned interruption arranged by Flow Power, Flow Power will give the Customer at least 4 Business Days' notice.
- (c) On request, Flow Power will explain any planned interruption to the supply of electricity to the *Premises* which was arranged by Flow Power.
- (d) For interruptions made by the distributor, Flow Power will refer the Customer to the distributor to provide information and Flow Power is not liable for any such interruptions.

8.5 Life support equipment

- (a) If a person living or intending to live at the *Premises* requires life support equipment, the Customer must register the *Premises* with Flow Power or the distributor. To register, the Customer will need to give written confirmation from a registered medical practitioner of the requirement for life support equipment at the *Premises*. Subject to law, the *Premises* may cease to be registered as having life support equipment if no medical confirmation is provided.
- (b) The Customer must tell Flow Power or the distributor if the life support equipment is no longer required at the *Premises*.
- (c) If the *Premises* is registered with Flow Power, Flow Power will give the Customer general advice relating to any planned or unplanned interruption to the supply of electricity to the *Premises*, at least 4 Business Days' notice in writing of any interruption planned by Flow Power, information to assist the Customer to prepare a plan of action in case of an unplanned interruption, and an emergency telephone contact number.

9. Disconnection

Flow Power may arrange the disconnection of a *Premises* or all of the *Premises* if:

- (a) the Customer fails to pay Flow Power an amount billed within 5 Business Days of the due date on the bill;
- (b) the Customer does not pay the amount of any Advance Payment within 5 Business Days of the day it is required to be paid;
- (c) the Customer purchases electricity at the *Premises* principally for personal, household or domestic use;
- (d) the Customer's consumption of electricity at the *Premises* or, if there is more than one *Premises* consumption at which can be aggregated as contemplated by clause 14, the aggregate consumption of electricity across those *Premises* is

below the relevant consumption threshold contemplated by clauses 14.1 and 14.2;

- (e) either of the conditions set out in clause 13.2 are otherwise met in respect of the Customer;
- (f) any of the electrical installation and the equipment at the *Premises* do not conform with the law;
- (g) electricity has been stolen or the meter has been interfered with or is not accessible;
- (h) the Customer has on-sold electricity supplied to the *Premises* without Flow Power's prior written consent; or
- (i) this agreement terminates.

10. Vacation or Sale of Premises

- (a) The Customer must give 20 Business Days' notice of any intention to vacate or sell the *Premises*.
- (b) Subject to compliance by the Customer with the consumption threshold requirements of clauses 14.1 and 14.2, and provided the Customer is not in breach of any terms of this agreement, Flow Power will take all steps necessary to:
 - (i) include additional premises as *Premises* in; or
 - (ii) remove existing *Premises* from,this agreement on request by the Customer as soon as reasonably practicable, if in Flow Power's reasonable opinion the Customer's aggregate forecast consumption for the next 12 months after the relevant *Premises* is no less than 80% of the aggregate forecast consumption of the Customer on the date of this agreement,
- (c) The parties agree that the Customer will not be liable under clause 13.4 for any early termination fee (except in relation to costs associated with the removal of any kWatch Controller, as defined in the kWatch Schedule) for any removal of an existing Premises under clause 10(b).

11. Liability

11.1 Acknowledgement

If the applicable Energy Charges in this agreement reflect Spot Prices, the Customer acknowledges and agrees that:

- (a) Spot Prices are established on a Trading Interval basis, may range from a low market floor price to a high market price cap, and are volatile;
- (b) Energy Charges reflect Spot Prices;
- (c) Flow Power makes no representation or guarantee as to what Spot Prices will be or as to the expected results for the Customer of this agreement;
- (d) the Customer has independently decided that entering into this agreement is appropriate and proper for it, based upon the Customer's own judgment, and is not relying upon any advice from Flow Power; and
- (e) the Customer is capable of understanding and understands and accepts the terms and risks of this agreement and also is capable of assuming and assumes those risks.

11.2 No liability for consequential loss

To the extent permitted by law, Flow Power is not liable to the Customer, in contract, in tort, in equity by operation of statute or otherwise, for any kind of:

- (a) indirect, special or consequential loss or damage;
- (b) loss of profit, anticipated profit, revenue or opportunity; or
- (c) loss arising from business interruption, suffered or incurred by the Customer, or any other person, and arising out of or in connection with this agreement.

11.3 Terms implied by and guarantees under law

To the extent permitted by law and without limiting clause 8.2, Flow Power's liability to the Customer for breach of any condition or warranty implied by or any guarantee under any law in connection with the supply of goods by Flow Power to the Customer is limited (at Flow Power's option) to the replacement of the goods, the supply of equivalent goods or the payment of the cost of acquiring equivalent goods. In the case of a service, Flow Power's liability is limited to the re-supply of the service or the payment of the cost of having the service supplied again.

11.4 Statutory limitations of liability

This agreement does not vary or exclude any immunity, limitation of liability or indemnity that Flow Power may have under law.

11.5 Force majeure

Flow Power's obligations under this agreement are suspended for the duration and to the extent of any event outside its reasonable control. Flow Power must immediately notify the Customer of the nature of any such event and its likely duration. Flow Power must use its reasonable endeavours to remove, overcome or minimise the effects of the event as soon as reasonably practicable.

11.6 Customer Liabilities

- (a) If the Customer incurs liability in connection with this agreement arising out of, or in connection with, an act or omission of the distributor, metering coordinator or metering provider, Flow Power is not liable to the Customer except to the extent Flow Power recovers the liability from the distributor, metering coordinator or metering provider.
- (b) The Customer indemnifies Flow Power against any claim, or from any liability Flow Power incurs or suffers, in connection with or arising from this agreement, relating to:
 - (i) a breach of this agreement by the Customer;
 - (ii) the negligence of the Customer; or
 - (iii) any act or omission by the Customer or the Customer's representatives to the extent Flow Power (or its Related Bodies Corporate) have indemnified the distributor, metering coordinator or metering provider for that liability.

12. Confidentiality and Publicity

12.1 Confidentiality

- (a) For the purposes of this clause 12, Confidential Information means the terms of this agreement and any information about a party's business, operations or

customers received by the other party under this agreement.

(b) Subject to clauses 12.1(c), 12.1(d) and 12.2, each party must:

- (i) not disclose, and must use reasonable endeavours to ensure that its personnel do not disclose, the other party's Confidential Information to any third party without the consent of the other party which must not be unreasonably withheld or delayed; and
- (ii) not use the other party's Confidential Information otherwise than in connection with this agreement.

(c) Clause 12.1(b) does not apply where Confidential Information:

- (i) is or becomes public knowledge other than by breach of clause 12.1(b);
- (ii) is already in the possession of a party, without any restriction in relation to disclosure, before the party received the Confidential Information from the other party;
- (iii) is legally required to be disclosed (in which case the party making the disclosure must give as much advance notice as possible to the other party of the disclosure);
- (iv) has been independently developed or acquired by the party in receipt other than as a result of this agreement; or
- (v) is provided to either party's personnel, advisors and contractors for the purposes of performing that party's obligations under this agreement.

(d) Clause 12.1(b) does not apply to the disclosure of the Customer's Confidential Information by Flow Power to Flow Power's Related Bodies Corporate.

(e) Each party must immediately notify the other party of any unauthorised disclosure or use of the Confidential Information and must take all steps reasonably required by the other party in relation to such unauthorised disclosure or use.

(f) Each party must, on demand, return to the other party (or at its request, destroy) any documents containing the other party's Confidential Information (unless any Confidential Information is required to be kept by law, in which case that Confidential Information may be kept for that purpose only).

(g) Monetary damages are an insufficient remedy for breach of clause 12.1(b). Each party is entitled to injunctive relief to prevent a breach of clause 12.1(b) and to compel specific performance of clause 12.1(b).

12.2 Publicity

Clause 12.1(b) does not apply to Flow Power publicising that Flow Power sells electricity to the Customer at the Premises and that the Customer is a customer of Flow Power, in Flow Power's media releases, promotional material and advertising.

13. Termination

13.1 Insolvency Event

In this clause 13, Insolvency Event means with respect to a party:

- (a) the party is dissolved, wound up or placed into bankruptcy or an order is made by a court or a resolution is passed or the party gives notice of its intention that the party be dissolved, wound up or placed into bankruptcy;
- (b) a liquidator, provisional liquidator or trustee in bankruptcy is appointed in respect of the party or any property of the party;
- (c) an application is made to a court for an order that the party be dissolved, wound up or placed into bankruptcy or a liquidator, provisional liquidator or trustee in bankruptcy be appointed in respect of the party or any property of the party and the application is not withdrawn or discharged within 10 Business Days from the party becoming aware or receiving notice of the application;
- (d) a controller is appointed in respect of the party or any property of the party or takes possession or gains control of any property of the party;
- (e) except to reconstruct or amalgamate while solvent, the party enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (f) the party is (or states that it is) insolvent or an insolvent under administration;
- (g) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the party is taken to have failed to comply with a statutory demand;
- (h) execution or other process issued on a judgment, decree or order of a court in favour of a creditor against the party, or another party authorised to be sued as nominal defendant on behalf of the party, is returned wholly or partly unsatisfied, or the party makes a statement from which it may be reasonably deduced that such an event has occurred;
- (i) the party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

13.2 Right to terminate

Subject to any applicable law, either party may terminate this agreement immediately by giving notice of termination to the other party if:

- (a) the other party refuses or in any way fails to perform any of the material provisions of this agreement that bind the other party and, if the refusal or failure is capable of remedy, the other party has failed to remedy the default within 5 Business Days from receipt of a notice of default from the party; or
- (b) an Insolvency Event occurs with respect to the other party.

13.3 Flow Power's right to terminate

Flow Power may terminate this agreement immediately by giving notice of termination to the Customer if:

- (a) the *Premises* are disconnected in accordance with clause 9;
- (b) the Customer vacates or sells the *Premises*;
- (c) if any representation or warranty made by the Customer is untrue or misleading (whether by omission or otherwise) when made; or
- (d) the Customer enters into an agreement with another retailer under which financial responsibility to AEMO for the *Premises* is transferred to that other retailer,

or, if there is more than one *Premises*, any of the preceding events occurs with respect to any of those *Premises* in which case Flow Power may at its election decide to terminate this agreement in respect of all of those *Premises* on the one hand or just those of them affected by the relevant event on the other (and an early termination fee calculated under clause 13.4 and in each Schedule (if applicable) will apply on a pro-rata basis for those affected *Premises*).

13.4 Early termination fee

- (a) The Customer agrees and acknowledges that:
 - (i) if an *End Date* has been specified, the Customer has entered into a fixed term agreement with Flow Power and that if Flow Power terminates this agreement under clauses 13.2 or 13.3 prior to the *End Date*; or
 - (ii) if an *End Date* has not been specified, if Flow Power terminates this agreement under clauses 13.2 or 13.3,

Flow Power may suffer Loss. To allow Flow Power to recover that Loss, but without prejudice to any other action or claim Flow Power may have under this agreement or at law, Flow Power may charge the Customer, and the Customer agrees to pay, an early termination fee in accordance with this clause 13.4.

- (b) Subject to clause 13.10(c), the early termination fee is an amount equal to the aggregate Loss Flow Power will suffer in connection with the early termination of this agreement (and the Customer's breach where relevant), including but not limited to:
 - (i) loss of profit (where any consumption will be based on the Customer's estimated consumption from the date of termination to the *End Date*, or if an *End Date* has not been specified, a 3-month period from the date of termination of this agreement);
 - (ii) Loss arising from Flow Power's continuing obligations under any relevant Wholesale Contract (or any Loss Flow Power will incur in terminating or reversing those arrangements or contracts); and
 - (iii) any other Losses.
- (c) In calculating the early termination fee, Flow Power must act reasonably and will be entitled to use estimates and forecasts.
- (d) The Customer agrees and acknowledge that the early termination fee could be substantial, particularly if the Customer consumes large amounts of electricity.
- (e) The Customer may request an estimate of the likely early termination fee. Flow Power must give the Customer this estimate within a reasonable time of such request. Any estimated early termination fee must

be based on information current at the date Flow Power calculates the estimate and, as such, that estimated early termination fee may be different to the actual early termination fee.

- (f) At the Customer's request, Flow Power must give the Customer a statement setting out how Flow Power has calculated the early termination fee.
- (g) The Customer must pay Flow Power the Early Termination Fee within 10 Business Days of receipt of a bill.

13.5 When termination is effective

Termination of this agreement is not effective until:

- (a) if the parties enter into a new agreement, the effective date of the new agreement;
- (b) if the Customer has entered into an agreement with another retailer, when financial responsibility to AEMO for the *Premises* has transferred from Flow Power to the other retailer; or
- (c) if Flow Power disconnects the *Premises*, the date of disconnection.

13.6 Meter reading on termination

Upon termination of this agreement, the meter will be read and a final bill will be issued for outstanding Energy Charges, *Service and Administration Charges* and other fees and charges.

13.7 Effect of termination

Termination of this agreement will not prejudice or otherwise affect any rights and obligations of the parties expressed in this agreement to survive termination of this agreement, nor will it prejudice or otherwise affect any right or remedy one party has against the other party in respect of amounts payable under this agreement in respect of any Trading Intervals occurring before termination or in respect of any breach of this agreement by the other party before termination, but will terminate all other rights and obligations of the parties under this agreement.

13.8 Survival

This clause 13 and clauses 4.5, 6.4(h), 6.4(i), 6.6, 6.7, 6.8, 7.5, 11, 12 and 14 survive termination of this agreement.

13.9 RoLR event

This agreement will terminate if Flow Power is no longer entitled to sell electricity due to a RoLR or last resort event (as defined in the National Energy Retail Law or corresponding Victorian law). If this occurs, Flow Power will be required to provide and will provide the Customer's name, billing address and *NMI* to the designated electricity retailer for the relevant event.

13.10 Termination by the Customer

- (a) This clause 13.10 applies only if an *End Date* is not specified and this clause 13.10 is a material provision of this agreement.
- (b) The Customer may terminate this agreement by giving at least 3 months prior written notice.
- (c) No amount is payable by either party in connection with an early termination in accordance with clause 13.10(b) except an amount calculated in accordance with clause 5(b) of the kWatch Schedule (if applicable).

14. Consumption Thresholds

14.1 Background

The following table sets out per annum consumption thresholds that apply to an individual premises of a business customer, or to more than one premises of the business customer in the aggregate, below which, under applicable law, the business customer is treated as a small customer and entitled to various consumer protections:

State or Territory	Consumption threshold	Individual or aggregate
Victoria	40 MWh	Individual
NSW	100 MWh	Aggregate
ACT	100 MWh	Aggregate
South Australia	160 MWh	Aggregate
Queensland	100 MWh	Aggregate
Tasmania	150 MWh	Aggregate

14.2 Explicit informed consent

- (a) If the Customer has more than one *Premises*, then the Customer gives explicit informed consent to those *Premises* being treated on an aggregated basis for the purposes of, and to the full extent permitted by, applicable law.
- (b) In clause 14.2(a), *Premises* means the *Premises* and also any other premises the subject of any other agreement between the Customer and Flow Power under which Flow Power sells the Customer electricity.

14.3 Customer's representation

The Customer represents that its annual consumption of electricity at the *Premises* has been, or in the case of new *Premises*, is estimated to be, more than the relevant consumption threshold contemplated by clauses 14.1 and 14.2.

14.4 Additional applicable law

If the Customer's annual consumption of electricity is less than the relevant consumption threshold contemplated by clauses 14.1 and 14.2, then, despite clause 14.3, additional applicable law may apply. If there are any inconsistencies between this agreement and any such applicable law, the applicable law prevails. If any provision of this agreement is void, invalid or unenforceable as a result of the operation of the applicable law, that provision may be severed and does not affect the validity, operation or enforceability of any other provision of this agreement.

15. General

15.1 Governing law and jurisdiction

This agreement is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

15.2 Amendment

The parties may only amend this agreement if each party signs the written amendment.

15.3 Assignment

This agreement is for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by this agreement. A party may

only assign its rights under this agreement after it obtains the consent of the other party. A party must not unreasonably withhold or unreasonably delay the giving of its consent.

15.4 Entire agreement

This agreement constitutes the entire agreement of the parties in respect of the subject matter of this agreement and supersedes all prior discussions, undertakings and agreements.

15.5 Notices

Any notice, consent or other communication under this agreement must be given by one party to the other in writing. A party may give such a notice, consent or other communication by hand delivery, pre-paid post or e-mail to the other party at the relevant address included in the 'Details' of this agreement.

A notice is deemed to be given:

- (a) if sent by email – when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address provided that the sender of the notice does not receive any system message indicating that the transmission of the notice has been delayed or has failed; or
- (b) if sent by mail – if sent by express mail, 3 Business Days after posting, or if sent by regular mail, 6 Business Days after posting.

15.6 GST

- (a) In this clause 15.6, a word or term defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning where used in connection with the GST imposed under that Act.
- (b) All amounts payable to a party under this agreement (other than an amount for GST payable to the party under this clause 15.6) have been calculated without regard to GST.
- (c) If the whole or any part of any such amount is the consideration for a taxable supply for which the supplying party is liable to pay GST, the supplying party may charge the party liable to pay for the taxable supply under this agreement, and that party must pay the supplying party, concurrently with the payment of that amount, an additional amount equal to the GST payable in respect of the taxable supply calculated on the basis that the value of the taxable supply is the amount payable for the taxable supply excluding any GST.
- (d) The recovery of consideration for any taxable supply made under this agreement is subject to the supplying party issuing to the party liable to pay for the taxable supply a tax invoice in respect of the supply.
- (e) Any reference to a cost or expense incurred by a party in this agreement excludes any amount of GST forming part of the relevant cost or expense when incurred by the party for which the party can claim an input tax credit.

15.7 Costs

- (a) Each party must bear its own costs in relation to the negotiation, preparation and execution of this agreement.

- (b) Where this agreement is amended, novated or assigned at the Customer's request, Flow Power may charge the Customer an administration charge to cover Flow Power's reasonable costs (including legal and other directly associated costs).

15.8 PPSA

- (a) In this clause 15.8, PPSA means the *Personal Property Securities Act 2009* (Cth) and Security Interest has the meaning given in the PPSA.
- (b) If Flow Power determines that this agreement is or contains a Security Interest in favour of Flow Power or a Security Interest otherwise arises from this agreement, the Customer agrees to do anything which Flow Power asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling Flow Power to apply for any registration, or give any notification, in connection with the Security Interest; or
 - (iii) enabling Flow Power to exercise rights in connection with the Security Interest.
- (c) If this agreement is or contains a Security Interest in favour of Flow Power then, in relation to such Security Interest, the parties agree, to the extent permitted:
 - (i) to contract out of the enforcement provisions detailed in section 115 of the PPSA and any other provision of the PPSA notified to the Customer by Flow Power after the date of this agreement; and
 - (ii) that Flow Power is not required to give any notice required under any provision of the PPSA.
- (d) The Customer waives its right to receive any verification statement or notice of any verification statement in respect of any financing statement or financing change statement relating to any Security Interest in favour of Flow Power created under this agreement.

15.9 Customer information

Flow Power may seek information concerning the Customer, the *Premises*, the Customer's electricity usage, metering, billing, payment and credit history insofar as to determine the suitability of this agreement as deemed necessary. Flow Power may use this information for the further development or sale of products and services to the Customer unless prevented by law.

15.10 Counterparts

This agreement may be executed in any number of counterparts and signatures on behalf of a party may be on different counterparts.

15.11 Further assurances

Except as expressly provided in this agreement, each party must, at its own expense, do all things reasonably necessary to give full effect to this agreement and the matters contemplated by it.

15.12 Waiver

- (a) No waiver of a right or remedy under this agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.

- (b) A single or partial exercise of a right or remedy under this agreement does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

15.13 Severability

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this agreement is not affected.

15.14 Indemnity

- (a) Each indemnity given by a party under this agreement is a continuing obligation, separate and independent from the party's other obligations under this agreement.
- (b) An obligation under this agreement to indemnify a party against a claim includes the obligation to indemnify that party against any legal or other professional costs and disbursements incurred by the indemnified party on a full indemnity basis, whether or not the claim is successful.

16. Partnerships and Trusts

16.1 Partnerships

If the Customer is a partnership, each partner in that partnership is jointly and severally liable under this agreement.

16.2 Trusts

If the entity entering into this agreement as the Customer does so as a trustee, that entity represents and warrants in its own right and as trustee of the relevant trust that, as at the date of this agreement and until such time as all the Customer's obligations under this agreement are discharged:

- (a) that entity is the sole trustee of that trust;
- (b) that entity has the requisite capacity and authority to enter this agreement on behalf of, and to bind the beneficiaries of, that trust and to perform all the Customer's obligations under this agreement pursuant to the documents governing that trust; and
- (c) that entity has the right to be fully indemnified out of the assets of that trust in relation to this agreement and the assets of that trust are sufficient to satisfy all obligations of the Customer under this agreement.

17. Interpretation & Definitions

17.1 Interpretation

Unless expressly provided otherwise, a reference to a clause in this General Terms and Conditions is a reference to a clause in this General Terms and Conditions only. In this agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) in this agreement including the Agreement Particulars and any schedules, any term appearing *Like This* is defined or provided for in the Agreement Particulars, provided that "*Premises*" and "*NMI*" means each or all of the *Premises* and *NMIs* detailed in the Agreement Particulars as the context may require or, if there is only one such *Premises* and *NMI*, that *Premises* and *NMI*;

- (b) headings are for convenience only and do not affect the interpretation of this agreement;
- (c) the singular includes the plural and vice versa;
- (d) words that are gender neutral or gender specific include each gender;
- (e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation;
- (g) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its agents, successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) this agreement includes all schedules and attachments to it;
 - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (vii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
 - (viii) a monetary amount is in Australian dollars and all amounts payable under or in connection with this agreement are payable in Australian dollars;
- (h) an agreement on the part of two or more persons binds them jointly and each of them severally; and
- (i) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.

17.2 Definitions

Advance Payment means Flow Power's reasonable estimate of the Customer's 55 days' worth of Energy Charges, network charges, market charges, metering charges and all other amounts payable under this agreement.

AEMO means Australian Energy Market Operator Limited ABN 94 072 010 327 or any other entity that operates the national electricity market;

Agreement Particulars means the section of this agreement titled 'Agreement Particulars'.

Business Day means a day other than a Saturday or Sunday or a public holiday in Melbourne;

Electricity Price has the meaning given in the Agreement Particulars;

Energy Charge in relation to the *Premises* and a Trading Interval, means an amount calculated in accordance with clause 4.2 for the *Premises* and that Trading Interval and **Energy Charges** has a corresponding meaning;

Environmental Charge has the meaning given in clause 4.6;

Five Minute Settlement means the National Electricity Amendment (Five Minute Settlement) Rule 2017 No. 15 under the National Electricity Law;

Loss means any cost, expense, liability, claim, damage or loss (including 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 Disruption Event means the occurrence after the date of this agreement of any of the following events but excluding Five Minute Settlement:

- (a) AEMO not announcing or publishing a relevant Spot Price or there being a permanent discontinuation or unavailability of a relevant Spot Price;
- (b) a material change in the formula for or the method of calculating a relevant Spot Price but excluding any change in the market price cap or in the market floor price;
- (c) the imposition of, change in or removal of an excise, severance, sales, use, value-added, transfer, stamp, documentary, recording or similar tax on, or measured by reference to, electricity (other than a tax on, or measured by reference to, overall gross or net income) by any government or taxation authority, if the direct effect of such imposition, change or removal is to raise or lower a relevant Spot Price in any Trading Interval from what it would have been without that imposition, change or removal; and
- (d) a change in the location of the regional reference node to which a relevant Spot Price relates or a change in the boundaries or the number of regional reference nodes of the region in which that regional reference node is located,

where each term appearing above like this has the same meaning as in the National Electricity Rules;

National Electricity Law means the law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA) as it applies in each of South Australia, Victoria, New South Wales, Queensland, Tasmania and the Australian Capital Territory;

National Electricity Rules means the rules of that name approved in accordance with the National Electricity Law;

Region has the meaning given in the National Electricity Rules;

Related Body Corporate has the same meaning as in the *Corporations Act 2001* (Cth);

Spot Price has the meaning given in the National Electricity Rules and in relation to the *Premises* refers to the spot price for the Region to which the *Premises* is assigned under the National Electricity Rules (which may or may not correspond with the State or Territory in which the *Premises* is physically located);

Trading Interval has the meaning given in the National Electricity Rules and therefore until Five Minute Settlement commences refers to a 30 minute period commencing on the hour or half hour and after Five Minute Settlement commences refers to each five minute period ending on the hour and each continuous period of five minutes thereafter; and

Wholesale Contract means:

- (a) a wholesale, power purchase, hedge or other similar contract that has the purpose or effect of reducing Flow Power's (or a related body corporate of Flow Power's) exposure to the volatility of the wholesale cost of acquiring electricity in the National Electricity Market; or
- (b) contracts related to metering, environmental certificates, efficiency or reliability schemes or any other service providers in connection with supply of electricity.

18. Additional LGCs

- (a) The Customer may, prior to 1 October 2022, notify Flow Power that it requires an additional volume of LGCs for the calendar year of 2022, capped at 1,840 LGCs.
- (b) If Flow Power receives a notice under clause 18(a), it must transfer those additional LGCs to the Customer (or to their nominee) prior to 31 January 2023, and the Customer agrees to pay Flow Power \$32 for each LGC transferred, to be invoiced in the next bill issued after the transfer of LGCs occurs.

kWatch Schedule

1. Interpretation

1.1 Interpretation

In this schedule:

- (a) capitalised terms that are otherwise not defined in this schedule have the meaning given to them in the General Terms and Conditions;
- (b) any term appearing *Like This* is defined or provided for in the Agreement Particulars, provided that “*Premises*” and “*NMI*” means each or all of the *Premises* and *NMIs* detailed in the Agreement Particulars as the context may require or, if there is only one such *Premises* and *NMI*, that *Premises* and *NMI*; and
- (c) unless expressly provided otherwise, a reference to a clause in this schedule is a reference to a clause in this schedule only.

1.2 Definition

In this schedule:

Agreement IP means any and all Intellectual Property Rights created, designed, devised, prepared or brought into existence by Flow Power in connection with the kWatch Controller and the KWatch Portal Service;

Background IP means any and all Intellectual Property Rights owned by or licensed to Flow Power which Flow Power uses in connection with the kWatch Controllers and the KWatch Portal Service;

Intellectual Property Rights means all copyright, trademark, patent, design, confidential information, moral, trade secret, circuit layout and other like rights whether arising by common law or by statute or any right to apply for registration under a statute in respect of those or like rights;

kWatch Controller means a smart device incorporating an assembly of hardware and other components which is capable of integration with existing systems and operations within an electrical installation and which, when electrically connected to a compatible meter, is capable of copying the energy data recorded by the meter and making that energy data available for remote retrieval;

kWatch Portal Service means making energy data recorded by the meter at the *Premises* accessible at the internet site established by Flow Power and accessible at flowpower.kwatch.com.au or by Flow Power’s mobile app; and

Nominated Premises means each *Premises* nominated by the Customer that Flow Power is satisfied that the kWatch Controller can be safely and conveniently installed, where the number of Nominated Premises does not exceed the *Inclusive kWatch Controller Amount*.

2. The kWatch Controller

2.1 Provision of the kWatch Controller

- (a) Unless a kWatch Controller has already been installed and commissioned at the Nominated Premises as at the date of this agreement, Flow Power will use reasonable endeavours to install, test and commission a kWatch Controller at each of the Nominated Premises at a time agreed between the parties, taking into account the stock level of kWatch Controllers then

available to Flow Power, the availability of service providers and the location of the Nominated Premises.

- (b) If the *kWatch Controller Installation Assumptions* for a Nominated Premises are not satisfied, Flow Power will notify the Customer and set out any additional costs required to complete the installation, testing and commissioning of the kWatch Controller at that Nominated Premises.
- (c) Subject to the Customer agreeing to pay the additional costs set out in the notice provided under clause 2.1(b), Flow Power will proceed with the installation, testing and commissioning of the kWatch Controller.

2.2 Operation and maintenance

Until this agreement terminates, Flow Power must operate and maintain the kWatch Controller installed and in commission at the Nominated Premises in accordance with good industry practice.

2.3 Removal or disablement

On termination of this agreement, Flow Power may either remove the kWatch Controller from the *Premises* or disable and leave the kWatch Controller at the *Premises*.

2.4 Customer’s obligations

- (a) On reasonable prior notice, the Customer must allow Flow Power access to the *Premises*, to install, test, commission, operate, maintain and remove the kWatch Controller.
- (b) The Customer must provide Flow Power with any assistance reasonably required to install, commission, operate, maintain or remove the kWatch Controller including by making available such place within the *Premises* for the kWatch Controller to be located as is reasonably required by Flow Power.
- (c) The Customer must not damage, modify or interfere with the kWatch Controller or permit any other person to do so, and must take all reasonable precautions to protect the kWatch Controller from damage, modification or interference.
- (d) The Customer must notify Flow Power immediately if the Customer considers the kWatch Controller is not operating properly, by telephoning 1300 08 06 08 or by email to go@flowpower.com.au.

2.5 Ownership

The Customer acknowledges and agrees that:

- (a) the kWatch Controller will at all times be removable equipment and the personal property of Flow Power and is not a fixture to or at the *Premises*;
- (b) the kWatch Controller is owned by Flow Power; and
- (c) the Customer has no rights in the kWatch Controller and may not grant any encumbrances or other interests in the kWatch Controller.

3. The kWatch Portal

- (a) From the later of when Flow Power starts to sell to the Customer the electricity supplied to the *Premises* under this agreement and when a kWatch Controller is first in commission at the *Premises*, Flow Power agrees to provide the Customer with the KWatch Portal Service.

- (b) The Customer acknowledges and agrees that Flow Power may collect and use the energy data recorded by the meter at the *Premises* for the purposes of providing the Customer with the kWatch Portal Service, and that Flow Power may disclose that energy data to third parties engaged by Flow Power.
- (c) Flow Power must use reasonable endeavours to ensure that relevant energy data is accessible via the kWatch Portal Service on a real time basis 24 hour a day, 7 days a week. The Customer acknowledges that Flow Power does not, guarantee the accessibility of the kWatch Portal Service at any given time.

4. Intellectual Property

- (a) All Agreement IP vests in Flow Power as and from the time when it is created or brought into existence. The Customer has no right, title or interest in or to any Agreement IP. The Customer must assign all Intellectual Property Rights in the Agreement IP to Flow Power or as Flow Power may direct and sign all necessary documents and do all other things necessary for Flow Power to establish, exploit and protect its rights in the Agreement IP, both before and after the termination of this agreement.
- (b) The Customer has no right, title or interest in or to any Background IP

5. Early Termination Fee

- (a) In accordance with the General Terms and Conditions, Flow Power is entitled in certain circumstances to terminate this agreement and charge the Customer an early termination fee.
- (b) If clause 5(a) applies, then, in addition to that early termination fee but without allowing Flow Power to recover for the same loss twice, Flow Power may charge the Customer a further early termination fee in respect of the installation costs for kWatch Controllers as follows:
 - (i) if the agreement is terminated before the end of the 3rd month after the *Proposed Start Date*: \$1,200 for each kWatch Controller installed;
 - (ii) if the agreement is terminated in the 4th, 5th or 6th month after the *Proposed Start Date*: \$800 for each kWatch Controller installed;
 - (iii) if the agreement is terminated in the 7th, 8th or 9th month after the *Proposed Start Date*: \$400 for each kWatch Controller installed; and
 - (iv) otherwise: nil.

6. Survival

Clauses 2.3, 2.4, 2.5 and 4 survive termination of this agreement.

Export Electricity Schedule

1. Interpretation

1.1 Interpretation

In this schedule:

- (a) capitalised terms that are otherwise not defined in this schedule have the meaning given to them in the General Terms and Conditions;
- (b) any term appearing *Like This* is defined or provided for in the Agreement Particulars, provided that “*Premises*” and “*NMI*” means each or all of the *Premises* and *NMIs* detailed in the Agreement Particulars as the context may require or, if there is only one such *Premises* and *NMI*, that *Premises* and *NMI*; and
- (c) unless expressly provided otherwise, a reference to a clause in this schedule is a reference to a clause in this schedule only.

1.2 Definition

In this schedule:

Export Electricity means electricity which is generated by the Generating System, is not used by the Customer and is supplied through the supply point at the *Premises* into the distribution system;

Export Energy Charge in relation to the *Premises* and a Trading Interval, means an amount calculated in accordance with clause 5.2 for the *Premises* and that Trading Interval and **Export Energy Charges** has a corresponding meaning;

General Terms and Conditions means the section of this agreement titled ‘General Terms and Conditions’; and

Generating System means any generating system installed at the *Premises*.

2. Purchase and sale

Flow Power agrees to purchase, and the Customer agrees to sell, the Export Electricity.

3. Export Electricity term

3.1 Commencement

Although this agreement may have commenced, Flow Power does not commence purchasing any Export Electricity, and has no obligation to pay for any Export Electricity, unless and until:

- (a) the customer has notified Flow Power that there is a Generating System and has provided Flow Power with any details of the Generating System, including its generating capacity, as Flow Power may reasonably require;
- (b) the Customer has installed a meter capable of recording the Export Electricity and AEMO has allocated the meter to Flow Power; and
- (c) Flow Power is satisfied with the metering arrangements.

3.2 End

Once it has commenced, the purchase and sale of the Export Electricity under this schedule continues until this agreement terminates.

4. Installing the generating system

4.1 Responsibility for installation

It is the Customer’s responsibility to organise for the installation of the Generating System and its connection to the distribution system and to organise with the distributor for any appropriate reassignment of the Customer’s network tariff.

4.2 Connection and metering installation charges

Flow Power may pass on to the Customer any connection and metering installation charges imposed by the distributor in relation to the Generating System at cost and the Customer must reimburse Flow Power for those charges.

5. Export Energy Charges

5.1 Liability

Subject to clause 5.2(b), Flow Power must pay the Export Energy Charges outlined in this clause 5 and in the Agreement Particulars.

5.2 Export Energy Charges

- (a) For each Trading Interval the Export Energy Charge for the *Premises* is an amount calculated as follows:

$$EEP * L * ME$$

where:

EEP is the *Export Electricity Price* for the *Premises* for that Trading Interval as set out in the Agreement Particulars;

L is the transmission loss factor applicable in respect of the *Premises* under the National Electricity Rules or, if there is also an applicable distribution loss factor under the National Electricity Rules, the product of the two loss factors; and

ME is the amount of the *Premises’* Export Electricity in that Trading Interval.

- (b) If the *Export Electricity Price* for a Trading Interval is negative, then no Export Energy Charge is payable by Flow Power for that Trading Interval and instead the Customer must pay the absolute value of the Export Energy Charge for that Trading Interval to Flow Power and Flow Power may include the relevant amount on the Customer’s next bill.

5.3 Variation of Export Energy Charges

Flow Power may reduce the Export Energy Charges to recover any direct or indirect increase in the cost of purchasing the Export Electricity from the Customer as a result of:

- (a) the introduction of, change in, or repeal of, any law or regulatory requirement, or in its interpretation or administration by a government agency, a regulator or a court; or
- (b) compliance by Flow Power with an applicable direction or requirement (whether existing or future) of a government agency or a regulator,

which occurs after the date of this agreement.

5.4 Credits

Flow Power must credit the Export Energy Charges for the Export Electricity against the Energy Charges and other fees and charges in the Customer’s bills as follows:

- (a) Flow Power must credit the Export Energy Charges arising during a period in which Flow Power sells electricity to the Customer against the Energy Charges and other fees and charges in the bill that relates to that period; and
- (b) if the amount of Export Energy Charges that arises during that period exceeds the Energy Charges and other fees and charges for that period, Flow Power must credit the excess amount against the Energy Charges and other fees and charges that relate to the next billing period and any remaining excess amount against the Energy Charges and other fees and charges in a subsequent bill.

5.5 Payments

On request, Flow Power must pay the Customer any excess amounts contemplated by clause 5.4(b). Flow Power must also pay the Customer any excess amount if this agreement terminates unless Flow Power is able to credit the excess amount against amounts the Customer owes under another agreement with Flow Power for the sale of electricity.

5.6 No separate bills

Subject to clause 10.3, neither Flow Power nor the Customer is to prepare any separate bills for the Export Electricity.

5.7 Ongoing Export Energy Charges

- (a) Subject to clause 5.7(b), Flow Power must pay Export Energy Charges under clause 5.2 for or in respect of Export Electricity supplied from the *Premises* after the *End Date* or any earlier date on which this agreement terminates, but on the basis that the *Export Electricity Price* for the *Premises* for each Trading Interval is the Spot Price minus the absolute value of 20% of the Spot Price, if by then a new agreement has not been entered into or financial responsibility to AEMO for the *Premises* has not transferred from Flow Power to another retailer.
- (b) If the *Export Electricity Price* for the *Premises* for a Trading Interval under clause 5.7(a) is negative, then no Export Energy Charge is payable by Flow Power for that Trading Interval and instead the Customer must pay the absolute value of the Export Energy Charge for that Trading Interval to Flow Power and Flow Power may include the relevant amount on the Customer's next bill.

5.8 Meter data

Export Energy Charges are to be calculated and billed on the same basis as Electricity Charges under clause 7.3 of the General Terms and Conditions, with metering data recorded by the meter and provided to Flow Power in accordance with the law to be prima facie evidence of electricity exported from the *Premises*.

5.9 Reviews

On request, Flow Power must review the Customer's credits on the same basis as Flow Power review bills under clause 6.3 of the General Terms and Conditions which applies to such review subject to any necessary adaptation as do clauses 6.7 and 6.8 of the General Terms and Conditions in respect of any over-crediting or under-crediting respectively.

6. Customer's obligations

6.1 Generating System

- (a) In installing the Generating System and supplying Export Electricity to the distribution system, the Customer must comply with the law.
- (b) The Customer must give Flow Power 15 Business Days' notice if there will or is likely to be a change to the generating capacity of the Generating System.

6.2 Meters

The Customer must pay for the meter that records the Export Electricity and for its installation and maintenance.

6.3 Safety and emergencies

The Customer must at all times:

- (a) maintain the Generating System in a safe condition; and
- (b) ensure that any work on the Generating System is done by properly qualified electricians.

7. Environmental benefits

Unless otherwise agreed in writing, Flow Power is not entitled to any renewable energy certificate under the *Renewable Energy (Electricity) Act 2000* (Cth) which may be created in respect of electricity generated by the Generating System or any other environmental benefit arising under law or otherwise from the generation of that electricity.

8. Disconnection

The Customer agrees and acknowledges and that if Flow Power is entitled to disconnect the *Premises* under clause 9 of the General Terms and Conditions and the *Premises* are disconnected, the Generating System will not be able to supply electricity through the supply point at the *Premises* into the distribution system. The Customer must co-operate with and assist Flow Power and the distributor in respect of any such disconnection.

9. Responsibilities

9.1 Title

Title to the Export Electricity passes to Flow Power at the supply point at the *Premises*.

9.2 The distributor

The Customer agrees and acknowledges that:

- (a) it is the distributor, not Flow Power, who connects or connected the *Premises* to the distribution system and who will maintain that connection;
- (b) the distributor is responsible for taking the supply of the Export Electricity into the distribution system;
- (c) when the supply of electricity to the *Premises* is interrupted, so too will the supply of the Export Electricity to the distribution system; and
- (d) Flow Power is not liable to the Customer in respect of any of these matters.

9.3 The Customer

The Customer is responsible for all risks in respect of the control and use of the Generating System and of electricity on the Customer's side of the supply point at the *Premises*.

9.4 Indemnity

To the extent the law allows, the Customer indemnifies Flow Power against loss or damage associated with any failure by the Customer to comply with any of its obligations under this schedule, the control and use of the Generating System and any electricity on the Customer's side of the supply point at the *Premises*, whether or not this agreement has terminated, except to the extent the loss or damage is the direct result of negligence by Flow Power.

10. GST

10.1 Application

This clause 10 applies if:

- (a) in the Agreement Particulars the Customer represents that the Customer will supply the Export Electricity to Flow Power in the course or furtherance of an enterprise that the Customer carries on and that the Customer is registered or required to be registered for GST; and
- (b) the Export Electricity to Flow Power is a taxable supply.

10.2 GST

Any amount Flow Power owes the Customer under clause 5 excludes any GST payable on the supply of the Export Electricity to Flow Power. As well as crediting or paying the Customer that amount, Flow Power must also credit or pay to the Customer a further amount equal to any GST payable on the supply. Flow Power must credit or pay that further amount to the Customer as and when Flow Power credits or pays to the Customer the amount owed under clause 5, except Flow Power does not have to do so unless Flow Power can create, or has received from the Customer, a tax invoice for the supply.

10.3 Tax invoicing

- (a) If Flow Power can, Flow Power must (and the Customer must not) issue tax invoices in respect of the supply of the Export Electricity to Flow Power. Flow Power is registered for GST and must notify the Customer if Flow Power ceases to be. Flow Power will combine tax invoices with the Customer's bills and include the Customer's ABN on them.
- (b) If Flow Power is unable to issue tax invoices, the Customer must issue tax invoices to Flow Power within five Business Days of a request from Flow Power.

10.4 Definitions

In this clause 10 a word or term defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning where used in connection with the GST imposed under that Act.

Energy Ready Schedule

This schedule applies if the Agreement Particular specifies that this Energy Ready Schedule applies.

1. Interpretation

1.1 Interpretation

In this schedule:

- (a) capitalised terms that are otherwise not defined in this schedule have the meaning given to them in the General Terms and Conditions;
- (b) any term appearing *Like This* is defined or provided for in the Agreement Particulars, provided that “*Premises*” and “*NMI*” means each or all of the *Premises* and *NMIs* detailed in the Agreement Particulars as the context may require or, if there is only one such *Premises* and *NMI*, that *Premises* and *NMI*; and
- (c) unless expressly provided otherwise, a reference to a clause in this schedule is a reference to a clause in this schedule only.

1.2 Definition

In this schedule:

Additional Energy Ready Services has the meaning given in clause 3(a) of this schedule;

Additional Energy Ready Services Charges has the meaning given in clause 3(c) of this schedule;

Agreement IP means all Intellectual Property Rights created, designed, devised, prepared or brought into existence by Flow Power in connection with the provision of the Energy Ready Services under this agreement;

Background IP means all Intellectual Property Rights owned by or licensed to Flow Power which Flow Power uses in connection with the provision of the Energy Ready Services under this agreement;

Energy Ready Services has the meaning given in clause 2(b) of this schedule;

Initial Term means the period starting on the *Energy Ready Start Date* and ending 12 months later;

Intellectual Property Rights means all copyright, trademark, patent, design, confidential information, moral, trade secret, circuit layout and other like rights whether arising by common law or by statute or any right to apply for registration under a statute in respect of those or like rights;

Service Charges means the *Energy Ready Service Charge*, the *Energy Ready Shared Savings Charge* (if any) and the Additional Energy Ready Services Charges (if any);

Shared Savings means the value of each item of saving in costs, expenses, fees or charges that are identified by Flow Power and communicated to the Customer, and later implemented or recovered by either Flow Power or the Customer, including (but not limited to) alternative network tariffs, energy efficiency opportunities or historical billing errors, and excluding any depreciation, amortisation costs or billing errors created by Flow Power;

Shared Savings Period means the period commencing on the date on which an item of Shared Savings commences until the date that is the earlier of:

- (a) the date that is 12 months later; and

- (b) the date that item of Shared Savings is no longer existing;

Shared Savings Termination Fee has the meaning given in clause 9.2 of this schedule; and

Termination Fee has the meaning given in clause 9.1 of this schedule.

2. Energy Ready Services

- (a) Subject to conditions set out in this agreement, Flow Power agrees to provide the Energy Ready Services for the term of this agreement, and the Customer agrees to pay the Service Charges.

- (b) Flow Power will:

- (i) examine and analyse the Customer's supply of energy to each *Premises* for each month;
- (ii) present to the Customer, a report that outlines electricity usage and detailed electricity analysis for each *Premises* using kWWatch software for each reporting period; and
- (iii) seek to identify savings on energy costs by making available the Energy Ready Services set out in the “List of Energy Ready initiatives” in the Agreement Particulars that are marked with “ER”,

together, **Energy Ready Services**.

- (c) Flow Power may from time to time undertake maintenance work on the systems used to provide the Energy Ready Services and the Energy Ready Services may not be available during those periods. Flow Power will use reasonable endeavours to:

- (i) schedule maintenance at times that are unlikely to cause a material impact on the Customer's use of the Energy Ready Services;
- (ii) notify the Customer in advance of any scheduled maintenance that may have an impact on the availability of the Energy Ready Services; and
- (iii) minimise any period of unavailability due to maintenance work.

- (d) Flow Power must:

- (i) exercise due care, skill and judgment in providing Energy Ready Services; and
- (ii) comply with applicable laws relating to the Energy Ready Services.

- (e) Flow Power may engage subcontractors to provide the whole or any part of the Energy Ready Services but remains liable for all of its obligations under this schedule.

- (f) The Customer acknowledges and agrees that some of the Energy Ready Services may not be available if there is any failure of or interruption to any relevant third-party system, infrastructure or network including the internet.

3. Additional Services

- (a) During the term of this agreement, the parties may agree for Flow Power to provide additional services such as:

- (i) provide services in relation to each of the “List of Energy Ready initiatives” described in the

Agreement Particulars which are listed as Additional Services initiatives; or

- (ii) provide other services such as LGC accreditation, submetering, control system upgrades, energy audits or sustainability advice and strategy,

the **Additional Services**.

- (b) An agreement between the parties for the provision of Additional Services under clause 3(a) of this schedule must specify:
 - (i) the scope of services;
 - (ii) the proposed program; and
 - (iii) the fees for Additional Services, which may be Flow Power's hourly rates.
- (c) In consideration for Flow Power providing the Additional Services (if any), the Customer agrees to pay the fees agreed between the parties in accordance with this clause 3 (**Additional Energy Ready Service Charges**).

4. Customer Obligations

On request and for the duration of the term of this agreement, the Customer must provide Flow Power with:

- (a) copies of all accounts and contracts (including both historical and current information) related to the supply of electricity to the *Premises or NMIs*;
- (b) a signed letter of authority in a form required by Flow Power to allow Flow Power to access the Customer's energy consumption information and to enable Flow Power to negotiate with third parties (such as networks) on behalf of the Customer and to obtain refunds and credits on behalf of the Customer, where appropriate.

5. Charges

5.1 Energy Ready Service Charges

- (a) In consideration for delivering the Energy Ready Services, the Customer agrees to pay the *Energy Ready Service Charge*.
- (b) On conclusion of the Initial Term, the *Energy Ready Service Charge* may be amended by Flow Power by written notice to the Customer.

5.2 Energy Ready Shared Savings Charge

In consideration for identifying Shared Savings through delivery of the Energy Ready Services, the Customer agrees to pay the *Energy Ready Shared Savings Charge* for the duration of the Shared Savings Period for each Shared Savings item.

5.3 Invoicing

Flow Power will bill the Customer for the Service Charges on the conclusion of each month. Flow Power may include the Service Charges in another bill issued under this agreement.

6. Liability

To the extent permitted by law, Flow Power's liability to the Customer, whether in contract, in tort (including negligence), in equity by operation of statute or otherwise, arising out of or in connection with this schedule is limited to 12 months of Service Charges for Energy Ready Services.

7. Intellectual Property

- (a) All Agreement IP vests in Flow Power as and from the time when it is created or brought into existence. The Customer has no right, title or interest in or to any Agreement IP. The Customer must assign all Intellectual Property Rights in the Agreement IP to Flow Power or as Flow Power may direct and sign all necessary documents and do all other things necessary for Flow Power to establish, exploit and protect its rights in the Agreement IP, both before and after the termination of these Supplemental Terms.
- (b) The Customer has no right, title or interest in or to any Background IP.

8. Opt-out

- (a) Subject to clause 9.2, the Customer may opt-out of the Energy Ready Services following conclusion of the Initial Term if it provides at least 30 days prior written notice.
- (b) Flow Power will not be obliged to provide the Energy Ready Services to the Customer, and the Customer will not be liable to pay the *Energy Ready Services Charge*, in respect of the period after that opt-out date.

9. Early Termination Fees

9.1 Termination Fee

- (a) The Customer acknowledges that:
 - (i) the Customer has entered into a fixed term agreement with Flow Power and that if this agreement is terminated prior to the Initial Term, Flow Power may suffer loss; and
 - (ii) the structure of the *Energy Ready Shared Savings Charges* is such that if this agreement is terminated or expires and there are *Energy Ready Shared Savings Charges* that would be payable beyond the date of termination had it not occurred, Flow Power may suffer loss.
- (b) To allow Flow Power to recover Flow Power's genuine pre-estimate of that loss, Flow Power may charge the Customer, and the Customer agrees to pay, a Termination Fee in accordance with this clause 9 of this schedule.
- (c) The Termination Fee is an amount equal to the sum of:
 - (i) all of the Service Charges Flow Power estimates Flow Power would have received from the Customer over the period from the date of termination to the end of the Initial Term, less all the costs Flow Power estimates Flow Power would have incurred in delivering the Energy Ready Services (or any Additional Services) and performing its other obligations under over that period; and
 - (ii) the full amount of any *Energy Ready Shared Savings Charges* Flow Power estimates Flow Power would have received from the Customer under clause 5.2 of this schedule for each of the Shared Savings items identified and communicated to the Customer (whether implemented or not) on or prior to the date of termination, had this agreement continued indefinitely.

9.2 Shared Savings Termination Fee

If:

- (a) the Customer opts-out of the Energy Ready Services during the *Trial Period* (if any) or under clause 8(a) after the Initial Term; or
- (b) this agreement expires and the Customer has not opted-out of the Energy Ready Services in accordance with this schedule,

Flow Power may charge the Customer, and the Customer agrees to pay, a **Shared Savings Termination Fee** equal to the full amount of any *Energy Ready Shared Savings Charges* Flow Power estimates Flow Power would have received from the Customer under clause 5.2 for each of the Shared Savings items identified and communicated to the Customer (whether implemented or not) on or prior to the opt-out date or the expiry date (as relevant), had this agreement continued indefinitely and had the Shared Savings items been implemented.

9.3 General

- (a) In calculating the Termination Fee or the Shared Savings Termination Fee, Flow Power must act reasonably and will be entitled to use estimates, historical data and forecasts.
- (b) The Customer agrees and acknowledges that the Termination Fee or the Shared Savings Termination Fee could be substantial, particularly if the Customer consumes large amounts of electricity.
- (c) The Customer must pay Flow Power the Termination Fee or the Shared Savings Termination Fee within 10 Business Days of receipt of a bill.

10. Survival

Clauses 5.2, 6 and 9 survive termination of this agreement.

GreenPower Schedule

This schedule applies if the Agreement Particular specifies that GreenPower Schedule applies to this agreement.

1. Interpretation

1.1 Interpretation

In this schedule:

- (a) capitalised terms that are otherwise not defined in this schedule have the meaning given to them in the General Terms and Conditions;
- (b) any term appearing *Like This* is defined or provided for in the Agreement Particulars, provided that “*Premises*” and “*NMI*” means each or all of the *Premises* and *NMIs* detailed in the Agreement Particulars as the context may require or, if there is only one such *Premises* and *NMI*, that *Premises* and *NMI*; and
- (c) unless expressly provided otherwise, a reference to a clause in this schedule is a reference to a clause in this schedule only.

1.2 Definition

In this schedule:

Actual Yearly Load for a Contract Year means the aggregate amount of electricity supplied to all of the *Premises* in that Contract Year (but excluding any export electricity at the *Premises*).

Estimated Yearly Load for a Contract Year means the aggregate amount of electricity consumption requirement specified in the Agreement Particulars or Premises Schedule in respect of all of the *Premises*. If a Contract Year is less than 12 months, then such a pro-rata amount as reasonably determined by Flow Power.

Flex Factor means a value corresponding to the table below:

Aggregate amount of electricity consumption requirement specified in the Agreement Particulars or Premises Schedule in respect of all of the Premises	Flex Factor
Less than 1,000 MWh	1.0
1,000 – 10,000 MWh	0.2
More than 10,000 MWh	0.1

GreenPower Charge has the meaning given in clause 2(b).

GreenPower Generator means an electricity generator approved under the National GreenPower Accreditation Program.

LGC means large-scale generation certificate created under Subdivision A of Division 4 of Part 2 of the REE Act and registered under Division 5 of Part 2 of that Act.

LGC Spot Rate for the purposes of clause 4 and for a Contract Year, means the closing price for LGCs (converted to c/kWh where \$/LGC is equivalent to \$/MWh) for the last Business Day of that Contract Year, as published by a widely recognised broker, service provider or benchmark selected in good faith by Flow Power.

Contract Year means:

- (a) the period starting on the *Proposed Start Date* and ending on the last day of the calendar year in which the *Proposed Start Date* occurs;
- (b) the period starting on the first day of the calendar year in which the *End Date* occurs and ending on the *End Date*; and
- (c) each calendar year between the two preceding periods.

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

2. GreenPower Charges

- (a) The Customer must pay the GreenPower Charges for the *Premises*.
- (b) For each Trading Interval, the GreenPower Charge for the *Premises* is an amount calculated as follows:

$$GPR * GPP * L * MD$$

where:

GPR is the *GreenPower Rate* applicable for the *Premises* in the relevant period;

GPP is the *GreenPower Percentage* applicable for the *Premises* in the relevant period;

L is the relevant distribution loss factor applicable in respect of the *Premises* under the National Electricity Rules; and

MD is the amount of electricity supplied to the *Premises* in that Trading Interval.

- (c) If there is more than one *Premises*, the Customer must pay a GreenPower Charge for each of the *Premises* for each relevant Trading Interval.

3. GreenPower Obligations

- (a) Flow Power will:
 - (i) ensure that for the applicable *GreenPower Percentage* of the electricity supplied to the *Premises*, an equivalent amount of electricity is produced from GreenPower Generators; and
 - (ii) voluntarily surrender the corresponding amount of eligible large-scale generation certificates to the relevant regulator.
- (b) The Customer acknowledges and agrees that, given that the electricity supplied to the *Premises* under this agreement is sourced from the national electricity grid, the electricity supplied to the *Premises* may not necessarily be from renewable sources.
- (c) If at any time the REE Act, or any other regulation or scheme rules are repealed or amended and as a result LGCs can no longer be legally created or surrendered as contemplated in this clause 3, then Flow Power may terminate the operation of this clause 3 to the extent it is unable to perform its obligations by giving notice to the Customer. However, Flow Power must use reasonable endeavours to provide the Customer with alternative green or similar environmental rights created under any legislation that replaces the REE Act and the associated regulations or schemes, on substantially similar basis as provided for in this clause 3.

- (d) For any supply of electricity after the *End Date*, Flow Power will no longer be obliged to ensure that any amount of the electricity sold under this agreement would be GreenPower accredited renewable electricity at the applicable *GreenPower Percentage*.

4. GreenPower Load Flex

- (a) Flow Power may impose an additional charge for the electricity supplied to the *Premises* in any Contract Year if:

- (i) the Actual Yearly Load for that Contract Year is more than the value of:

Estimated Yearly Load * (1 + Flex Factor) (**Upper Flex Limit**); or

- (ii) the Actual Yearly Load for that Contract Year is less than the value of:

Estimated Yearly Load * (1 – Flex Factor) (**Lower Flex Limit**).

- (b) The additional charge Flow Power may impose under clause 4(a)(i) is the greater of nil and an amount to be determined as follows:

$(LSR - GPR) * GPP * L * (AYL - UFL)$

where:

LSR is the LGC Spot Rate;

GPR is the *GreenPower Rate*;

GPP is the applicable *GreenPower Percentage* for the *Premises* for the relevant period;

L is the relevant distribution loss factor applicable in respect of the *Premises* under the National Electricity Rules;

AYL is the Actual Yearly Load for the Contract Year; and

UFL is the Upper Flex Limit as defined in clause 4(a)(i)

- (c) The additional charge Flow Power may impose under clause 4(a)(ii) is the greater of nil and an amount to be determined as follows:

$(GPR - LSR) * GPP * L * (LFL - AYL)$

where each of *GPR*, *LSR*, *GPP*, *L* and *AYL* has the same meaning as in clause 4(b) and *LFL* is the Lower Flex Limit as defined in clause 4(a)(ii).

- (d) If there is more than one *Premises*, *L* under clauses 4(b) and 4(c) is the load weighted average of the applicable distribution loss factor applicable in respect of each of the *Premises*, as fairly and reasonably calculated by Flow Power by reference to the amount of electricity supplied to each of the *Premises* in the relevant Contract Year.

- (e) Flow Power may include any additional charge under this clause 4 in the next bill issued under this agreement or in any later bill.

5. Early Termination

- (a) In accordance with the General Terms and Conditions, Flow Power is entitled in certain circumstances to terminate this agreement and charge the Customer an early termination fee.

- (b) If clause 5(a) applies, then, in addition to that early termination fee but without allowing Flow Power to recover the same loss twice, Flow Power may charge

the Customer a further early termination fee equal to the sum of:

- (i) all of the GreenPower Charges Flow Power estimates Flow Power would have received from the Customer for or in respect of electricity consumed over:

(A) if an *End Date* has been specified, the period from the date of termination of this agreement to the *End Date*; or

(B) if an *End Date* has not been specified, a 3 month period from the date of termination of this agreement,

less all the costs Flow Power estimates Flow Power would have incurred to procure the LGCs to comply with clause 3(a) over that period;

- (c) Relevant provisions of the General Terms and Conditions dealing with:

- (i) how Flow Power must calculate the amount of any early termination fee Flow Power is entitled to charge;

- (ii) information Flow Power must give to the Customer about any such fee; and

- (iii) the Customer's obligation to pay any such fee, apply equally with respect to any early termination fee Flow Power is entitled to charge under this clause, subject to any necessary adaptation.

Direct Debit Request

Details

Flow Power (we, us, our)	Name:	Progressive Green Pty Ltd trading as 'Flow Power'
	ABN:	27 130 175 343
	UIN:	User Identification Number 314011
	Address:	Ground floor, 109 Burwood Rd, Hawthorn, VIC 3122
	Email:	go@flowpower.com.au
	Phone:	1300 08 06 08
	Attention:	General Manager Energy Solutions

Customer (you, your)

Company Name:	_____
ABN:	_____
Address:	_____
Email:	_____
Phone:	_____
Attention:	_____

Electricity Sale Agreement

Reference Number:	_____
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Prior payment arrangements

This request and the Direct Debit Service Agreement that forms part of it supersede and replace any prior arrangements between you and us for payments of amounts under your electricity agreement with us.

Your authority to us and explicit informed consent

By submitting this request to us, you authorise and request and give your explicit informed consent to us to debit your account through the Bulk Electronic Clearing System (BECS) or to charge your credit card, as the case may be, for the amount of each bill we send you under your Electricity Sale Agreement with us after the date of this request, on the due date shown on the bill. You authorise us to verify the details of your account or credit card for direct debiting with your financial institution, and you authorise your financial institution to release to us information allowing us to verify those details.

Cheque or Savings Account

Complete the following details if you want us to direct debit your cheque or savings account:

Name of financial institution:	_____
BSB:	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Account number:	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Account in name of:	_____

Signed for and on behalf of Customer. If account is held jointly, all signatures are required:

_____ Signature	_____ Signature
_____ Name & Title	_____ Name & Title
Date:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/>

Credit Card

Complete the following details if you want us to charge your credit card:

Credit card:	Mastercard:	<input type="checkbox"/>
	Visa:	<input type="checkbox"/>
	American Express:	<input type="checkbox"/>
Credit card number:	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
Expiry date:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/>	
Credit card in name of:	<hr/> <hr/>	

Signed for and on behalf of Customer. If account is held jointly, all signatures are required:

<hr/> <hr/>	<hr/> <hr/>
Signature	Signature
<hr/> <hr/>	<hr/> <hr/>
Name & Title	Name & Title
Date:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/>

Direct Debit Service Agreement

1. Introduction

This is *your* Direct Debit Service Agreement with Progressive Green Pty Ltd trading as 'Flow Power' ABN 27 130 175 343 of Ground Floor, 109 Burwood Road Hawthorn Vic 3122 (Flow Power) (User Identification Number 314011). It explains what *your* obligations are under *your* direct debit arrangement with *us*. It also details what *our* obligations are to *you* under the arrangement.

Please keep this *agreement* for future reference. It forms part of the terms and conditions of *your Direct Debit Request* and should be read in conjunction with *your Direct Debit Request*.

2. Definitions

In this *agreement*:

account means the account held at *your financial institution* from which we are authorised to arrange for funds to be debited.

agreement means this Direct Debit Request Service Agreement between *you* and *us*.

banking day means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia.

credit card means the credit card which we are authorised to charge.

Direct Debit Request means the direct debit request between *us* and *you*.

due day means a day that payment by *you* to *us* is due.

payment means a particular transaction where a debit is made to *your account* or where *your credit card* is charged.

us or we means Flow Power.

you means the customer who has signed or authorised by other means the *Direct Debit Request*.

your financial institution means the financial institution nominated by *you* on the *Direct Debit Request* at which the *account* is maintained.

3. Debiting your account or charging your credit card

- By signing the *Direct Debit Request* or by providing *us* with a valid instruction, *you* have authorised *us* to arrange for funds to be debited from *your account* or to charge *your credit card*. *You* should refer to the *Direct Debit Request* and this *agreement* for the terms of the arrangement between *us* and *you*.
- We will only arrange for funds to be debited from *your account* or will only charge *your credit card* if we have sent to the address nominated by *you* in the *Direct Debit Request* a billing advice which specifies the amount payable by *you* to *us* and when it is due.
- If the *due day* falls on a day that is not a *banking day*, we may direct *your financial institution* to debit *your account* or charge *your credit card* on the following *banking day*. If *you* are unsure about which day *your account* has been or will be debited or on which *your credit card* has been or will be charged, *you* should ask *your financial institution*.

4. Amendments by us

We may vary any details of this *agreement* or the *Direct Debit Request* at any time by giving *you* at least fourteen (14) days written notice.

5. Amendments by you

You may change, stop or defer a *payment*, or terminate this *agreement* by:

- (a) writing to *us* at Flow Power PO Box 6074 Hawthorn VIC 3122;
- (b) by telephoning *us* on 1300 08 06 08 during business hours; or
- (c) arranging it through *your financial institution*, which is required to act promptly on *your* instructions.

In relation to the above reference to 'change', *your financial institution* may 'change' *your payment* only to the extent of advising *us* of *your* new *account* or *credit card* details.

If *you* terminate this agreement through *your financial institution*, *you* must provide *us* with written notice of the termination within 7 days. If *you* provide *us* with such notice of cancellation, *we* will no longer rely on the *Direct Debit Request*.

6. Your obligations

- (a) It is *your* responsibility to ensure that there are sufficient clear funds available in *your account* or on *your credit card* to allow a *payment* to be made in accordance with the *Direct Debit Request*.
- (b) If there are insufficient clear funds to meet a *payment*:
 - (i) *you* may be charged a fee and/or interest by *your financial institution*;
 - (ii) *you* may also incur fees or charges imposed or incurred by *us*; and
 - (iii) *you* must arrange for the *payment* to be made by another method or arrange for sufficient clear funds to be in *your account* or on *your credit card* by an agreed time so that *we* can process the *payment*.
- (c) *You* should check *your account* or *credit card* statement to verify that the amounts debited from *your account* or charged to *your credit card* are correct.

7. Dispute

- (a) If *you* believe that there has been an error in debiting *your account* or charging *your credit card*, *you* should notify *us* directly on 1300 08 06 08 and confirm that notice in writing with *us* as soon as possible so that *we* can resolve *your* query more quickly. Alternatively, *you* can take it up directly with *your financial institution*.
- (b) If *we* conclude as a result of our investigations that *your account* or *credit card* has been incorrectly debited or charged, *we* will respond to *your* query by arranging for *your financial institution* to adjust *your account* or *credit card* (including interest and charges) accordingly. *We* will also notify *you* in writing of the amount by which *your account* or *credit card* has been adjusted.
- (c) If *we* conclude as a result of our investigations that *your account* or *credit card* has not been incorrectly debited or charged, *we* will respond to *your* query by providing *you* with reasons and any evidence for this finding in writing.

8. Accounts and credit cards

You should check:

- (a) with *your financial institution* whether direct debiting is available from *your account* as direct debiting is not available on all accounts offered by financial institutions.
- (b) *your account* or *credit card* details which *you* have provided to *us* are correct by checking them against a recent *account* or *credit card* statement; and
- (c) with *your financial institution* before completing the *Direct Debit Request* if *you* have any queries about how to complete the *Direct Debit Request*.

9. Confidentiality

- (a) *We* will keep any information (including *your account* or *your credit card* details) in *your Direct Debit Request* confidential.
- (b) *We* will make reasonable efforts to keep any such information that *we* have about *you* secure and to ensure that any of *our* employees or agents who have access to information about *you* do not make any unauthorised use, modification, reproduction or disclosure of that information.
- (c) *We* will only disclose information that *we* have about *you*:
 - (i) to the extent specifically required by law; or
 - (ii) for the purposes of this *agreement* (including disclosing information in connection with any query or claim).

10. Notice

- (a) If *you* wish to notify *us* in writing about anything relating to this *agreement*, *you* should write to Flow Power PO Box 6074 Hawthorn VIC 3122.
- (b) *We* will notify *you* by sending a notice in the ordinary post to the address *you* have given *us* in the *Direct Debit Request*.

Any notice will be deemed to have been received on the third *banking day* after posting.