

# Solar Power Purchase Contract

## Contract Details

Item	Details
1	<b>Seller ('we', 'us', 'our')</b> AG Energy Pty Ltd ABN: 25 621 384 914
2	<b>Buyer ('you', 'your')</b> [insert full company name] ABN: [insert ABN]
3	<b>Site</b> [insert address]
4	<b>Maximum System Size</b> [XX] kW
5	<b>Price</b> [XX] cents per kWh, excluding GST, as adjusted for CPI in accordance with the Standard Terms and Conditions.
6	<b>Minimum Consumption</b> [XX] kWh per month
7	<b>Term</b> [XX] years from the Supply Commencement Date.
8	<b>Conditions Precedent</b> (a) [insert Buyer's Conditions Precedent, if any] (b) [insert Seller's Conditions Precedent, if any]
9	<b>Governing Law and Jurisdiction</b> New South Wales, Australia
10	<b>Notice Details</b> (a) Us: AG Energy Pty Ltd PO Box 64 Concord West NSW 2138 Email: terry.curtis@ag-energy.com.au Authorised Representative: Terry Curtis (b) You: [insert full company name] [insert address] Email: [insert] Authorised Representative: [insert]
11	<b>Initial Period End Date</b> [insert date] OR [XX] years after the Supply Commencement Date.
12	<b>Battery</b> [Included   Not included]
13	<b>Special Conditions</b> [insert any agreed amendments to standard terms or conditions or other agreed special conditions, e.g. provision of security or parent company guarantee from the Buyer if there are concerns with ability to satisfy financial obligations]
14	<b>Terms and Conditions</b> This contract is governed by the AG Energy Standard Terms and Conditions which are attached to, and form part of, this contract.

**EXECUTION**

**Date:**

Executed by AG Energy Pty Ltd in accordance with s127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director/Secretary (print)

Executed by the **[insert full company name]** in accordance with s127 of the *Corporations Act 2001* (Cth):

**A G E N E R G Y**  
\_\_\_\_\_  
Director

**E R G Y**  
\_\_\_\_\_  
Director/Secretary



\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director/Secretary (print)

**Attachment 1: AG Energy Standard Customer Contract**

ATTACHMENT 1 – AG ENERGY STANDARD TERMS AND CONDITIONS

**1 Conditions Precedent**

- (a) This contract (other than clause 1 and clauses 25, 29 and 30 which take effect on from and the date of this contract) is subject to and has no legal force or effect unless and until all the Conditions Precedent are satisfied or waived in accordance with clauses 1(c) and 1(d).
- (b) You must use your best endeavours to satisfy the Buyer Conditions Precedent and we must use our best endeavours to satisfy the Seller Conditions Precedent as soon as reasonably practicable and in any event by the Conditions Precedent Sunset Date.
- (c) You must provide us with notice in writing upon the satisfaction of each Buyer Conditions Precedent.
- (d) We must provide you with notice in writing upon the satisfaction of each Seller Condition Precedent or waiver of the Conditions Precedent.
- (e) The Conditions Precedent may be waived by us in our absolute discretion by giving you notice in writing.
- (f) If any of the Conditions Precedent have not been satisfied or waived by the Conditions Precedent Sunset Date, then either party may terminate this contract by notice in writing to the other party with immediate effect, following which:
  - (i) this contract will be of no further legal force or effect; and
  - (ii) neither party will have any liability to the other party arising out of or in connection with this contract or its termination.

**2 Purchase, Sale and Supply**

- (a) We agree to supply and sell to you all electricity generated from the System and delivered to the Connection Point for the Price from the Supply Commencement Date in accordance with the terms of this contract.
- (b) You agree to purchase from us all electricity generated from the System and delivered to the Connection Point for the Price from the Supply Commencement Date in accordance with the terms of this contract.
- (c) All electricity generated from the System will be delivered to the Connection Point.
- (d) Title to, risk in relation to, and control of the electricity from the System passes to you at the Connection Point.

**3 Term**

Subject to clause 1(a), this contract commences on the Effective Date and continues for the duration of the Term, unless terminated earlier in accordance with the terms of this contract.

**4 Construction and Commissioning**

- (a) We will obtain all Authorisations necessary for the design, construction, operation and maintenance of the System.
- (b) You must provide all reasonable assistance to us in obtaining all Authorisations necessary for the design, construction, operation and maintenance of the System.
- (c) We will design, construct, operate and maintain the System so that it:
  - (i) complies with all Laws and Authorisations applicable to the design, construction and commission of the System;
  - (ii) complies with the Site Licence; and
  - (iii) subject to relevant Authorisations, has a generating capacity of up to the Maximum System Size.

- (d) We will do all things reasonably necessary to achieve the Supply Commencement Date as soon as reasonably practicable. We will inform you about our progress in achieving the Supply Commencement Date.
- (e) We will provide you with notice in writing of the Supply Commencement Date.
- (f) Notwithstanding our rights under clause 18 of this contract, we reserve the right to modify, revise or reduce the size of the System as we reasonably determine if you do not meet at least 70% of the Minimum Consumption.

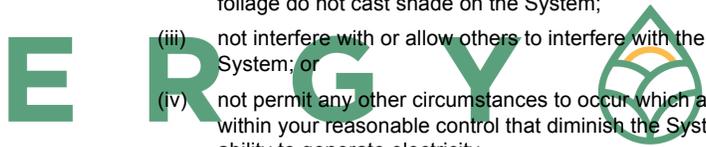
**5 Operations and Maintenance**

- (a) We will operate and maintain the System:
  - (i) at our cost, except to the extent any damage is caused by your act or omission or the act or omission of others acting within your control or on the Site with your consent; and
  - (ii) in accordance with good industry practice.
- (b) You must do all things necessary to allow us to operate and maintain the System in accordance with this contract.
- (c) You must:
  - (i) not and must not permit others to, modify, improve, revise or add to the System in any way or do anything that would cause the System not to operate as normal;
  - (ii) take reasonable steps to ensure that trees or any other foliage do not cast shade on the System;
  - (iii) not interfere with or allow others to interfere with the System; or
  - (iv) not permit any other circumstances to occur which are within your reasonable control that diminish the System's ability to generate electricity.
- (d) You must not construct structures on or modify the Site in a way that casts shade on or impacts the System unless you:
  - (i) first consult with us;
  - (ii) relocate the System to a more suitable location to be agreed between us on the Site at your cost and expense; and
  - (iii) compensate us for electricity you would have purchased but for the relocation of the System under this clause 5(d), during the time the System is not generating electricity due to the relocation, calculated in accordance with clause 5(e).
- (e) Compensation payable by you under clause 5(d) is to be calculated on the basis of:
  - (i) the amount of electricity generated from the System and supplied to the Site at the Connection Point over the equivalent period in the previous year; and
  - (ii) if the period (or a part of the period) during which the System is not generating electricity falls within the first 12 months after the Supply Commencement Date, the Minimum Consumption.

**6 Price Adjustment**

- (a) The Price for each Financial Year will be adjusted on 1 July of each year following the date of this contract in accordance with the following formula:

$$P = \frac{A \times B}{C}$$



where:

P means the Price for a Financial Year;

A means the Price for the preceding Financial Year;

B means the most recently published quarterly CPI prior to the commencement of the Financial Year; and

C means the most recently published quarterly CPI prior to the commencement of the preceding Financial Year (except in respect of the first 1 July during the Term, C means the most recently published quarterly CPI prior to the date of execution of the contract),

provided that if the Price for a Financial Year (determined in accordance with the above formula) is less than the Price for the previous Financial Year, the Price will remain the same as the Price for the previous year.

- (b) If our costs of complying with our obligations under this contract increase or decrease because of a Change in Law, we may (acting reasonably) pass through the increase or decrease in costs associated with the Change in Law by increasing or decreasing the Price. We may give you a notice stating the proposed adjustment in the Price, which adjustment will be based on reasonable methods of calculation, estimation or allocation and specifying the nature of the Change in Law. The adjustment to the Price will take effect on and from the date specified in that notice, which may be retrospective.
- (c) If an adjustment under clause 6(b) results in the Price increasing by 5% or more, you may terminate this contract and clause 18 will apply.

## 7 Billing and Payment

- (a) We will collect data from the Metering Equipment in order to determine the amount of electricity generated by the System and delivered to the Connection Point, however, we may estimate the data in accordance with clause 8(c).
- (b) If, in accordance with clause 8(c), we estimate the amount of electricity generated by the System and delivered to the Connection Point to calculate a bill, we will:
- state on the bill that it is based on an estimation; and
  - when the Metering Equipment is later read, adjust the Price to reflect the difference between the estimate and the data actually collected.
- (c) Subject to and without limiting clause 7(d), we will issue a bill to your nominated email address within 5 Business Days after the start of each calendar month during the Term for all electricity (in kWh) generated from the System and supplied to the Site at the Connection Point for the previous calendar month.
- (d) If the amount of electricity generated by the System and supplied to the Site at the Connection Point for any calendar month during the period starting on the Supply Commencement Date and ending on the Initial Period End Date is lower than the Minimum Consumption, the bill issued for that calendar month under clause 7(c) will be for the Minimum Amount.
- (e) Subject to clause 7(g), you must pay the amount shown on the bill to us in full within 10 Business Days from the date on which we issue the bill.
- (f) If you do not comply with clause 7(e), interest will accrue daily on any outstanding amount at:
- a rate of 5% per annum during the first six months after the Supply Commencement Date; and
  - the BBSW Rate plus 2% per annum thereafter,
- from the date which is 10 Business Days from the date on which we issue the bill under clause 7(c).
- (g) If you (acting reasonably) dispute whether a part or the whole of a bill issued by us is payable:
- you may give to us a written notice of Dispute which specifies the details of the amount that you dispute and

the reasons for the Dispute, as soon as practicable after the Dispute arises (whether before or after you have paid the bill);

- if the Dispute relates to only part of a bill, you must pay the undisputed amount in accordance with clause 7(d);
- within 10 Business Days after receipt of a notice under clause 7(g)(i), we will review the bill and notify you of the outcome of our review;
- if the parties are unable to resolve the Dispute regarding the amount invoiced within a further 3 Business Days after the date you receive a notice under clause 7(g)(iii), either party may invoke the dispute resolution process in clause 19;
- despite a Dispute arising between the parties, the parties must continue to perform and comply with their respective obligations under this contract during the period of the Dispute, except that any failure to pay the disputed amount will not be regarded as a breach of this contract until the Dispute is resolved; and
- if the parties agree, or a final decision is made or reached, in respect of the Dispute that an amount is payable:
  - by you, we will add that amount on your next bill; and
  - by us to you, we will deduct that amount from your next bill.

## 8 Metering

- (a) We will, at our cost, install and maintain the Metering Equipment in accordance with good industry practice.
- (b) We will bear the costs invoiced by your retailer or distribution services provider for any works at the Site required to connect the System to the area distribution network, including any standard works necessary to install or upgrade your grid meter, but only where the works are not otherwise required by your retailer or distribution services provider irrespective of the connection of the System.
- (c) If the Metering Equipment cannot be read or if the metering data is not obtained (for example, if the Metering Equipment breaks down or is faulty), we may estimate readings from the Metering Equipment in accordance with good industry practice.

## 9 Vacating the Site

- (a) If you are vacating or selling the Site for any reason, you must:
- give us a notice and provide your forwarding address to us for your final bill; and
  - use reasonable endeavours to novate this Contract to the purchaser or incoming occupier of the Site in accordance with clause 22.
- (b) When we receive the notice under clause 9(a), we will use our best endeavours to arrange for the reading of the Metering Equipment on the date specified in your notice (or as soon as reasonably practicable after that date) and send a final bill to you at the forwarding address stated in your notice.
- (c) You will continue to be responsible for any bills incurred in relation to the Site until your contract ends in accordance with clause 18 of this contract or we receive notice of the novation of this Contract in accordance with clause 22.

## 10 Title and security interests in the System

- (a) We retain legal and beneficial title to the System for the duration of the Term unless and until title is transferred pursuant to clause 11 of this contract.
- (b) If a party determines that this contract (or any transfer or transaction in connection with it) is or contains a security interest, each party agrees to do all things necessary (such as obtaining consents, signing and producing or procuring the signing and production of documents, and providing information) for the purpose of:

- (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (ii) enabling the party benefitted by the security interest (**Benefitted Party**) to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Benefitted Party; or
- (iii) enabling the Benefitted Party to exercise rights in connection with the security interest,

in each case at the Benefitted Party's cost.

#### 11 Transfer of title in the System

- (a) Title to the System automatically transfers to you upon the expiry of the Term free of any encumbrances, unless:
  - (i) this contract has been terminated earlier in accordance with clause 18; or
  - (ii) there is any outstanding Default that has not been remedied or is not reasonably capable of being remedied in accordance with clause 18(a),

in which case clause 10(a) applies.

- (b) The parties must do all acts necessary, including executing all transfer documentation, to effect the transfer of title in the System within 90 days of the expiry of the Term.

#### 12 Ownership of Renewable Energy Certificates

- (a) You acknowledge and agree that:
  - (i) any Renewable Energy Certificates created or produced from, or by reference to, the System will be owned by us and you have no rights to any Renewable Energy Certificates; and
  - (ii) you will provide any information, and take all reasonable steps that we or any person nominated by us may reasonably require to create or register Renewable Energy Certificates.

#### 13 Insurance

- (a) From the Effective Date and for the duration of the Term:
  - (i) we must maintain the following insurances with a reputable insurer:
    - (1) public liability insurance for a minimum amount of \$10 million in any one occurrence and in the aggregate; and
    - (2) any other insurance as required by Law; and
  - (ii) you must effect and maintain the following insurances with a reputable insurer:
    - (1) property insurance for the full replacement value of the System;
    - (2) public liability insurance for a minimum amount of \$10 million in any one occurrence and in the aggregate; and
    - (3) any other insurance as required by Law.
- (b) Each party must:
  - (i) subject to clause 13(c), use reasonable endeavours to procure that the other party is a beneficiary under the insurance in clause 13(a)(i) or 13(a)(ii) (as applicable); and
  - (ii) upon request by the other party, provide the other party with certificates of currency and copies of policy details as evidence of the insurances required to be effected and maintained under clause 13(a).
- (c) You must ensure that we are named as a named insured party under the insurance in clause 13(a)(ii)(1), and that we are entitled to all insurance payout proceeds from that insurance.

- (d) If the System is damaged or destroyed and we receive the insurance payout proceeds from the insurance maintained by you under clause 13(a)(ii)(1), we may use such proceeds to repair, reinstate or replace the System.

#### 14 Your Acknowledgements

- (a) You acknowledge and agree that:
  - (i) the System is an alternative source of energy supply to the Site which is intended to supplement, but not replace, your primary source of electricity supply from your electricity retailer;
  - (ii) this contract is separate to and is not related to your primary supply contract with your electricity retailer and we do not control the quality, frequency or continuity of the electricity supply to the Site from your energy retailer or any other sources;
  - (iii) the quality and reliability of your electricity supply and the quality, pressure and continuity of your solar electricity supply is subject to a variety of factors that are beyond our control as your solar electricity supplier, including accidents, emergencies, weather conditions, the conduct of any works necessary to repair or maintain the System, health and safety reasons, vandalism and any Force Majeure Event, system demand, the technical limitations of the distribution system, the acts of other persons (such as your distributor), including at the direction of a relevant Government Agency, and other circumstances beyond our reasonable control or otherwise as permitted or required by Law; and
  - (iv) to the maximum extent permitted by Law, we make no warranties, whether express or implied, in relation to the performance of our obligations, or the supply of electricity, under this contract, except for the warranties contained in this contract.
- (b) Clause 14(a) continues to apply notwithstanding the expiry or termination of this contract.

#### 15 Representations and Warranties

- (a) As at the date of this contract, each party represents and warrants to the other party that:
  - (i) it has full corporate power and lawful authority to execute and deliver this contract and to perform or cause to be performed its obligations under this contract;
  - (ii) this contract constitutes a legal, valid and binding obligation enforceable in accordance with its terms;
  - (iii) as at the date of this contract, this contract does not conflict with or result in the breach of any Law affecting its ability to enter into this contract or any material term or provision of any contract or deed or any writ, order or injunction, judgement, or Law to which it is a party or is subject or by which it is bound;
  - (iv) as at the date of this contract and to its knowledge there are no actions, claims, proceedings or investigations pending or threatened against it or by, against or before any person which it may have a material effect on the subject matter of this contract; and
  - (v) if it is government-owned entity, it is contracting in its commercial capacity and waives all rights to immunity from applicable Laws.
- (b) As at the date of this contract, you warrant that you:
  - (i) are a commercial enterprise and the Site will be used only for commercial purposes; and
  - (ii) will not use electricity generated by the System for residential purposes.
- (c) The representations and warranties given in clauses 15(a) and 15(b):
  - (i) are continuing representations and warranties that will not merge on, and will remain in full force and effect after the date of this contract; and



- (ii) are independent of the other representations and warranties given under or in connection with this contract.
- (d) For as long as we are a Clean Energy Council approved retailer, we will comply with the Solar Retailer Code of Conduct, which can be accessed via the Clean Energy Council website.
- (e) Each party acknowledges that the other party has executed this contract in reliance on the representations and warranties made to it in this clause 15.

## 16 Indemnities

- (a) You indemnify us against any Loss or Claim arising out of your acts or omissions or acts or omissions of others acting within your control or on the Site with your consent, whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise in relation to this contract, except to the extent caused by the negligence or wrongful act or omission by us or our employees, agents or contractors or a breach of this contract by us.
- (b) We indemnify you against any Loss or Claim arising out of our acts or omissions, whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise in relation to this contract, except to the extent caused by your negligence or wrongful act or omission, or the negligence or wrongful acts or omission of your employees, agents or contractors or a breach of this contract by you.
- (c) Subject to clause 17, the indemnities in this contract are continuing, separate and independent obligations of the parties from their other obligations and survive termination of this contract.
- (d) It is not necessary for a party to incur an expense before enforcing a right of indemnity in connection with this contract.

## 17 Liability

- (a) Notwithstanding any other provision of this contract but subject to clause 17(c):
  - (i) neither party will be liable to the other party for any Indirect Loss arising out of or in connection with this contract, in equity, under statute, tort (including negligence) or otherwise at Law; and
  - (ii) to the extent permitted by Law, including the Australian Consumer Law, the aggregate liability of a party to the other party in respect of any Loss or Claim arising out of or in connection with this contract, in equity, under statute, tort (including negligence) or otherwise at Law during a Financial Year is limited to \$10,000.
- (b) We will not be liable to you for any Loss or Claim arising from:
  - (i) the quality, frequency or continuity of the electricity supply to the Site from the System, your energy retailer or any other source;
  - (ii) any interruption or reduction of the supply of electricity from the System from time to time due to distribution network issues, the conduct of any works necessary to repair or maintain the System, health and safety reasons, other circumstances beyond our reasonable control or otherwise as permitted or required by Law; and
  - (iii) total or partial failure to supply electricity to the Site.
- (c) Clauses 17(a) and (b) do not limit or exclude a party's liability in respect of:
  - (i) claims by any person against the party in respect of personal injury, death, loss or damage to any property or any other third party liability;
  - (ii) events or circumstances in respect of which insurance proceeds would have been available but for a failure of the party to effect and maintain, comply with the terms of, or diligently pursue a claim under, any insurance policy

required to be taken out and maintained by the party under this contract;

- (iii) events or circumstances in respect of which insurance proceeds are recovered by the party pursuant to any insurance policy required to be taken out by the party under this contract; or
- (iv) the Wilful Default of a party,

## 18 Default and Termination

- (a) If a party commits a Default, the other party may serve a Default Notice on the defaulting party specifying:
  - (i) in the case of a Default which is reasonably capable of remedy, a reasonable time period (not less than 20 Business Days) from the date of the Default Notice within which the defaulting party must remedy the Default; and
  - (ii) in the case of a Default which is not reasonably capable of remedy, whether it will exercise its termination right under clause 18(d).
- (b) If:
  - (i) you have failed to pay a bill in accordance with clause 7(e); or
  - (ii) you have committed a Default and we have issued a Default Notice under clause 18(a),

we may suspend the operation of the System and disconnect or otherwise cease the electricity supply from the System to the Connection Point until you remedy the Default to our reasonable satisfaction.

- (c) Following the receipt of a Default Notice, the defaulting party must diligently take all reasonable steps to remedy the Default to the reasonable satisfaction of the other party within the timeframe specified in clause 18(a)(i).
- (d) A party has a right to terminate this contract by written notice to the other party where:
  - (i) in the case of a Default which is reasonably capable of remedy, that party is the non-defaulting party and the period of time specified in a Default Notice issued by it has expired and, where applicable, the defaulting party has failed to remedy the relevant Default to its reasonable satisfaction; and
  - (ii) in the case of a Default which is not reasonably capable of remedy, a reasonable period (which must not be less than 15 Business Days) from the date of the Default Notice has passed.
- (e) If this contract terminates:
  - (i) on or before the Initial Period End Date and:
    - (1) you are the defaulting party; or
    - (2) clause 6(c) applies,
 then:
    - (3) we may remove the System from the Site at your sole cost and expense; and
    - (4) you must pay us:
      - (a) our reasonable costs and expenses of removing the System from the Site; and
      - (b) the sum of the Minimum Amount (pro-rated for part months) for each month and part of a month in the period between the date of termination and the Initial Period End Date (inclusive),
 (together, the **Early Termination Fee**) which will be immediately due and payable to us upon termination; or
  - (ii) on or before the Initial Period End Date and
    - (1) you are not the defaulting party; and

(2) clause 6(c) does not apply; or  
after the Initial Period End Date, then:

(3) we may remove the System from the Site at our sole cost and expense as soon as reasonably practicable.

- (f) Any expiry or termination of this contract does not affect any rights of the parties which may have accrued before the date of expiry or termination, including our rights under clause 18(e).
- (g) This clause 18 does not limit a party's rights at law or in equity in respect of any breach of this contract by the other party.

## 19 Dispute Resolution

- (a) A Dispute arises when one party issues a notice to the other party notifying it of the Dispute (**Dispute Notice**).
- (b) A party must not commence court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause 19.
- (c) If a party commences court proceedings in contravention of this clause 19, the other party need not comply with their obligations under this clause 19 in respect of the relevant Dispute.
- (d) Our standard dispute resolution process applies in respect of any Dispute under or relation to this contract. We will separately notify you of that process, but it relevantly includes the following steps:
- (i) the parties' respective senior representatives must use their reasonable endeavours to resolve the Dispute. Such meeting must take place no later than 10 Business Days after receipt of the Dispute Notice; and
  - (ii) if the parties are unable to resolve the Dispute pursuant to clause 19(d), either party may commence court proceedings to resolve the Dispute.

## 20 Notices

- (a) Any communication (including each notice, request, demand, consent or approval) under or in connection with this contract:
- (i) must be in writing and signed by the sender (in the case of email, set out the full name of the sender);
  - (ii) must be addressed to the attention of the authorised representative of the party as set out in Item 10 of the Contract Details (or substitute representative as notified by a party to the other party from time to time);
  - (iii) must be delivered to the intended recipient by prepaid post, or by hand or email to the address or email addresses as set out in Item 10 of the Contract Details (or substitute address or email address as notified by a party to the other party from time to time); and
  - (iv) will be taken as having been received by the other party:
    - (1) (in the case of delivery by hand) on delivery;
    - (2) (in the case of prepaid post) on the third Business Day after the date of posting;
    - (3) (in the case of email) when it is dispatched by the sender,but in each case, if the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

## 21 Force Majeure

- (a) If, as a result of a Force Majeure Event, a party is prevented in whole or in part from performing its obligations under this contract:
- (i) it must promptly notify the other party setting out:
    - (1) the obligations it cannot perform;
    - (2) the details of the Force Majeure Event; and

(3) the measures proposed to remedy or abate the Force Majeure Event; and

- (ii) following a notice under clause 21(a)(i), and while the Force Majeure Event continues, the obligations that cannot be performed because of the Force Majeure Event will be suspended; and
  - (iii) it must remedy the Force Majeure Event to the extent reasonable practicable and resume performance of its obligations as soon as reasonable possible.
- (b) The party that is prevented from carrying out its obligations under this contract as a result of Force Majeure Event must take all action reasonably practicable to mitigate any Loss suffered by a party as a result of its failure to carry out its obligations under this contract.
- (c) The parties have no liability for any Loss or Claim arising from a Force Majeure Event, however obligations to pay money due otherwise under this contract are not suspended because of a Force Majeure Event.

## 22 Assignment

- (a) You may not assign, novate or otherwise deal with this contract or assign any payment or any other right, benefit or interest under this contract without our prior written consent (which must not be unreasonably withheld or delayed).

## 23 Set off

A party may deduct from any payment to the other party any amount which is due and payable from the other party to it pursuant to this contract.

## 24 GST

- (a) All payments referred to in this contract are exclusive of GST unless expressly stated otherwise.
- (b) Unless the context requires otherwise, words and phrases used in this clause 23 that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.
- (c) If GST is payable, or notionally payable, on a supply made under or in connection with this contract, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**).
- (d) Where any indemnity, reimbursement or similar payment under this contract is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.
- (e) If an adjustment event occurs in relation to a supply made under or in connection with this contract, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

## 25 Confidentiality

- (a) Subject to clause 25(b), neither party may disclose Confidential Information of the other party without the prior written consent of the other party (which consent must not be unreasonably withheld).
- (b) Either party may disclose Confidential Information of the other party which:
- (i) at the time of disclosure is in the public domain (other than as a result of a breach by a party to this contract of this clause 25);
  - (ii) is required to be disclosed:
    - (1) for the purposes of performing its obligations under this contract;
    - (2) to its professional advisers, financiers or consultants if each recipient of Confidential

Information agrees to keep the Confidential Information confidential; or

(3) by Law;

- (iii) in our case, is to any Related Body Corporate of ours, or to any shareholder or potential shareholder or purchaser of ours or a Related Body Corporate of ours; or
  - (iv) is necessary for the purpose of obtaining any Authorisation; or
  - (v) is required to be disclosed to the Licensor under the Site Licence if the Licensor under the Site Licence is not the Buyer.
- (c) Either party must return to the other party any Confidential Information of the other party on demand.
- (d) This clause 25 survives the termination or expiry of this contract.

## 26 Entire Contract

This contract and the Site Licence where the Buyer also is the Licensor, contain the entire agreement between the parties with respect to its subject matter. This contract and the Site Licence, where the Buyer also is the Licensor, set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. Neither party has relied on or is relying on any other Conduct in entering into this contract and completing the obligations contemplated by it.

## 27 Governing Law and Jurisdiction

- (a) This contract is governed by the laws of the jurisdiction set out in item 9 of the Contract Details.
- (b) In relation to the contract and related non-contractual matters, the parties irrevocably submit to the exclusive jurisdiction of the courts of the jurisdiction set out in item 9 of the Contract Details.

## 28 General

- (a) If any provision of this contract is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by Law, be and continue to be valid and enforceable.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) A variation to this contract must be in writing and signed by the parties.
- (d) This contract may be executed in any number of counterparts which, when taken together, constitute one instrument.

## 29 Definitions

- (a) **Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.
- (b) **Authorisations** means any approval, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarization, permit, registration or waiver by any Government Agency, and includes any renewal of, or variation to, any of them.
- (c) **Battery**, if marked as being included in Item 12 of the Contract Details, means the battery or batteries to be installed and maintained on the Site in accordance with the terms of the Site Licence and connected to the rest of the System.
- (d) **BBSW Rate** for a period means the Bank Bill Swap Rate.

- (e) **Business Day** means a day that is not a Saturday, Sunday or Public Holiday in the jurisdiction set out in item 9 of the Contract Details.
- (f) **Buyer** means the party set out in Item 2 of the Contract Details.
- (g) **Buyer Conditions Precedent** means the conditions precedent (if any) set out in Item 8(a) of the Contract Details.
- (h) **Change in Law** means a change to any Law that specifically requires us to implement or perform new or additional obligations or implement changes to the System, or otherwise imposes new or modified reporting, record keeping, publication, training or compliance obligations on us.
- (i) **Claim** means any claim, action, demand or proceeding by any party or a third party against the other party for Loss or other relief under, arising out of, or in connection with this contract or the System.
- (j) **Conditions Precedent** means the Buyer Conditions Precedent and the Seller Conditions Precedent.
- (k) **Conditions Precedent Sunset Date** means the date which is 3 months after the date of this contract or such later date as is agreed by the parties in writing.
- (l) **Confidential Information** means, in relation to a party to this contract, information relating to a party's business, computer systems or affairs, and includes any:
- (i) trade secrets, know-how, scientific and technical information;
  - (ii) product, customer, marketing or pricing information;
  - (iii) information in relation to, and the terms of, this contract; and
  - (iv) any other information which a party notifies the other party is confidential, or which the party knows or ought to know is confidential.
- (m) **Connection Point** means the physical point at which electricity generated from the System is supplied to the Site.
- (n) **Consumer Price Index or CPI** means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics (or such other index which is consistent with the Consumer Price Index if the Consumer Price Index is no longer published).
- (o) **Contract Details** means the 'Contract Details' of this contract as attached to this contract.
- (p) **Default** means:
- (i) a party fails to effect or maintain insurance (or provide evidence of insurance) required to be effected and maintained by it under this contract;
  - (ii) a party has failed to pay an amount that is due and payable under this contract to the other party;
  - (iii) in respect of you only,
    - (1) you sell the Site without our prior written consent;
    - (2) you lose the exclusive right to occupy and enjoy the Site;
    - (3) the Site Licence is terminated;
    - (4) you breach your obligations under the Site Licence;
    - (5) there has been illegal or fraudulent use of energy at the Site;
  - (iv) an Insolvency Event occurs in respect of a party; or
  - (v) a party otherwise commits any breach of a material obligation under this contract.
- (q) **Default Notice** means a notice served under clause 18(a), which specifies that it is a Default Notice.
- (r) **Dispute** means a genuine dispute or difference of opinion between the parties regarding this contract.

- (s) **Early Termination Fee** means the amount payable by you under clause 18(e)(i)(4) of this contract.
- (t) **Effective Date** means the date on which all Conditions Precedent have been waived or satisfied.
- (u) **Financial Year** means the 12 month period commencing on 1 July of a year and ending on 30 June of the subsequent year.
- (v) **Force Majeure Event** means an event or circumstances which is beyond the reasonable control and without the fault or negligence of the party affected and which, by the exercise of reasonable care and diligence, the party affected was unable to prevent or overcome.
- (w) **Government Agency** means a government or a governmental, semi-governmental or judicial entity or authority.
- (x) **GST** means the goods and services tax levied under *A New Tax System (Goods and Services) Tax Act 1999* (Cth) and includes any replacement or subsequent similar tax, or for any goods or services provided or performed outside of Australia, any goods and services tax, value added tax or similar tax levied in respect of any supply in the relevant jurisdiction.
- (y) **Indirect Loss** means any Loss for business interruption, loss of use, generation or production, loss of actual or anticipated profit revenue, or opportunity or loss of contract (other than this contract) or reputation.
- (z) **Initial Period End Date** means the date set out in Item 11 of the Contract Details.
- (aa) **Insolvency Event** means where:
- (i) a party is, or informs the other party or any of their creditors that it is, insolvent under administration, insolvent or unable to pay its debts as and when they fall due;
  - (ii) a party enters into a composition or arrangement with its creditors or calls a meeting of creditors to enter into a composition or arrangement;
  - (iii) a party takes or has instituted against it an action or proceedings whether voluntary or compulsory which may result in the winding up of that party and that application or order is not stayed, withdrawn or otherwise disposed of within 14 days of the application or order;
  - (iv) a party goes into liquidation, provisional liquidations or is under administration; or
  - (v) an act is done or an event occurs which, under the laws from time to time of a country having jurisdiction in relation to a party has an analogous or similar effect to any of the events described in subclauses (i) to (iv).
- (bb) **Laws** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation and includes:
- (i) the Australian Consumer Law;
  - (ii) the National Electricity Law;
  - (iii) the National Electricity Rules; and
  - (iv) the National Energy Retail Law, as implemented in each applicable State and Territory.
- (cc) **Licensor** means the party referred to as such in the Site Licence and includes its successors and assigns, and where the context permits includes its agents and employees.
- (dd) **Loss** means losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.
- (ee) **Metering Equipment** means the equipment required to measure the quantity of electricity generated from the System and supplied to the Site at the Connection Point, including the rate at which that energy is supplied.
- (ff) **Maximum System Size** means the maximum size of the System as set out in Item 4 of the Contract Details.
- (gg) **Minimum Amount** with respect to a month means the Minimum Consumption multiplied by the Price to be billed in accordance with clause 7(d) and/or clause 18(e).
- (hh) **Minimum Consumption** means the minimum amount of electricity per month, measured in kWh per month, generated by the System and consumed by you as set out in Item 6 of the Contract Details.
- (ii) **National Electricity Law or NEL** means the 'National Electricity Law' set out in the Schedule to the National Electricity (South Australia) Act 1996 (SA) as it applies to New South Wales.
- (jj) **National Electricity Rules** means the National Electricity Rules as defined in the NEL.
- (kk) **National Energy Retail Law** means the Law of that name that is applied by each participating State and Territory.
- (ll) **Price** means the price set out in Item 5 of the Contract Details, as adjusted in accordance with clause 6.
- (mm) **Related Body Corporate** has the meaning attributed to that term in the *Corporations Act 2001* (Cth).
- (nn) **Renewable Energy Certificate(s)** means any renewable energy certificate(s) as defined in the *Renewable Energy (Electricity) Act 2000* (Cth) and the *Renewable Energy (Electricity) Regulations 2001* (Cth) (or any replacement legislation or scheme), or any other right, credit, certified emissions reduction unit, off-set, tradeable unit, allowance, concession, permit or benefit (other than a feed-in tariff from your retailed for the sale of electricity once that electricity has passed the Connection Point), generated or derived from the System.
- (oo) **Seller** means AG Energy Pty Ltd, as set out in Item 1 of the Contract Details.
- (pp) **Seller Conditions Precedent** means the conditions precedent (if any) set out in Item 8(b) of the Contract Details.
- (qq) **Site** means the premises specified in Item 3 of the Contract Details.
- (rr) **Site Licence** means the licence granted to us or any Related Body Corporate of ours which grants the necessary rights of access to the Site to permit us to install, operate and maintain the System at the Site for the Term and remove the System upon expiry or termination of this contract or where otherwise permitted under this contract.
- (ss) **Supply Commencement Date** means the date on which electricity is first generated from the System and is available to be supplied to you at the Connection Point.
- (tt) **System** means the solar photovoltaic electricity generation system of up to the Maximum System Size and any Battery to be installed and maintained on the Site in accordance with the terms of the Site Licence which may consist of PV panels, inverters, mounts, electrical transformer, cables, switchgear and other associated equipment and improvements necessary to generate and transmit electricity.
- (uu) **Term** means the term of supply of electricity generated by the System to you, measured in years from the Supply Commencement Date, as set out in Item 7 of the Contract Details.
- (vv) **Wilful Default** means:
- (i) an intentional or reckless act or omission by or on behalf of a party which that party or its representatives knew or ought reasonably to have known would be a breach of its obligations under this contract or at law or in equity, or would likely result in the other party suffering Loss; or
  - (ii) a fraudulent act or omission by or on behalf of a party.

- (a) In this contract, unless expressly stated otherwise:
- (i) words importing the singular include the plural and vice versa;
  - (ii) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
  - (iii) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit or schedule to, this contract and a reference to this contract includes any annexure, exhibit and schedule;
  - (iv) a reference to \$ or dollars means Australian dollars;
  - (v) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute; and
  - (vi) a reference to a party to a document includes that party's successors and permitted assigns and that party's employees, agents, consultants and contractors.
- (b) The use of the words "includes", "including" or similar expressions in this contract do no limit what else is included.
- (c) Headings and bolding are for convenience only and do not affect the interpretation of this contract.

**A G E N E R G Y**

