

# Flow Business

## Market Retail Contract – Agreement Terms

Effective 1 November 2024

## General Terms and Conditions

### 1. Background

#### 1.1 Parties

This contract is between:

- (a) Progressive Green Pty Ltd trading as 'Flow Power' (ABN 27 130 175 343) ('we', 'us', 'our'); and
- (b) the customer identified in the Product Terms ('you', 'your').

#### 1.2 Scope of contract

This is a market retail contract. Under this Agreement, we will sell electricity to you at your Supply Address. You have a separate agreement with us for each Supply Address if we are your retailer for more than one Supply Address. For each agreement we have with you, it includes:

- (a) these Agreement Terms;
- (b) the Product Terms;
- (c) the Feed-in Tariff Terms; and
- (d) any other applicable terms and conditions for your product.

#### 1.3 Eligibility

- (a) You are eligible for this Agreement if you and your Supply Address satisfy any eligibility criteria as set out in our offer.
- (b) We may, by written notice to you, end or change this Agreement if you are no longer eligible or if information available to us or an assumption we have made (including about your distribution area, network tariff or meter) is incorrect or no longer correct. If we change the Agreement in these circumstances, we may offer you a new plan and/or vary your Charges in accordance with clause 8, and you can choose to immediately end this Agreement without penalty by letting us know.

### 2. Small Customers

- (a) This Agreement applies to Small Customers. As of the date of this Agreement, the Regulatory Requirements provide that you are a Small Customer if:
  - (i) you are a Residential Customer; or
  - (ii) you are a Business Customer who is a Small Customer.
- (b) Whether you are a Small Customer is determined by how much electricity you consume in a year and your Distributor. You must notify us if the amount of energy you use changes materially as you may change from being a Small Customer to a Non-Small Customer.

### 3. Commencement of this Agreement

#### 3.1 Cooling off period

- (a) This Agreement has a cooling off period of 10 Business Days and you may cancel this Agreement before this

period ends. The cooling off period starts from the Acceptance Date or the date you receive a copy of this Agreement in accordance with the Regulatory Requirements (whichever is later).

- (b) If we have provided new connection services at your request and you cancel this Agreement during the cooling off period, we may still charge you any applicable connection charges.

#### 3.2 Commencement

- (a) This Agreement commences on the Acceptance Date.
- (b) We will begin to sell you electricity on the Supply Commencement Date which can be:
  - (i) the end of the applicable cooling off period;
  - (ii) the date your Supply Address transfers to us from another retailer; or
  - (iii) any other date agreed between us.

### 4. The transfer

- (a) If you are currently with another retailer for your Supply Address, we will arrange for the transfer of your Supply Address to us. You agree that we can take all necessary actions in connection with the transfer. If both of us agree, the transfer date (and the Supply Commencement Date) may be a date in the past.
- (b) We may stop the transfer and cancel this Agreement before the transfer is completed:
  - (i) if the transfer has not been completed within three months of the Acceptance Date;
  - (ii) if any information you have given us or included in the Product Terms is not correct; or
  - (iii) if you fail to meet our credit requirements.

If any of the above occurs, we will give you written notice.

### 5. Ending this Agreement

#### 5.1 When this Agreement ends

This Agreement is ongoing until either party ends it in accordance with this Agreement.

#### 5.2 How we can end this Agreement

We can terminate this Agreement by giving you 20 Business Days' notice.

#### 5.3 How you can end this Agreement

You can terminate this Agreement by:

- (a) requesting us to disconnect your Supply Address. This Agreement will end 10 Business Days after disconnection;
- (b) entering into a new agreement with us at the Supply Address. This Agreement will end when the new agreement starts;

- (c) transferring your electricity supply at your Supply Address to another retailer. This Agreement will end when your Supply Address transfers to the other retailer; or
- (d) in the circumstances described in clause 6 (where you relocate).

#### 5.4 Other circumstances where the Agreement ends

This Agreement will also terminate:

- (a) where we or another retailer begins supplying electricity at the Supply Address to another person;
- (b) if you are no longer eligible for this Agreement (see clause 1.3(b));
- (c) 10 Business Days after you have been disconnected, provided that you do not have a right to be reconnected; or
- (d) if we are no longer entitled to sell electricity due to a Retailer of Last Resort Event.

#### 5.5 What happens when this Agreement ends

- (a) If this Agreement ends and you continue to take electricity supply from us, we will continue to sell you electricity on the terms and prices of our Standard Retail Contract until you enter into a new agreement with us or transfer your Supply Address to another electricity retailer or someone else takes electricity supply at your Supply Address under a new agreement with us or another electricity retailer.
- (b) Any rights, obligations or remedies you or we have under this Agreement prior to the date this Agreement ends will continue after this Agreement ends. This includes any obligation you or we have to pay any Charges or other amount due, and anything that deals with privacy, marketing, governing law, liability, payments, Charges, metering, billing, disconnection, giving you notices and other obligations relating to safety or the use of energy.

### 6. Relocation

- (a) If intend to move out of your Supply Address, subject to any Regulatory Requirements and clause 6(b), this Agreement will end on the later of:
  - (i) an agreed date, if you give us at least 3 Business Days prior notice; and
  - (ii) the date we obtain a final meter read.
- (b) If you move out of your Supply Address and as a result the Supply Address is disconnected by your Distributor or Meter Service Provider, or we need to obtain a special meter read, we may pass through to you any fee charged by the Distributor or the Meter Service Provider.

### 7. What you have to pay

#### 7.1 Charges

You agree to pay us the Charges set out in these Agreement Terms, the Product Terms and any other application terms and conditions. The Charges generally include the following:

- (a) Daily Supply Charge: this is a charge that applies daily, regardless of how much electricity you use.
- (b) Energy Charge: this is calculated based on the Electricity Rate and the amount of electricity you use, and a component may be based on how efficient your electricity usage is if your Product Terms indicate that a Price Efficiency Adjustment is payable. The Electricity Rate calculation is detailed in the Product Schedule.
- (c) Distributor Charge: any amounts that your Distributor charges us for services provided at your Supply Address and which do not already form part of the supply or energy usage charges, including disconnection fee, connection fee and special meter reading fee. We do not set these amounts as they are set by your Distributor.
- (d) Metering Charge: any amounts that a Meter Service Provider charges us for metering-related goods or services provided at your Supply Address and which do not already form part of the supply or electricity usage charges, including a disconnection fee, connection fee, meter work fees and meter reading fees. This may also include the cost of any non-standard work, modification or installation required relating to your meter.
- (e) Taxes: any taxes (including GST), duties, imposts, levies, regulated charges, costs, fees and charges that we have to pay (directly or indirectly) when we sell and supply electricity and GreenPower (if applicable) and other goods and services to you.
- (f) Card Payment Fee: a fee for paying by bank cards or another payment method where we incur a merchant services fee.
- (g) Other Charges: any other charges as specified in your Product Terms or communicated to you.

#### 7.2 Additional charges

In some circumstances the following charges may apply:

- (a) any reasonable costs incurred by us for arranging network, connection and metering services for you. These amounts will be notified to you.
- (b) any reasonable costs incurred by us as a result of you breaching this Agreement or any Regulatory Requirements, unless those amounts are also included in one of the Charges.
- (c) if your payment is dishonoured or reversed and it results in us incurring a fee, we may recover the amount of this fee from you.

#### 7.3 Security Deposits

- (a) You permit us to obtain credit checks to determine your creditworthiness from time to time.
- (b) Depending on your creditworthiness, we may require that you provide a Security Deposit.

- (c) The circumstances in which we can ask for a Security Deposit are governed by the Regulatory Requirements.
- (d) If you provide us with a Security Deposit, we will pay you interest on that deposit in accordance with the Regulatory Requirements.
- (e) We may use your Security Deposit to offset any amount you owe under this Agreement in accordance with the Regulatory Requirements.

## 8. Variation of Charges

### 8.1 Charges variation

- (a) Where permitted by the Regulatory Requirements, you agree that we may vary the amount, nature and/or structure of the Charges, or introduce new Charges, for any reason.
- (b) We may also change the amount of any Feed-in Tariff we pay you (if applicable) in accordance with the Feed-in Tariff Terms.

### 8.2 Notification

We will let you know about any changes to the Charges in accordance with Regulatory Requirements. The notice of change may be by a message on your bill.

### 8.3 Variation of Charges during Billing Period

If the Charges change during a Billing Period then we'll calculate your bill for that period on a proportionate basis.

### 8.4 Price Efficiency Adjustment

Where your Product Terms indicate that a Price Efficiency Adjustment is payable, you acknowledge that:

- (a) the Price Efficiency Adjustment component of your Energy Charge is a variable rate based on the efficiency of your energy usage (this is described in the Product Schedule); and
- (b) unless the Regulatory Requirements state otherwise, the changes in the Price Efficiency Adjustment is not a variation of Charges for the purposes of this clause 8 and clause 8.2 does not require us to notify you of the changes to the Price Efficiency Adjustment or the applicable variable rate at any given time.

## 9. Billing and payment

### 9.1 Billing and communication

Unless the Regulatory Requirements say otherwise or we agree to communicate with you differently, we will send, and you agree to receive:

- (a) all communications from us electronically; and
- (b) your bill to the email address of your choice.

### 9.2 Electricity usage

Your energy usage charges will be based on the amount of electricity you use during a Billing Period, which will be determined in accordance with the Regulatory Requirements,

generally by the Distributor or the Meter Service Provider measuring the amount of energy used by reading the meter at your Supply Address, or by estimating your usage. A component of your energy usage charges may be based on how efficient your electricity usage is if your Product Terms indicate that a Price Efficiency Adjustment is payable.

### 9.3 Billing Period

- (a) We will send you a bill to your nominated email address as soon as possible after the end of each Billing Period (which is set out in your Product Terms). If you do not have a Smart Meter, instead of sending you a bill after each Billing Period, we may send you a bill after an actual or estimated schedule read of your meter (which is typically on a quarterly basis).
- (b) If your meter is replaced by a Smart Meter during a Billing Period, in some circumstances, we may send you a bill in respect of the period before the replacement and a separate bill in respect of the period after the replacement.
- (c) You must pay each bill in full by the Due Date or make payments in accordance with your payment schedule or instalment plan.
- (d) We may change the Billing Period by prior written notice to you.

### 9.4 Estimates

- (a) You agree that we may estimate your usage in accordance with the Regulatory Requirements if we are unable to obtain metering data of your actual usage.
- (b) If your bill is based on an estimate and we subsequently obtain your actual usage, we will adjust a subsequent bill for the difference. However, if your bill is based on an estimate because you fail to give us access to your meter, we may charge you an additional fee if you ask for a bill based on your actual usage to cover our costs.

### 9.5 Payment Due Date

- (a) If you cannot pay by the Due Date or if you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about payment options, payment plans or government support.
- (b) If you do not pay your bill by the Due Date (unless you've requested a review of the bill) we may do one or more of the following:
  - (i) apply any Security Deposit in accordance with clause 7.3 and where permitted under the Regulatory Requirements;
  - (ii) disconnect your electricity supply in accordance with clause 14; or
  - (iii) make arrangement (including engaging a third party) to obtain the payment from you.

## 9.6 Direct Debit

You agree that:

- (a) you will pay your bills under this Agreement by direct debit;
- (b) we may debit your account in accordance with any direct debit information you provide us; and
- (c) you will comply with our direct debit terms and conditions.

## 10. Metering

- (a) If you have an older type of electricity meter or a Smart Meter that is not Zigbee compatible, we may arrange a Zigbee compatible Smart Meter to be installed at your Supply Address. By entering into this Agreement, you consent to the existing meter at your Supply Address being replaced with a Zigbee compatible Smart Meter (if you do not already have a Smart Meter or if you have a Smart Meter that is not Zigbee compatible) and waive your right to opt out of having your electricity meter replaced. If the existing meter is replaced by a Smart Meter, you agree that your tariff and the Charges you pay under this Agreement may change. We will give you notice in accordance with Regulatory Requirements.
- (b) You may need to pay the cost of any non-standard work, modification or installation required at your Supply Address relating to your meter (including if those non-standard works relate to the Smart Meter). We'll let you know before we arrange these works.
- (c) If you do not have a Smart Meter and before your Smart Meter is installed, you explicitly consent that we will use estimates (as permitted by the Regulatory Requirements) and/or AEMO's or your Distributor's usage profile in respect of your area to determine your usage for each Trading Interval.
- (d) You agree that we or a Meter Service Provider may temporarily interrupt the supply of electricity to your Supply Address for the purpose of installation, maintenance, repair or replacement of a Smart Meter in accordance with the Regulatory Requirements. We will give you prior notice if your electricity supply will be interrupted but only if it is practicable or if the Regulatory Requirements requires us to do so.
- (e) If you do not agree to pay the costs referred to in clause 10(b), or if a Smart Meter is unable to be installed at the Supply Address for any other reason, then you will continue to be billed in accordance with clause 10(c) until a Smart Meter is installed.

## 11. Reviewing your bill

### 11.1 Bill reviews

- (a) If you believe there are errors with a bill, please contact us as soon as possible. You can also request us to review your bill, but you must do so as soon as you become aware

of an error. We will notify you of the outcome in accordance with our standard complaints procedures (see clause 23).

- (b) While your bill is being reviewed, you must still pay any amount not in dispute (in accordance with the Regulatory Requirements) by the Due Date. You must also pay any future bills by the Due Date even if we are reviewing another bill.

### 11.2 Meter tests

- (a) You may request for your meter to be tested as part of a bill review. If the test shows that the meter or meter data is not faulty or incorrect, you must pay the cost of the meter test.
- (b) If the review finds the bill is correct, you must pay the unpaid amount. If the review finds the bill is incorrect, we'll adjust the bill under review in accordance with Regulatory Requirements and you must pay the amount (if any) of the bill that is still outstanding after the adjustment.

### 11.3 Undercharge

If you have been undercharged, you will only have to pay the amounts that should have been charged in the time period allowed by the Regulatory Requirements prior to us notifying you of the undercharge, unless the undercharging occurred due to your fault or unlawful act or omission, then we are allowed to recover all amounts undercharged as long as it is not prohibited by the Regulatory Requirements.

### 11.4 Overcharge

If you have been overcharged, we will inform you and repay you the overcharged amount in accordance with the Regulatory Requirements. We will not pay you interest on any overcharged amount.

## 12. Customer obligations

### 12.1 General obligations

- (a) Title and risk in the electricity supplied under this Agreement will pass to you at the point of connection between the distribution system and your Supply Address. You must comply, at your own costs, with the Regulatory Requirements that apply to you.
- (b) You must ensure that:
  - (i) your name and the Supply Address are correctly set out in the Product Terms;
  - (ii) the contact details you have provided to us, including the email address at which you will receive your bills or notices, are correct; and
  - (iii) inform us if there is any change to information you have previously given us, including information about safe access to your meter and changes to any registered life support equipment at the Supply Address.

- (c) You must give us reasonable assistance and co-operation when we ask you, to allow us to comply with the Regulatory Requirements that apply to us.

## 12.2 Access

- (a) You must give us and other relevant service providers (including your Distributor and Meter Service Provider) or our contractors with safe, convenient and unhindered access to the Supply Address and the meter at the Supply Address for purposes related to this Agreement, including to:
- (i) read, install, inspect, test, repair, maintain, alter or replace a meter; or
  - (ii) connect, disconnect or reconnect electricity supply at the Supply Address.
- (b) If you don't give us, the Metering Service Provider or your Distributor access to your Supply Address or your meter, you must pay us the reasonable costs we incur in trying to do so.

## 12.3 Other obligations

- (a) You must also:
- (i) take reasonable steps to mitigate or reduce any loss or damage you might suffer in connection with this Agreement;
  - (ii) allow only appropriately qualified and accredited people to carry out any work in connection the electricity infrastructure at your Supply Address;
  - (iii) ensure that electricity infrastructure is maintained in good condition and not damaged or interfered with in any way;
  - (iv) not tamper with or bypass your meter, or allow anyone else to do so; and
  - (v) not interfere with, disconnect, displace, remove or replace or damage the meter or the distribution system, or allow anyone else to do so.
- (b) The meters are not owned by you but are owned by a third party (usually your Distributor, Meter Service Provider or us) and title to the meters will not pass to you at any time.

## 13. Your electricity supply

### 13.1 Quality of supply

- (a) As your retailer, we do not control or operate the distribution system, and therefore, we cannot control the quality, frequency or continuity of physical supply of electricity to your Supply Address. Where we refer to supplying you with electricity or connecting your Supply Address, we mean that we will arrange for your Distributor to do so.
- (b) Therefore, this means that:
- (i) we are not responsible for the safety, quality, continuity or reliability of your electricity supply; and

- (ii) to the extent permitted by law, we make no promises, guarantees, warranties or representations to you about these things.

### 13.2 Interruption to supply

- (a) Sometimes, we may need to interrupt your electricity supply, including:
- (i) to install, test, repair, maintain, exchange, alter, replace or remove your electricity meter;
  - (ii) in an emergency;
  - (iii) for health and safety reasons; or
  - (iv) due to any circumstances beyond our reasonable control or where otherwise permitted under the Regulatory Requirements.
- (b) We will use reasonable endeavours to keep you informed if this occurs, and we will follow any notice requirements set out in the Regulatory Requirements.
- (c) Your Distributor may also need to interrupt your electricity supply. If this happens, your Distributor is responsible for providing you notice in accordance with the Regulatory Requirements, and to the extent permitted by law, you agree that we are not liable for such interruption.

## 14. Disconnections

- (a) We will provide notice using the contact details you have provided us and/or updated from time to time before we disconnect you. We will follow any requirements or procedures set out in the Regulatory Requirements.
- (b) If permitted under, and in accordance with, Regulatory Requirements, we may arrange for disconnection of your electricity supply if:
- (i) you ask us to;
  - (ii) your Distributor makes a valid request to us to do so;
  - (iii) you fail to pay a bill by the Due Date;
  - (iv) due to your acts or omissions we, the Distributor or the Meter Service Provider cannot safely access the meter at the Supply Address where access is required, including to read, test, check, inspect, maintain, repair, alter, replace or remove the meter;
  - (v) you refuse to pay a Security Deposit as required under this Agreement;
  - (vi) if you've used electricity at the Supply Address fraudulently, or intentionally used it contrary to energy laws;
  - (vii) you have not agreed to an instalment plan or other payment option when we have required you to do so;
  - (viii) you have not adhered to the terms of any instalment plan or other payment option; or
  - (ix) we are otherwise entitled to under the Regulatory Requirements.



## 15. GreenPower

- (a) GreenPower is included in this Agreement if specified in the Product Terms that it is included. If this is the case, the Energy Charges you pay include GreenPower.
- (b) If GreenPower is not specified as included in the Product Terms, you have the option to take up GreenPower and you will have to pay the GreenPower Charges specified in the Product Terms.
- (c) If GreenPower is applicable, we will source an equivalent amount of electricity from GreenPower accredited renewable sources to match your electricity usage (or if applicable, your chosen percentage).

## 16. Liability

Subject to the Regulatory Requirements:

- (a) we will not be liable to you for any loss or damage in connection with or arising out of this Agreement, except to the extent caused or contributed by our breach of this Agreement or negligence;
- (b) we are not liable to you for any loss or damage in connection with or arising out of any act or omission of your Distributor;
- (c) you agree to indemnify us or any third party for any reasonable costs incurred in connection with or arising out of your breach of this Agreement or negligence. Nothing in this clause 16(c) makes you liable for any loss, damage or liability arising from our fraud, negligence or wilful misconduct, or that of our agents, officers or contractors;
- (d) you agree to indemnify us and any third party against any liability in connection with or arising out of the use of electricity supplied under this Agreement after ownership passes to you. Nothing in this clause 16(d) makes you liable for any loss, damage or liability arising from our fraud, negligence or wilful misconduct, or that of our agents, officers or contractors; and
- (e) nothing in this clause 16 entitles us to recover from you an amount greater than we would otherwise have been able to recover at law.

## 17. Regulatory Requirements

- (a) If the Regulatory Requirements require any matter to be included in this Agreement, then that matter is deemed to be included in this Agreement.
- (b) In addition, if there is any inconsistency between the Regulatory Requirements, then the Regulatory Requirements will prevail to the extent of that inconsistency.

## 18. Force Majeure Event

### 18.1 Force Majeure

- (a) In this Agreement, Force Majeure Event means, for an Affected Party, any event or circumstance occurring that:
  - (i) is not within the reasonable control of the Affected Party;
  - (ii) could not be prevented, overcome or remedied by the exercise of reasonable effort by the Affected Party; and
  - (iii) results in the Affected Party being unable to meet or perform its obligation under this Agreement.
- (b) However, the failure or inability of the Affected Party to pay any amount due and payable under this Agreement is not a Force Majeure Event.
- (c) The Affected Party's obligation under this Agreement will be suspended for the duration and to the extent of the Force Majeure Event (other than an obligation to pay money).

### 18.2 Mitigation

- (a) The Affected Party must:
  - (i) try to use reasonable endeavours to remove, overcome or minimise the effects of Force Majeure Event as soon as reasonably practicable; and
  - (ii) provide prompt notice, including any information required by the Regulatory Requirements.
- (b) If the Force Majeure Event is widespread, our requirement to give you prompt notice is satisfied if we make the necessary information available by way of providing a 24 hour telephone service within 30 minutes of being advised of the Force Majeure Event, or otherwise as soon as practicable.

## 19. Warranties and rights

- (a) To the extent permitted by law, we give no condition, warranty or undertaking and we make no representation to you about the condition or suitability of any good or service provided under this Agreement, its quality, fitness or safety, other than those set out in this Agreement.
- (b) If any part of this Agreement is unlawful, unenforceable or invalid, that part will not apply, but the rest of the Agreement will continue unchanged.

## 20. Life Support

- (a) If a person living or intending to live at the Supply Address requires life support equipment (as defined under the Regulatory Requirements) you must:
  - (i) register the requirement for life support equipment with us or your Distributor; and
  - (ii) provide certification from a registered medical practitioner of the requirement for life support equipment at the Supply Address.

- (b) Following registration of the life support equipment, we will provide you with advice and information as required under Regulatory Requirements to assist you in the event of an interruption to your energy supply.
- (c) If certification from a registered medical practitioner is not provided in accordance with Regulatory Requirements, your Supply Address may cease to be registered as requiring life support equipment.
- (d) You must tell us or your Distributor if the registered life support equipment is no longer required at the Supply Address or if there are any changes to the registered life support equipment.

## 21. Your privacy

- (a) We collect, use and disclose your personal, credit and confidential information in accordance with our Privacy Policy available at <https://flowpower.com.au/privacy/>.
- (b) In connection with this Agreement, we may collect data relating to your consumption of electricity or electricity feed-in. Subject to any Regulatory Requirements, you expressly agree that we may collect, use and disclose data relating to your electricity consumption or feed-in at our discretion, including but not limited to developing new products, for marketing purposes, disclosing to our partners or third parties, selling to third parties or any other purposes.

## 22. Notices

Subject to clause 9.1, unless the Regulatory Requirements require otherwise, you agree that we will give you notice in writing:

- (a) personally;
- (b) by post, addressed to the address you have provided us. We will consider that you have received the notice on the sixth Business Day after we post it;
- (c) by e-mail to the email address you have given us. We will consider that you have received the email the day after we send it;
- (d) by a message on your bill; or
- (e) if permitted by the Regulatory Requirements, by sending you an electronic message (e.g. email or SMS)

If you have not chosen an address for notices or we have not been able to contact you at that address, then if we send the notice to the Supply Address, you will be deemed to have received it.

## 23. Complaints

- (a) If you have a query, complaint or dispute, you may contact us in writing or by phone. We will address any complaints in accordance with our complaints handling and dispute resolution procedure, which can be located at

flowpower.com.au, or is available by request. We will inform you of the outcome of your complaint.

- (b) If you are not satisfied with our response to your complaint, you may refer your complaint to the energy ombudsman in your state.

## 24. Amendments to this Agreement

- (a) We may vary this Agreement if:
  - (i) we give you 20 Business Days' notice of the variation; and
  - (ii) you accept the change by not terminating the Agreement during that period.
- (b) We may also vary this Agreement by notice to you if we need to do so because the Regulatory Requirements change.

## 25. Applicable law

This Agreement is governed by the laws in force in the state or territory in which your Supply Address is located. Each party submits to the non-exclusive jurisdiction of the courts there.

## 26. Assignment or novation

- (a) You may not assign, transfer or novate this Agreement without our consent.
- (b) Subject to the Regulatory Requirements, you agree we may:
  - (i) assign, transfer or novate this Agreement; and/or
  - (ii) transfer you as a customer,
 to any third party, any of our Related Bodies Corporate or as part of the transfer of a substantial number of our customers to a third party. You'll be notified of any assignment, transfer or novation.

## 27. Governing Law

The laws of the State or Territory the Supply Address is located in govern this Agreement. You and we submit to the on-exclusive jurisdiction of the courts in that State or Territory.

## 28. Meaning of terms in this Agreement

**Acceptance Date** means the date:

- (a) you accept this Agreement online;
- (b) you accept this Agreement in front of one of our representatives;
- (c) you return the signed Agreement to us;
- (d) you indicate your acceptance by any other method; or
- (e) specified in the Product Terms.

**Affected Party** means us or you (as the case may be), where we or you are prevented from performing an obligation under this Agreement by a Force Majeure Event.



**Agreement** means the Agreement Terms and the Product Terms, the Feed-in Tariff Terms and all other applicable terms and conditions.

**Agreement Terms** means this document, including all sections and schedules.

**Billing Period** means any period for which a bill is or may be issued. This may be specified in the Product Terms and may be amended from time to time in accordance with this Agreement.

**Business Customer** means a Small Customer who is not a Residential Customer.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the state or territory of your Supply Address.

**Charges** means the charges and fees described or set out in this Agreement, including the charges described in clause 7.

**Distributor** means a person (or company) licensed to supply electricity who owns and operates a distribution system connected to your Supply Address.

**Due Date** means the date stated on your bill or any other date for payment of the bill which we agree with you.

**Feed-in Tariff Terms** means the document that is titled 'Feed-in Tariff Terms' that is applicable to a customer in the state or territory of your Supply Address (a copy of which is available on our website).

**Force Majeure Event** has the meaning given in clause 18.1.

**General Terms and Conditions** means the section of this document that is titled 'General Terms and Conditions'.

**Meter Service Provider** means any person who provides services on our or your Distributor's behalf in relation to:

- the meter, including to read, install, inspect, test, repair, maintain, alter or replace it;
- processing meter data and providing it to us and other third parties who need it in connection with your electricity supply;
- electricity supply, such as disconnection or reconnection of your electricity supply; and
- the co-ordination of the above.

**Non-Small Customer** means a customer who is not a Small Customer (see clause 2).

**Price Efficiency Adjustment** has the meaning given in the Product Schedule.

**Product Schedule** means the section of this document that is titled 'Product Schedule'.

**Product Terms** means the document titled 'Product Terms' provided to you with these Agreement Terms.

**Regulatory Requirements** means any relevant Commonwealth, State or local government regulation, including all laws, regulations, subordinate legislation, proclamations, Orders in Council, licence conditions, codes,

determinations made by a relevant regulator, guidelines or standards applicable from time to time in the State in which the Supply Address is located.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Residential Customer** means a customer who purchases energy predominantly for personal, domestic or household use.

**Retailer of Last Resort Event** means an event or circumstance that triggers the operation of the retailer of last resort scheme in relation to us under the Regulatory Requirements.

**Security Deposit** means an amount of money or other arrangement to provide security against you not paying a bill.

**Small Customer** means, in respect of a Supply Address, a customer as prescribed under the Regulatory Requirements.

**Smart Meter** means a meter which records electricity consumption at pre-determined intervals, has two-way communication capability and can be read remotely.

**Spot Price** has the meaning given in the National Electricity Rules and refers to the spot price for the region to which your Supply Address is assigned under the National Electricity Rules. This is the wholesale price for electricity in your region.

**Standard Retail Contract** means a contract for the sale and supply of electricity applicable to a Supply Address, required to be offered to you under the Regulatory Requirements.

**Supply Address** means the premises specified as the supply address in the Product Terms.

**Supply Commencement Date** means the supply commencement date set out in the Product Terms section or otherwise notified to you.

**Trading Interval** has the meaning given in the National Electricity Rules.

**We and Us** means Progressive Green Pty Ltd trading as 'Flow Power' (ABN 27 130 175 343).

## 29. Interpretation

Unless otherwise stated:

- headings are for convenience only and do not affect the interpretation of this Agreement;
- the singular includes the plural and vice versa;
- words that are gender neutral or gender specific include any gender;
- 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;
- the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation;

- (f) a reference to you being in a state or territory is a reference to the state or territory in which your Supply Address is located;
- (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.

## Product Schedule

### Flow Business

#### 1. Background

This schedule supplements the General Terms and Conditions and forms part of your Agreement.

#### 2. Electricity Rate

For each Billing Period, the Electricity Rate used to determine the Energy Charges described in clause 7.1(b) of the General Terms and Conditions is calculated as follows:

$$ER = BR + PEA$$

where:

*ER* is the Electricity Rate;

*BR* is the Base Rate specified in your Product Terms or any other rate as notified by us to you from time to time in accordance with this Agreement; and

*PEA* is the Price Efficiency Adjustment described in clause 3.2 of this schedule for the relevant Billing Period.

#### 3. Base Rate and Price Efficiency Adjustment

##### 3.1 Base Rate

- The Base Rate specified in your Product Terms includes a Benchmark PEA. The Benchmark PEA will be specified on our website.
- The Benchmark PEA broadly represents the average Customer Price Efficiency Adjustment of Flow Power's business customers (as reasonably determined by Flow Power from time to time).
- You agree that we may vary the Benchmark PEA by notice to you, where doing so is not prohibited by the Regulatory Requirements.

##### 3.2 Price Efficiency Adjustment

For each Billing Period, the Price Efficiency Adjustment is calculated as follows:

$$PEA = CPEA - BPEA$$

where:

*PEA* is the Price Efficiency Adjustment;

*CPEA* is the applicable Customer Price Efficiency Adjustment calculated in accordance with clause 4 of this schedule for that Billing Period; and

*BPEA* is the Benchmark PEA applicable for that Billing Period.

#### 4. Customer Price Efficiency Adjustment

- The Customer Price Efficiency Adjustment is an adjustment that reflects your usage patterns against the wholesale market prices (i.e. the Spot Price) and network usage charges. This calculation is done using the Spot Price, the applicable underlying network tariff rate and

metering data in respect of each Trading Interval in a Billing Period. The mathematical calculation of the Customer Price Efficiency Adjustment for each Billing Period is:

$$LWAP - TWAP$$

- LWAP* is the electricity usage (or load) weighted average price in a Billing Period calculated by:
  - for each Trading Interval, adding together the Spot Price for that Trading Interval and the applicable underlying network tariff rate for that Trading Interval (**Aggregate Price**);
  - multiplying the Aggregate Price for a Trading Interval by your electricity usage at the Supply Address during that Trading Interval;
  - repeating the process in paragraph (ii) for each Trading Interval in that Billing Period and then adding them all up to a sum total; and
  - then dividing the sum total in paragraph (iii) by the total electricity usage at your Supply Address in that Billing Period.

Below is an illustrative example of this calculation assuming that there are only 3 Trading Intervals in a Billing Period (note that Trading Intervals are currently 5 minutes each and a typical Billing Period is about a month, so this is a very simplified example):

Trading Interval	Spot Price	Network Tariff	Aggregate Price	Usage
1	5 c/kWh	10 c/kWh	15 c/kWh	5 kWh
2	10 c/kWh	10 c/kWh	20 c/kWh	3 kWh
3	20 c/kWh	15 c/kWh	35 c/kWh	2 kWh

The *LWAP* will be calculated as follows:

$$= [ (15 \times 5) + (20 \times 3) + (35 \times 2) ] / (5 + 3 + 2) \\ = 20.5 \text{ c/kWh}$$

- TWAP* is the time weighted average price in a Billing Period calculated by:
  - adding up the Aggregate Price for each Trading Interval in that Billing Period; and
  - dividing the sum total in paragraph (i) by the number of Trading Intervals in that Billing Period.

Below is an illustrative example of this calculation based on the hypothetical example above of 3 Trading Intervals in a Billing Period:

The *TWAP* will be calculated as follows:

$$= (15 + 20 + 35) / 3 \\ = 23.3 \text{ c/kWh}$$

- (d) In the illustrative example above, the Customer Price Efficiency Adjustment for that Billing Period will be:

$$LWAP - TWAP$$

$$= 20.5 \text{ c/kWh} - 23.3 \text{ c/kWh}$$

$$= -2.8 \text{ c/kWh}$$

- (e) Continuing with the illustrative example and assuming that the BPEA is 2.5 c/kWh (note that this is an example only and may not be the actual BPEA that applies to you, please refer to clause 3.1 above for more details), the Price Efficiency Adjustment for the relevant Billing Period will be:

$$PEA = CPEA - BPEA$$

$$= -2.8 \text{ c/kWh} - 2.5 \text{ c/kWh}$$

$$= -5.3 \text{ c/kWh}$$

- (f) If your actual metering data for each Trading Interval is not available for a Billing Period for any reason (for example, where you do not have a Smart Meter), we will use estimates (as permitted by the Regulatory Requirements) and/or AEMO's or your Distributor's usage profile in respect of your area to determine your usage for each Trading Interval and across the day in order to calculate your Customer Price Efficient Adjustment.

#### 4.2 Underlying Network Tariff

- (a) If the applicable network tariff type at your Supply Address is an 'anytime' or single rate tariff (i.e. the underlying network tariff is the same for all Trading Intervals), then for the calculation of the Customer Price Efficiency Adjustment, the underlying network tariff for each Trading Interval will be the same (except where the underlying network tariff has changed during a Billing Period).
- (b) If the applicable network tariff type at your Supply Address is NOT an 'anytime' or single rate tariff (i.e. the underlying network tariff is NOT the same for all Trading Intervals), then for the calculation of the Customer Price Efficiency Adjustment, the underlying network tariff for each Trading Interval will be determined based on the relevant tariff that corresponds to the time period of the relevant Trading Interval (e.g. peak, off-peak, shoulder etc). In addition, where there are stepped rates for each time period, only the first applicable rate will be used for the calculation of the CPEA.

#### 5. GreenPower

- (a) We will:
- (i) ensure that for 100% of the electricity supplied to your Supply Address, an equivalent amount of electricity is produced from GreenPower Generators accredited under the National GreenPower Accreditation Program; and

- (ii) voluntarily surrender the corresponding amount of eligible large-scale generation certificates to the relevant regulator.

- (b) We will use reasonable endeavours to ensure that the GreenPower Generators referred to in clause 5(a)(i) will be the Nominated GreenPower Generator as specified in the Product Terms. However, we reserve the right to fulfill the obligation under clause 5(a)(i) from other GreenPower Generators, including but not limited to under the following circumstances:

- (i) where your energy usage in any given year is more than your estimated usage at the time of this Agreement;
- (ii) where there is a shortfall in the generation of the Nominated GreenPower Generator in any given year as compared with the forecast for that year; or
- (iii) any event or circumstance beyond our reasonable control.

- (c) You acknowledge and agree that, given that the electricity physically supplied to the Supply Address under this Agreement is sourced from the national electricity grid, the electricity physically supplied to the Supply Address may not necessarily be from renewable sources.

- (d) If for any reason we are unable to provide you the benefits described in clause 5(a), we will notify you of your options as soon as practicable.

#### 6. Smart Device

##### 6.1 Provision of Smart Device

- (a) Subject to the conditions in clause 6.1(b), we will provide you with one smart device and related accessories (**Smart Device**) to monitor your electricity usage in real time and other related services.
- (b) The provision of the Smart Device is subject to:
- (i) you having a Smart Meter installed at your Supply Address and the Smart Meter being compatible with the Smart Device (including having Zigbee compatibility);
- (ii) your Supply Address not being in an embedded network;
- (iii) us having sufficient units of the Smart Device in stock;
- (iv) you having adequate internet connection; and
- (v) any other criteria determined by us from time to time.
- (c) We reserve the right to supply you with a Smart Device that is refurbished (Smart Device that may have been used previously by another customer). Prior to delivery to you, we will ensure that the Smart Device is tested to be in good working order.
- (d) We reserve the right to update the software or firmware in your Smart Device to improve its performance or to

introduce new services and you agree that you will provide us with all necessary assistance.

## 6.2 Ownership

You acknowledge and agree that title and ownership to any Smart Device passes to you when we provide it to you.

## 6.3 Your obligations

You acknowledge and agree that:

- (a) the Smart Device is provided to you for the sole purpose of using the App Services during the term of this Agreement and for no other purposes;
- (b) you are responsible for the connection and installation of the Smart Device at your Supply Address. This setup process may involve contacting your Distributor and connection with your Smart Meter. We may also assist you in this regard and you expressly consent to us arranging with your Distributor (or Meter Service Provider) connection of the Smart Device to your meter on your behalf;
- (c) you must not damage, modify or interfere with the Smart Device or permit any other person to do so, and must take all reasonable precautions to protect the Smart Device from damage, modification or interference;
- (d) during the term of this Agreement:
  - (i) you will notify us immediately if you consider that the Smart Device is not operating properly; and
  - (ii) you must only use the Smart Device in conjunction with any mobile application or web portal approved by us.

## 6.4 App and App Services

- (a) During the term of this Agreement, we will provide you access to our App (via mobile applications or a web portal) to monitor your electricity in real time and to provide other related services (**App Services**). You acknowledge that some of the features of the App or App Services will require a correctly connected and installed Smart Device at your Supply Address.
- (b) You agree to comply with the terms and conditions governing your use of the App and App Services as set out in the App.

## 6.5 Intellectual Property

- (a) All intellectual property rights created, designed, devised, prepared or brought into existence by us in connection with the Smart Device (**Agreement IP**) vest in us as and from the time when it is created or brought into existence.
- (b) You have no right, title or interest in or to any Agreement IP and you must assign all intellectual property rights in the Agreement IP to us or as we may direct and sign all necessary documents and do all other things necessary for us to establish, exploit and protect its rights in the

Agreement IP, both before and after the termination of this Agreement.

## 6.6 Replacing faulty devices

- (a) If we troubleshoot with you and it appears that:
  - (i) the Smart Device you have is faulty other than due to your action; and
  - (ii) you have not breached this clause 6,
 then we will send you a replacement device, and we may also include a pre-paid return satchel with instructions on how to return the faulty device. If we ask you to return the faulty device, you agree to do so. If you fail to return the faulty device within 30 Business Days, we may charge you, and you agree to pay, the full replacement value of the device.
- (b) To the extent permitted by Regulatory Requirements, you agree that, depending on the circumstances:
  - (i) the replacement device may not be the same model you had if the original model is no longer available;
  - (ii) it is your responsibility to ensure the faulty device is wrapped and packed properly, and returned in the replacement unit box with all the accessories and power supplies from the original faulty unit; and
  - (iii) we will not be responsible or liable for items that are damaged in transit.
- (c) If, upon inspection, we determine the device to be faulty due to your action, you may be charged for the full replacement value of the device as well as all freight costs associated with the return.
- (d) Nothing in this clause 6 affects or excludes any rights that you may have under the Australian Consumer Law or any other Regulatory Requirements.

## 6.7 Liability

- (a) Subject to any rights you may have under applicable consumer laws, or any other law (including the Regulatory Requirements), other than as expressly provided for in this clause 6, we are not liable to you, in contract, in tort, in equity by operation of statute or otherwise, for any kind of:
  - (i) loss, damage, costs or expenses of any kind (including Consequential Loss) arising out of or in connection with any action, delay, omission or error by us in connection with, or in relation to the Smart Device or anything in this clause 6; or
  - (ii) indirect, special or consequential loss or damage, loss of data, loss of profit, anticipated profit, revenue or opportunity, or loss arising from business interruption (together, **Consequential Loss**), arising out of or in connection with your use of the Smart Device, whether or not we were aware of the

possibility of such loss or damage, including but not limited to:

- (A) any damage to any device or appliance at your Supply Address, your computer, mobile devices, or any other device used for connecting to the Smart Device; or
- (B) any unauthorised access to information in the App Services or Smart Device.

- (b) You agree to indemnify us and our personnel for any third-party legal proceedings arising out of or relating to your unlawful use of the Smart Device, or breach of this clause 6. This indemnity covers any liability or expense arising from claims, losses, damages, judgments, fines, litigation costs, and legal fees. Nothing in this clause 6.7(b) makes you liable for any loss, damage or liability arising from our fraud, negligence or wilful misconduct, or that of our agents, officers or contractors.