

# **ActewAGL Virtual Power Plant Services Agreement**

Effective 1 February 2022

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## ActewAGL Virtual Power Plant Services Agreement

Please read this carefully as it sets out what you need to know about the terms and conditions of the Products and Services to be provided to You by Us.

The terms of this agreement do not negate your rights and responsibilities as a customer of ActewAGL as set out in your retail energy contract available [here](#).

CONTRACT SPECIFICS	
Customer name	As set out in the ActewAGL Residential Energy Application or ActewAGL Electricity Sale Contract
Supply address	As set out in the ActewAGL Residential Energy Application or ActewAGL Electricity Sale Contract
Value of ActewAGL Credits and payment method	Included in the discount on the supply charge and the feed in tariff.
Virtual Power Plant Services term	12 months from the later date of when: <ol style="list-style-type: none"> <li>1. Your ActewAGL Electricity Sale Contract commences; and</li> <li>2. You accept the Offer, with renewal for successive 12 months term in accordance with this Agreement; and</li> <li>3. There is an operational Operated Product at the supply address.</li> </ol>
Exit fees	None apply
Specifications	Battery System Make and Model A. SolarEdge Inverter and LG Home Battery <ul style="list-style-type: none"> <li>• Battery Models:               <ul style="list-style-type: none"> <li>- LG RESU 10H; or</li> <li>- LG RESU 7H</li> </ul> </li> <li>• Inverter:               <ul style="list-style-type: none"> <li>- HD-Wave; or</li> <li>- StorEdge; or</li> <li>- Energy Hub.</li> </ul> </li> </ul> B. TESLA <ul style="list-style-type: none"> <li>• Model:               <ul style="list-style-type: none"> <li>- Powerwall 2</li> </ul> </li> </ul>

ACTEWAGL VIRTUAL POWER PLANT DETAILS	
Product name	ActewAGL Residential Energy Application or ActewAGL Electricity Sale Contract
Term	12 Month Automatic rollover for successive 12 month terms in accordance with the Residential energy agreement.
Exit fees	None apply

## 1. Definitions and Interpretation

### (a) Definitions

In this Agreement:

**ActewAGL** means Icon Retail Investments Limited and AGL ACT Retail Investments Pty Ltd (trading as ActewAGL Retail) ABN 46 221 314 841, and “Us”, “Our” and “We” have corresponding meanings.

**ActewAGL Credits** means the credits provided to You by ActewAGL for participating in the ActewAGL VPP in the method set out in the Contract Specifics.

**ActewAGL Electricity Sale Contract** means the market retail contract between Us and You for the supply of electricity to You at the Supply Address. **Residential Energy Agreement** has the same meaning.

**Agreement** means this contract for VPP Services, and the Welcome Letter, Welcome Pack and Contract Specifics, attachments and annexures and any documents referred to therein.

**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.

**Backup Power** means any power delivered from any available energy remaining in the Operated Product while any power outage impacts the Supply Address of the location of the Operated Product.

**Business Day** means any day other than a Saturday, Sunday or public holiday in the state in which the Supply Address is located.

**Charge** means the drawing of electricity into the Operated Product, either from a solar photovoltaic system or from the National Electricity Grid and **Charging** has the same meaning.

**Clean Energy Regulator** means the Clean Energy Regulator established under the Clean Energy Regulator Act 2011 (Cth).

**Confirmation Letter** means the letter sent to You by Us specifying the VPP Services that We are providing to You with that name forming part of this Agreement.

**Contract Specifics** means the schedule of contract information with that name forming part of this Agreement.

**Data** means any data relating to the Operated Product, Your energy generation and consumption, net export of electricity and any other data that may be transmitted to Us in connection with Our provision of the VPP Services, including Your energy usage.

**Digital Meter** means a smart meter or other internet enabled device that measures energy consumption in a home.

**Discharge** means the exporting of electricity to the Supply Address or the National Electricity Grid and **Discharging** has the same meaning.

**Distributor** means an entity or person who owns, controls, or operates a distribution system.

**Electronic Means** means any form of electronic communication including email to an agreed email address, or short message service or multimedia message service to an agreed telephone number and which may consist of notice with a link to details of the variation on our website.

**Eligibility Criteria** means the criteria set out in clause 4(b) of this Agreement that You must meet for this Agreement to be effective.

**Energy Plan General Terms** means ActewAGL’s Ongoing market Retail Contract General Terms for Small Customers in ACT and NSW.

**Further Virtual Power Plant Services Term** (or Further VPP Services Term) has the meaning given in clause 13(a).

**Government Credit** means all rights, value, benefits, credits and certificates of any kind which derive from the supply of the Products and Services under a clean energy, energy productivity or carbon reduction government or regulatory program, including an incentive payment from REPS and RECs.

**Grid Connection Application** means an application to Your electricity Distributor to allow export of electricity from the Supply Address, (or any other changes (temporary or otherwise) to or in relation to the export of electricity from the Supply Address and any related applications for the purposes of this Agreement), including via an online portal, where applicable.

**Grid Connection Agreement** means the agreement between You and Your electricity Distributor to allow export of electricity from the Supply Address.

**GST** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

**Hold** means to cease Charging and Discharging the Operated Product.

**Initial Virtual Power Plant Test (or Initial VPP Test)** means an initial check conducted by Us to confirm that we can orchestrate the Operated Product.

**Initial Virtual Power Plant Services Term (Initial VPP Services Term)** means twelve (12) months, commencing on the date specified in clause 2(b).

**Intellectual Property** means all intellectual property rights (including rights in confidential information and data) throughout the world, whether present or future, registered or unregistered, including the right to apply for registration of any such rights.

**National Electricity Grid** means the physical and market infrastructure required to transport and supply electricity in New South Wales, Victoria, Queensland, South Australia and Tasmania.

**Non-excludable Obligation** has the meaning given in clause 14(b).

**Offer** means the offer made by Us to You via telephone or other method to provide You the VPP Services on the terms and conditions set out in this Agreement and as an ancillary product to your ActewAGL Electricity Sale Contract.

**Operated Product** means the product(s) that You own that meets the Specifications.

**Product Warranty** means the warranty that was provided by the manufacturer and/or supplier of your Operated Product at the time of purchase.

**Regulatory Requirements** means any relevant Commonwealth, State or local government regulation, including all laws, regulations, subordinate legislation, proclamations, orders in council, licence conditions, codes, guidelines or standards applicable from time to time to the supply or performance of the VPP Services at the Supply Address.

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

**Specifications** means a battery system make and models, as listed in the Contract Specifics. We may add further make and models to the Specifications from time to time.

**Supply** and **Supplier** have the meaning that they have in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

**Supply Address** means the address set out in the Welcome Letter or the Contract Specifics and is the address at which the VPP Services are or are to be supplied or performed by Us.

**Virtual Power Plant Services (or VPP Services)** means the right granted by You to Us to monitor, control and use the Operated Product(s) by Us. It includes Our modifying the Operated Product(s)'s settings in Our absolute discretion, including so as to cause the Operated Product(s) to Charge, Discharge or Hold.

**Virtual Power Plant Services Term (or VPP Services Term)** means the Initial VPP Services Term and any Further VPP Services Term.

**Welcome Letter** means the letter sent to You by Us specifying the VPP Services that We are providing to You.

**You** means the person who enters into this Agreement with Us, and "Your" has the corresponding meaning.

## **(b) Interpretation**

In this Agreement (unless the context otherwise requires):

- a) headings are for convenience and do not affect the interpretation of this Agreement;
- b) words importing the singular include the plural and vice versa;
- c) all references to 'include' or 'including' or 'for example' are non-exhaustive and do not imply any limitation;
- d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any government agency;
- e) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- f) a reference to a person includes that person's:
  - (i) executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns; and
  - (ii) officers, employees, contractors, agents or other representatives;
- g) when capitalised, grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- h) a period of time which:
  - (i) dates from a given day, or the day of an act or event, is to be calculated exclusive of that day;
  - (ii) commences on a given day, or the day of an act or event, is to be calculated inclusive of that day; and
  - (iii) an event which is required under this Agreement to occur on or by a stipulated day which is not a Business Day may occur on or by the next Business Day; and
- i) any discretion that We have under this Agreement will be exercised by Us on reasonable grounds, including considerations relating to:
  - (i) whether circumstances were beyond Your reasonable control, or were accidental but not negligent;
  - (ii) (our history with Us and our Related Bodies Corporate, including Your conduct under this Agreement, Your ActewAGL Electricity Sale Contract and any previous

contract with Us for the sale and supply of products and services;

- (iii) our evaluation of the likelihood that You will fulfil Your obligations under this Agreement or Your ActewAGL Electricity Sale Contract in the future; and
- (iv) the consistent application of Our policies applying to similar customers in similar circumstances (including departing from these policies in relevantly different circumstances).

## **2. Agreement and VPP Services commencement**

- a) The Agreement commences when You accept the Offer.
- b) The VPP Services Term commences on the later date of when:
  - (i) Your ActewAGL Electricity Sale Contract commences;
  - (ii) You have met the Eligibility Criteria;
  - (iii) There is an operational Operated Product at the supply address; and
  - (iv) You accept the Offer ("VPP Services Commencement Date")

## **3. Payment**

- a) We or one of Our Related Bodies Corporate (acting as Our agent) will credit the ActewAGL electricity bill associated with Your ActewAGL Electricity Sale Contract in the amount of any ActewAGL Credits.
- b) For clarity, under this Agreement:
  - (i) You are only entitled to ActewAGL Credits in accordance with clause 3(a);
  - (ii) no amounts are payable to You; and
  - (iii) ActewAGL Credits may only be applied as part payment of Your ActewAGL electricity bill and are not transferrable and are not redeemable for cash.

## **4. Your obligations**

- a) You will make Your own enquiries to find out how the VPP Services may impact:
  - (i) any retail electricity sale contract You are a party to;
  - (ii) Your Product Warranty;
  - (iii) Your Grid Connection Agreement;
  - (iv) any feed-in tariff You receive,

and You agree that We are not liable for any loss, damage or liability You suffer as a result of the impact of the VPP Services on any of the above unless we are negligent.

- b) You acknowledge and agree that you meet the following Eligibility Criteria:
  - (i) You must have authority and capacity to enter into this Agreement;
  - (ii) not be participating in another virtual power plant program;
  - (iii) have an Operated Product installed that meets the Specifications;
  - (iv) own or have the right to use the Operated Product;

- (v) own or occupy the Supply Address, or if You are not the owner of the Supply Address, have obtained written consent from the owner in relation to the entry into and performance of this Agreement;
  - (vi) have all necessary approvals, consents or authorities from any owner, residents, owner's corporation or local authorities;
  - (vii) have an ActewAGL Electricity Sale Contract in relation to the Supply Address;
  - (viii) own or have the right to use the solar photovoltaic system to which the Operated Product is connected at the Supply Address;
  - (ix) ensure each Operated Product is properly functioning and maintained and that You are connected to the internet (ideally through an ethernet connection) on a continuous basis;
  - (x) comply with all Regulatory Requirements in relation to the Supply Address and the Operated Product;
  - (xi) have a Grid Connection Agreement with Your Distributor in relation to the Supply Address, the Operated Product and the solar photovoltaic system and not be in breach of any Grid Connection Agreement;
  - (xii) meet any other reasonable criteria related to the services provided under this Agreement as specified by Us from time to time.
- c) You acknowledge that You are responsible for all energy charges under Your ActewAGL Electricity Sale Contract associated with the use and operation of the Operated Product and that You are responsible for all hardware, internet enabled device, internet connection, systems and software applications that You use to download, install and/or operate to access the VPP Services.
  - d) You agree to co-operate with Us and your manufacturer if a software upgrade to your Operated Product is required in order for Us to provide You with the VPP Services.
  - e) You must not, and must not allow, any other person to (unless otherwise authorised in writing by Us):
    - (i) control, move, remove, tamper with, disable, displace or damage any Operated Product (including intentionally disconnecting its internet connectivity other than through the ordinary course of maintain an internet connection); or
    - (ii) provide You with any services similar to or the same as the VPP Services in relation to the Operated Product.
  - f) Despite any other clause of this Agreement, You acknowledge and agree that if the terms and conditions of Your ActewAGL Electricity Sale Contract change (including any change to any charge, benefit or tariff), that any benefits, including financial benefits, arising under this Agreement or stated in the Welcome Letter or the Contract Specifics or any estimate of system performance or other representations may be impacted, and We are not liable to You for any loss, damage or liability You suffer as a result of or in connection with any such impacts.
  - g) If the Operated Product or Supply Address is sold, leased, sublet, licensed, transferred or assigned to any other person:
    - (i) You will notify the relevant person regarding consents in this Agreement and obtain their consent;

- (ii) You will notify Us immediately; and
- (iii) We may provide Our consent on terms and conditions We deem reasonable, including requiring any lessee, sublessee, licensee, assignee or transferee to enter into an agreement with Us on similar terms to this Agreement, which You agree use best endeavours to procure.

## 5. Customer Tax Warranty

You warrant to Us that:

- a) You are and for the duration of the Agreement will be, an individual;
- b) You are not and will not be entitled to an ABN as You are not carrying on an enterprise in Australia; and
- c) the Supply is wholly of a private and domestic nature (from the Supplier's perspective).

## 6. Impact of VPP Services

- a) You acknowledge that the VPP Services may impact upon your electricity usage as follows:
  - (i) a draw from the National Electricity Grid may appear as additional electricity consumption on Your electricity bill under Your Electricity Sale Contract; and
  - (ii) a discharge may impact on the amount of electricity generated from Your solar photovoltaic system that You have to use from the Products.
- b) In addition, the VPP Services will result in charge cycling of the Product and that this may have an impact on the lifespan of the Product.
- c) To the extent permitted by law, We are not liable to You for any loss, damage or liability You suffer as a result of or in connection with any of the impacts described in clauses 6(a) and 6(b).
- d) If Your Product has Backup Power, We will not allow the level of energy stored in the Product to drop below the following level as a result of a discharge from the Product:
  - (i) for a Tesla Powerwall: 20% of useable energy storage capacity; or
  - (ii) for a LG Home SolarEdge: the level of Backup Power set in Your inverter during installation or as amended by Us by agreement with You from time to time.

## 7. Estimate of VPP Services

- a) Except where one of the exclusions identified in clause 7(b) below applies, We estimate that the impact of the VPP Services on Your ActewAGL electricity bill will not exceed \$50 (inclusive GST) over each 12 month period measured from the VPP Commencement Date and each anniversary of that date.
- b) Clause 7(a) does not apply if:
  - (i) Your Electricity Sale Contract includes an electricity tariff that has a 'demand charge' component;
  - (ii) Your Product is set to a mode other than (for Tesla) 'Self-Powered' or (for SolarEdge inverters) 'Maximise Self-Consumption (MSC)'. For clarity, this means that operating modes such as time-based control, demand charge management and backup only functionality are excluded.

- c) Notwithstanding clause 7(a), if the terms and conditions of Your Electricity Sale Contract change (including any change to any charge, benefit or tariff), then any benefits, including financial benefits, arising under this Agreement may be impacted.

## 8. Government Credits

- a) You may be entitled to create or receive Government Credits, including through creating energy productivity value, as a result of the supply of the Services;
- b) We will own, and You assign to Us, all rights in and title to any such Government Credits that may arise in relation to the Services;
- c) You confirm that you have not created, or assigned the right to create, any Government Credits for participation in a VPP previously.
- d) We may apply for such Government Credit in Your name; and You authorise Us to directly receive payment and grant of, or right and title to, that Government Credit;
- e) If We do not receive the Government Credit in accordance with clause 8(a), including because You are not eligible to receive it; and
  - (i) We have already reduced the Purchase Price to reflect that Government Credit, or paid to you any credit amount;
  - (ii) then We may recover the value or amount of that Government Credit as a debt due and owing to Us, payable by You on demand.
- f) If the Government Credit was not created or was improperly generated, then if this was due to a breach by You of this Agreement, then in addition to the amounts in clause (e), we may also recover all reasonable costs or a reduction in benefits caused by this.
- g) You agree that You will promptly do all things necessary, including providing any necessary information and signing any further documents, to ensure that this clause 8 is effective.

## 9. Additional Services

- a) From time to time We may offer to add additional services (including adding additional Operated Products to this Agreement) by prior written notice of no less than 14 business days to You (**Additional Services**). This written notice will set out the terms of the Additional Services including any price impacts.
- b) If You accept the provision of the Additional Services in the manner set out in the written notice and sign a copy of that notice, the content of the notice will be incorporated into this Agreement and any terms, including payment terms (such as the quantity and/or method ActewAGL Credits are provided to You in the Welcome Letter or the Contract Specifics of this Agreement, will be varied upon Your signing of that notice.

## 10. Variations and change in law

- a) We may by written notice to You immediately vary this Agreement:
  - (i) as We consider necessary to accommodate any change in any Regulatory Requirements or where We are permitted to do so by a Regulatory Requirement;

- (ii) (to make a change that You have requested or expressly consented to;
  - (iii) to make an administrative or typographical change; or
  - (iv) to make the terms of this Agreement more favourable to You; or
  - (v) if We can demonstrate that due to a change in Regulatory Requirements a cost associated with the supply of the Services has increased after the commencement of the VPP Services Term, we may decrease the value of the ActewAGL Credits by a reasonable corresponding amount; and
  - (vi) such variation will be deemed to be incorporated into this Agreement.
- b) We may by written notice to You request to vary this Agreement in circumstances other than set out in clause 10(a) above and upon receipt of the notice, You can either:
    - (i) accept the proposed variation and the Agreement will continue with the variation; or
    - (ii) opt not to accept the proposed variation and terminate the Agreement in accordance with clause 11.2(a).

## 11. Termination

### 11.1 Termination by Us

- a) In addition to any other rights provided at law, We may provide you with not less than 30 days written notice to terminate this Agreement:
  - (i) if Your Grid Connection Agreement is terminated;
  - (ii) if We determine acting reasonably that it is not technically or operationally feasible or commercially viable to supply the VPP Services to You;
  - (iii) upon You notifying us, or if We become aware, that the property located at the Supply Address to which the VPP Services apply to has been sold, leased, sublet, licensed, transferred or assigned;
  - (iv) for convenience; or
  - (v) if Your ActewAGL Electricity Supply Contract is terminated.
- b) If this Agreement is terminated by Us in accordance with:
  - (i) Clauses 11.1(a)(i)–(iv) inclusive, You will be entitled to retain the ActewAGL Credits which You have received as at the date of termination, and we will pay You the ActewAGL Credits that have accrued up to the date of termination and the ActewAGL Credits that would have accrued (but for the termination of this Agreement) for the remainder of the Initial VPP Services Term or relevant Further VPP Services Term (as applicable); or
  - (ii) Clause 11.1(v), You will be entitled to retain the ActewAGL Credits that You have already received as at the date of termination and we will pay You the ActewAGL Credits that have accrued up to the date of termination. You will not be entitled to receive any other ActewAGL Credits

### 11.2 Termination by You

- a) You may terminate this Agreement by giving Us written notice of not less than 30 days stating that You opt not to accept the variation to the Agreement pursuant to clause 10(b) or 13(c). If you terminate in accordance with this clause, You will be entitled to retain the ActewAGL Credits which You

have received as at the date of termination, and we will pay You the ActewAGL Credits that have accrued up to the date of termination and the ActewAGL Credits that would have accrued (but for the termination of this Agreement) for the remainder of the Initial VPP Services Term or relevant Further VPP Services Term (as applicable)

### 11.3 Termination for Breach

- a) Either party may terminate this Agreement at any time by written notice of not less than 30 days to the other party if that other party commits a material breach of this Agreement and that breach:
  - (i) is not capable of remedy; or
  - (ii) (is capable of remedy but is not remedied within a reasonable period of not less than 60 days from the date of a written notice calling upon the party in breach to remedy such breach.
- b) For clarity, and without limiting any other rights of termination under this Agreement and what other breaches which may be material, the parties agree that the following are material breaches of this Agreement:
  - (i) (if Your Operated Product is not connected to the internet or properly functioning, and You do not rectify the connectivity or functionality promptly after being made aware of this by Us;
  - (ii) a breach of any of Your obligations under clause 4;
  - (iii) if You commit any fraudulent or grossly negligent act in relation to this Agreement.

### 11.4 Effect of termination by You without cause or for Your breach

- a) Without limiting clause 11.5, if:
  - (i) You terminate this Agreement other than in accordance with clause 11.2 or clause 11.3; or
  - (ii) We terminate this Agreement for Your breach in accordance with clause 11.3,

You will be entitled to retain the ActewAGL Credits that You have already received as at the date of termination, and we will pay You the ActewAGL Credits that have accrued up to the date of termination but You will not be entitled to receive any further ActewAGL Credits.

- b) Without limiting clause 11.5, if You terminate this Agreement for Our breach in accordance with clause 11.3(a), You will be entitled to retain the ActewAGL Credits which You have received as at the date of termination, and we will pay You the ActewAGL Credits that have accrued up to the date of termination and the ActewAGL Credits that You would have accrued (but for the termination of this Agreement) for the remainder of the Initial VPP Services Term or relevant Further VPP Services Term (as applicable).

### 11.5 Effect of termination – general

- a) Termination of this Agreement will not affect any:
  - (i) accrued rights or remedies that We or You may have under this Agreement; or
  - (ii) rights or obligations stated to survive termination, or by their nature intended to survive termination.

## 12 Electricity distributor and consents

- a) You warrant that you meet all Eligibility Criteria.

- b) You must immediately notify us if Your Grid Connection Agreement is amended or terminated.
- c) If We ask, You may appoint Us as Your representative to deal with Your Distributor, government agency, electricity retailer, Clean Energy Regulator and Relevant Manufacturer on Your behalf, including to:
  - (i) make any Grid Connection Application or any similar,
  - (ii) seek to amend or agree any amendment of Your Grid Connection Agreement;
  - (iii) accept Your electricity Distributor's terms and conditions including any variation of such terms and conditions;
  - (iv) seek and receive information from about Your eligibility to receive the VPP Services, Your connection, Grid Connection Agreement, Operated Product or other related systems at the Supply Address or any other technical information relevant to the supply of the VPP Services.
- d) You may withdraw the authorisation under clause 12(c) by notifying Us in writing, but this may delay or disrupt Our provision of the VPP Services (and by withdrawing the authorisation You agree that We may in Our absolute discretion terminate or suspend the supply of VPP Services that We consider are potentially affected by the loss of such authorisation).
- e) You agree that in appointing Us as Your representative under clause 12(c), this may prompt third parties such as Your Distributor to seek to ascertain whether You have complied with any of the Distributor's requirements or Regulatory Requirements. We are not liable to You for any loss, damage or liability You suffer as a result of any non-compliance in relation to Your Supply Address.

## 13 End of VPP Services Term

- a) This Agreement will terminate at the end of the Initial VPP Services Term if either party provides written notice that it is terminating this Agreement at least 14 days prior to the end of the Initial VPP Services Term. If neither party provides at least 14 days' written notice prior to the end of the Initial VPP Services Term, this Agreement will automatically renew for successive terms of one (1) year (each a **Further VPP Services Term**).
- b) In any Further VPP Services Term either party may terminate for convenience at any time by providing the other with 30 days' prior written notice that it is terminating this Agreement.
- c) If this Agreement renews in accordance with clause 13(a) for a Further VPP Services Term, all other terms and conditions of this Agreement continue to apply during the Further VPP Services Term, but in addition to the rights of Variation under clause 10, We may at any time provide You with 30 days' written notice (from the date in the notice) varying the terms and conditions of this Agreement (including changes to any fees, charges or price) that will apply for any Further VPP Services Term. If You do not agree with the proposed variations, You may terminate this Agreement on 30 days' written notice to us.
- d) If You or We terminate this Agreement at the end of the Initial VPP Services, You will be entitled to retain the ActewAGL Credits which You have received as at the date of termination, and we will pay You the ActewAGL Credits that have accrued up to the date of termination.



## 14 General warranties

- a) Despite anything to the contrary in this Agreement, to the extent that You receive VPP Services from Us as a consumer within the meaning of the Australian Consumer Law, You may have certain guarantees, rights and remedies under the Australian Consumer Law (including consumer guarantee right that the VPP Services We provide to You will be of acceptable quality, fit for the purpose disclosed and carried out by Us with due care and skill) that cannot be excluded, restricted or modified by agreement.
- b) Nothing in this Agreement operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
  - (i) contravene that statute; or
  - (ii) cause any term of this Agreement to be void, (**Non-excludable Obligation**).

## 15. Intellectual Property

- a) Intellectual Property owned by either party at the commencement of this Agreement remains the property of that party.
- b) Any Intellectual Property developed or created during the performance of this Agreement vests in Us immediately upon its creation and You assign all right, title and interest in such Intellectual Property to Us and will do any further acts or execute any documents required by Us to effect such assignment.
- c) Without limiting any other clause of this Agreement, to the extent You provide, submit, send or receive information or content in which You own Intellectual Property to Us under or in connection with this Agreement, You provide us with a perpetual royalty free worldwide license to use, reproduce, modify, adapt and create derivative works in such Intellectual Property for the purposes of improving and developing our products and services.

## 16. Data

- a) You consent to:
  - (i) the transmission of the Data to Us;
  - (ii) Our access to and use of the Data for any purpose We see fit to provide services under this Agreement (subject to privacy laws and Our privacy policy);
  - (iii) Our use and sharing of the Data with third parties, including any contractor providing the VPP Services, the Relevant Manufacturer, the Australian Energy Market Operator, the Clean Energy Regulator, a Distributor, a government agency or any person as required under the Regulatory Requirements or any person involved in the supply chain of a virtual power plant with which Your VPP Services are associated and to these third parties using and sharing this Data for any purpose they see fit (subject to privacy laws);
  - (iv) Us and Our Related Bodies Corporate using Your Data for internal assessments, developing new products and services.
  - (v) Us notifying third parties of Your consent to allow Us to continue receiving this Data as required to continue supplying You with products and services and

confirmation of Your consent by completing or signing documents provided to You. Where We are permitted by Regulatory Requirements, You give consent for Us to access and use information that is recorded prior to the date that You accept the Offer.

- b) You may withdraw the consents contained in this clause 16 at any time by notifying Us, but doing so may prevent Us from providing You with the VPP Services and may impact the functionality of the Operated Product and VPP Services (and by withdrawing consent You agree that We may in Our absolute discretion suspend or terminate the supply of VPP Services that We consider are potentially affected by the loss of such consent).
- c) Data obtained through this clause 16 survives termination or expiry of this Agreement to the extent required by Australian law.

## 17. Privacy and Confidential Information

Without limiting clause 16 or any other provision of this Agreement:

- a) The information and Data collected by Us may include personal information within the meaning of the Privacy Act 1988 (Cth). We may otherwise collect, use and disclose Your personal information in accordance with Our privacy policy and credit reporting policy, which is available at: [www.actewagl.com.au/legal/policies/retail-privacy-statement](http://www.actewagl.com.au/legal/policies/retail-privacy-statement), and which provides further details about the personal information We collect, what We do with it, where We send it, the credit reporting bodies We use and Your opt-out, access, correction and complaint rights with Us.

## 18. Liability

- a) You acknowledge and agree that the information and Data or reports You receive in connection with the VPP Services may be incomplete or vary from the data and information recorded by other metering devices, including any network electricity meter at the Supply Address. For clarity, in the event of any discrepancy, the network electricity meter will take precedence.
- b) You acknowledge and agree that the VPP Services will result in charge cycling of the Operated Product and that this may have an impact on the lifespan of the Operated Product.
- c) To the extent permitted by law, and where We are not negligent, We are not liable for any loss, harm, damage, cost, expense (including legal fees) or third party claims, or in the nature of special, indirect, consequential loss or damage, which You suffer, incur or are liable for, including arising directly or indirectly from:
  - (i) any property damage (including damage to the Operated Product and the property at the Supply Address) caused by the VPP Services;
  - (ii) any errors, viruses or bugs present in or arising from the VPP Services or any incompatibility of the VPP Services with any other software or hardware;
  - (iii) any damage caused to the Operated Product, or other inability to utilise the Operated Product, due to hardware or software upgrades initiated by the manufacturer;
  - (iv) any charge cycling referred to in clause 18(b) and its impact on the lifespan of the Operated Product;
  - (v) the Operated Product, any other Operated Product on the Supply Address, or any electricity charges payable by You under Your ActewAGL Electricity Sale Contract or to another retailer or Your distributor; or
  - (vi) any cost or expense (including legal fees), or in the nature of special, indirect or consequential loss or damage

(including, without limitation, economic loss (including increased electricity costs, loss of solar output, loss of stored solar energy, disruption of energy supply or storage, loss of revenue including any feed-in tariff or profit or any reduction in capital value of the Supply Address), loss of contract, loss of profit or revenue or loss of opportunity.

## 19. Regulatory Requirements

- a) Where Regulatory Requirements are optional or permit the parties to vary or exclude them by agreement, if a term or condition agreed between the parties in this Agreement is inconsistent with a Regulatory Requirement, the term or condition will prevail to the extent permitted.
- b) If:
  - (i) any matter required to be dealt with by a Regulatory Requirement is not, or is only partly, expressly dealt with in this Agreement; or
  - (ii) any term or condition of this Agreement is rendered void for inconsistency with a Regulatory Requirement, the relevant Regulatory Requirement is incorporated into this Agreement in whole or in part as required.

## 20. Force Majeure Event

- a) If an event outside Our or Your reasonable control (Force Majeure Event) prevents Us or You from complying with any obligations under this Agreement, those obligations will be suspended for the duration of the Force Majeure Event (other than any obligation to pay money).
- b) The party affected by the Force Majeure Event must use its best endeavours to:
  - (i) give the other party prompt notice of, and full details about, the Force Majeure Event; and
  - (ii) minimise, overcome or remove the Force Majeure Event as quickly as practicable (however, this will not require either party to settle any industrial dispute).
- c) The party affected by the Force Majeure Event must advise the other party about:
  - (i) the likely duration of that event;
  - (ii) the obligations affected by that event;
  - (iii) the extent to which those obligations will be affected; and
  - (iv) the steps that will be taken to minimise, overcome or remove those effects.
- d) For the purposes of clause 20(b)(i), and only 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 email or SMS within 30 minutes of being advised of the Force Majeure Event, or otherwise use best endeavours to establish as soon as practicable.

## 21. Assignment

- a) We may assign, transfer or novate Our rights and obligations under this Agreement to another person at any time:
  - (i) by notice to You, if:
    - a. that person is a Related Body Corporate of Us; or
    - b. that assignment, transfer or novation forms part of the transfer of all or a substantial part of Our battery or solar energy business to that other person.
- b) Unless otherwise agreed under this Agreement, You cannot assign, transfer or novate Your rights and obligations under this Agreement to any third party. Consent will not be unreasonably withheld should a request to assign be received under this clause 21, or clause 4(g).

## 22. Notices

- a) Except where otherwise specified in this Agreement or required under Regulatory Requirements, any communication between the parties under this Agreement may be in person, in writing, by telephone or by Electronic Means.
- b) Any communication under this Agreement required to be in writing may be made by mail or Electronic Means capable of generating a delivery confirmation report.
- c) Any written communication by You or Us is deemed to have been received:
  - (i) if sent by mail, the estimated delivery time of ordinary post as published by Australia Post; or
  - (ii) if sent by Electronic Means, on the earlier of receipt of delivery confirmation or the day of transmission (unless otherwise notified that delivery of the communication was unsuccessful or delayed).

## 23. Complaint handling and dispute resolution

- a) If You have a query or complaint, You may contact Us in writing or by telephone.
- b) We will address any complaints in accordance with Our complaints handling and dispute resolution procedure, which can be located at [www.actewagl.com.au/en/contact/complaints](http://www.actewagl.com.au/en/contact/complaints), or is available on request.
- c) We will inform You of the outcome of Your complaint. If You are not satisfied with our response to Your complaint, You may refer Your complaint to the energy ombudsman in the State in which Your Supply Address is located.

## 24. Waiver

Except as otherwise provided in this Agreement, a right created under this Agreement may only be waived in writing signed by the party granting the waiver.

## 25. Severability

If any part of this Agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Agreement, which will remain in full force and effect.

## 26. Applicable law

This Agreement is governed by the laws in force in the State in which Your Supply Address is located. The parties submit to the non-exclusive jurisdiction of the courts in that State.

## Customer enquiries

13 14 93

## Postal address

ActewAGL GPO Box 366

Canberra ACT 2601

## Language assistance

13 14 50

24 hours

如果您需要幫助，請打電話給下面的號碼。

¿Necesita un intérprete? Llame al número indicado abajo.

هل تحتاج إلى مترجم؟ اتصل بالرقم أدناه.

Trebate li pomoć tumača? Nazovite niže navedeni broj.

Nếu quý vị cần sự giúp đỡ, vui lòng gọi số bên dưới.

Se vi serve un interprete, telefonate al seguente numero.

Αν χρειάζεστε διερμηνέα, τηλεφωνείτε στον αριθμό παρακάτω.